

Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps

- UL 60730-2-4 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Thermal Motor Protectors for Motor-Compressors of Hermetic and Semi-Hermetic Type
- UL 60730-2-10 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electrically Operated Motor Starting Relays
- UL 60730-2-11 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Energy Regulators
- UL 60730-2-12 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electrically Operated Door Locks
- UL 60730-2-13 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Humidity Sensing Controls
- UL 60730-2-16 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Automatic Electrical Water Level Operating Controls of the Float Type for Household and Similar Applications
- UL 61058-1 Switches for Appliances

(1) Limited to electrical portions only.

(2) This standard is approved for testing and certification of products for use within recreational vehicles and mobile homes.

(3) This standard replaces UL 1950. Upon publication of the final notice for UL's renewal/expansion, the web page of all other NRTLs currently recognized for UL 1950 also will be updated to include UL 60950, due to earlier requests received from some of these other NRTLs for recognition of UL 60950.

(4) The Canadian Standards Association (CSA), another NRTL, had requested recognition for this standard in an expansion application, which OSHA granted on July 3, 2001 (66 FR 35271). However, the standard was mistakenly excluded from the notice but has been added to CSA's scope of recognition.

#### Preliminary Finding

UL has submitted acceptable requests for renewal and expansion of its recognition as an NRTL. As noted above, in processing these requests, OSHA has performed on-site reviews of certain UL facilities. UL has addressed the discrepancies noted by the assessor following the reviews, and the assessor has included the resolution in the on-site review reports (see Exhibits 24, 24-1, 24-2).

Following a review of the application files, the on-site review reports, and other pertinent information, the NRTL Program staff has concluded that OSHA can grant to UL: (1) the renewal for the 10 sites and the test standards and programs listed above, and (2) the expansion for the additional 2 sites and test standards, also listed above. The staff therefore recommended to the

Assistant Secretary that the applications be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Underwriters Laboratories Inc. can meet the requirements as prescribed by 29 CFR 1910.7 for the renewal and expansion of its recognition. This preliminary finding does not constitute an interim or temporary approval of the applications for UL.

OSHA welcomes public comments, in sufficient detail, as to whether UL has met the requirements of 29 CFR 1910.7 for the renewal and expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESSES**, no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above (also see **ADDRESSES**) no later than the last date for comments (also see **DATES** above). You must include your reason(s) for any request for extension. OSHA will limit an extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of UL's requests, the on-site review reports, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL4-93, the permanent record of public information on UL's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant UL's renewal and expansion requests. The Assistant Secretary will make the final decision on granting the renewal and expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

#### Notice of Voluntary Termination

With respect to Docket No. NRTL2-93, Entela, Inc., has requested that OSHA withdraw its recognition of the Entela site in Taipei, Taiwan (see Exhibit 22 in Docket NRTL2-93). This withdrawal is effective immediately, and OSHA will take no further action on

it. OSHA recognized this site on May 22, 1997 (62 FR 28066). Under section II.D of Appendix A to 29 CFR 1910.7, OSHA must "inform the public of any voluntary termination by **Federal Register** notice." This action is unrelated to our preliminary finding on the UL renewal and expansion requests. We include it herein only for convenience in processing.

Signed at Washington, DC, March 7, 2002.

**John L. Henshaw,**  
Assistant Secretary.

[FR Doc. 02-6447 Filed 3-15-02; 8:45 am]

**BILLING CODE 4510-26-P**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10912, et al.]

### Proposed Exemptions; Wyndham International, Inc. Employee Savings & Retirement Plan

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at that hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "moffittb@pwba.dol.gov", or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

#### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). 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 requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

#### Wyndham International, Inc.; Employee Savings & Retirement Plan (the Plan) Located in Dallas, Texas

[Application No. D-10912]

#### 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, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(2), and 407(a) 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 (D) of the Code, shall not apply to the past acquisition, holding, exercise by the Plan of certain stock purchase rights (the Rights),<sup>1</sup> which were issued by Wyndham International, Inc. (Wyndham) to all shareholders of record, as of September 30, 1999, of certain Wyndham common stock (the Common Stock) pursuant to a rights offering (the Rights Offering), provided that the following conditions were satisfied.

(a) The Plan's acquisition and holding of the Rights in connection with the Rights Offering occurred as a result of an independent act of Wyndham as a corporate entity;

(b) All holders of the Common Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering; and

(c) All decisions regarding the disposition or exercise of the Rights were made by the individual Plan participants whose accounts in the Plan received the Rights, in accordance with Plan provisions for the individually directed investment of such accounts.

**EFFECTIVE DATE:** This exemption, if granted, will be effective for the period from November 9, 1999 to December 8, 1999.

#### Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan with a Code section 401(k) feature. Wyndham, the Plan sponsor, is in the business of buying, selling, leasing, and managing hotels. Wyndham is a Delaware corporation headquartered in Dallas, Texas. The Plan provides for individually directed accounts. As of December 31, 1999, the fair market value of the total assets of the Plan was approximately \$71,963,560. As of May 26, 2000, the Plan had approximately 3,344 participants. The trustee of the Plan is CG Trust Company (the Trustee), located in Chicago, Illinois.

2. Among the assets of the Plan is Wyndham's Class A common Stock (i.e., the Common Stock), which is publicly traded on the New York Stock Exchange (NYSE). The applicant represents that, as of September 30, 1999 (the Record Date), there were issued and outstanding 168,132,832 shares of the

Common Stock. As of that date, the Plan held 487,364 shares of the Common Stock, less than one-half of one percent of all outstanding shares. These shares were held in individual accounts and had been purchased pursuant to participant direction of investment under the terms of the Plan. As of September 29, 1999, the closing price of the Common Stock on the NYSE was \$2.938 per share.

3. As background to the Rights Offering, Wyndham agreed to settle a class action lawsuit filed against it relating to a \$1 billion equity investment in Wyndham's Series B Convertible Preferred Stock. On September 17, 1999, Wyndham entered into a stipulation of settlement Agreement with the other parties to this litigation. On November 1, 1999, the Delaware Chancery Court issued an Order approving the stipulation of Settlement Agreement.

In accordance with the above-described settlement, all holders of the Common Stock, including the Plan, as well as the holders of certain units in partnerships related to Wyndham, were issued, on November 9, 1999, Rights to purchase shares of Wyndham's Series A Convertible Preferred Stock (the Preferred Stock) for a price of \$100 per share. The applicant represents that it filed Form S-3 with the Securities and Exchange Commission, as well as the Prospectus, dated November 8, 1999, for the Rights Offering.

The applicant further represents that the Plan had no control over the terms of the settlement, including the decision to carry out the Rights Offering, and that the Plan was not involved in any capacity in the settlement negotiations. Thus, the Rights Offering was an independent act of Wyndham as a corporate entity, and all holders of the Common Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering.

4. Pursuant to the Rights Offering, each shareholder of the Common Stock was issued one Right for each share of the Common Stock held as of the Record Date. Each shareholder was entitled to purchase one share of the Preferred Stock for every 57 Rights issued to such shareholder. As previously noted, the Plan held 487,364 shares of the Common Stock as of the Record Date. Consequently, the Plan was issued a total of 487,364 Rights. All Rights were to expire at 5:00 PM, Eastern Standard Time, on December 8, 1999 (the Expiration Date), 30 days after their issuance, unless they were properly exercised, or sold, before that date.

<sup>1</sup> The applicant states that the Rights do not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act.

5. The applicant represents that, in anticipation of the Rights Offering, the Plan was amended, as appropriate, to provide for the handling of the Rights. The Plan was also amended to establish a new Wyndham International, Inc. Series A Convertible Preferred Stock Fund (Preferred Stock Fund), similar to the fund that already held the Common Stock, to hold all shares of Preferred Stock that were purchased.

6. The applicant represents that each Plan participant was notified of the terms of the Rights offering, as well as the number of rights that were to be issued to the individual account of such participant. Each participant received a packet of information that included: (i) A memorandum, dated November 8, 1999, that was specifically designed to instruct participants regarding the Rights Offering; (ii) a Preferred Stock purchase form; and (iii) the Prospectus, dated November 8, 1999, which was also distributed to all other shareholders entitled to participate in the Rights Offering.

7. Each participant was allowed to direct the Trustee to sell or exercise the Rights allocated to the participant's account. In order to exercise the Rights, each shareholder was required to properly fill out, execute, and deliver a subscription warrant, along with full payment of the \$100 per share purchase price, to ChaseMellon Shareholder Services, LLC (ChaseMellon), the subscription agent, before the Expiration Date.

At the time of the Rights Offering, contributions could be invested, at the election of the participant, in one or more of the following investments: (i) CIGNA Guaranteed Long-Term Account; (ii) CIGNA Charter Large Company Stock Index Fund; (iii) Fidelity Puritan Account; (iv) Franklin Small Cap Growth A Account; (v) Franklin Mutual Qualified A Account; (vi) Wyndham International Common Stock Fund; (vii) Fidelity Advisor Growth Opportunities Account; (viii) INVESCO Dynamics Account; (ix) CIGNA Charter Small Company Stock Value I Fund; and (x) CIGNA Charter Foreign Stock II Fund. As set forth in the memorandum distributed to participants, a participant who elected to exercise his or her Rights was to authorize CIGNA Retirement & Investment Services (CIGNA), the Plan's third party administrator, to raise the purchase price for the Preferred Stock from the first six funds listed above. If insufficient, the participant was to authorize CIGNA to raise the amount from the next available fund in which the participant's account was invested.

The applicant represents that all decisions regarding the disposition or

exercise of the Rights were made by the individual Plan participants whose accounts in the Plan received the Rights, in accordance with Plan provisions for the individually directed investment of such accounts. The Board of Directors made no recommendation about whether an individual shareholder should exercise any Rights. Moreover, no shareholder was required to exercise any Rights or otherwise take any action in response to the Rights Offering.

8. Beginning on November 16, 1999, the Trustee attempted to sell, in the over-the-counter (OTC) market, any unexercised Rights that were allocated to the account of a participant. Prior to expiration, the Rights were to be transferred or sold through a stockbroker or ChaseMellon. However, no market developed for the Rights.

Wyndham did not charge any fee or sales commission to issue the Rights or to issue the Preferred Stock to a shareholder who exercised the Rights. Shareholders who exercised Rights through a broker or other holder of their shares were responsible for paying any fees that person may have charged. The shareholder was also to be responsible for any fees or sales commissions that were applicable to a sale of any of the Rights.

9. The applicant represents that the following is a summary of the Rights Offering. A total of 31 participants, who each had at least 57 Rights issued to his or her account, elected to exercise their Rights to purchase a total of 174 shares of Preferred Stock for the Plan.<sup>2</sup> The rest of the Rights expired without value, since no market developed for the Rights.

The applicant also stated that no market has ever developed for the Preferred Stock.<sup>3</sup> Upon completion of the Rights Offering, the beneficial ownership of individual shareholders of the Common Stock who did not exercise their Rights declined when compared to other holders of the Common Stock or limited partnership units who did exercise their Rights. This result occurred because the Preferred Stock was convertible into Common Stock and, therefore, represented dilution of

the ownership of Common Stock shareholders.

10. In summary, the applicant represents that the subject transactions satisfied the criteria for an exemption under section 408(a) of the Act for the following reasons: (1) The Plan's acquisition and holding of the Rights in connection with the Rights Offering occurred as a result of an independent act of Wyndham as a corporate entity; (2) all holders of the Common Stock, including the Plan, were treated in a like manner with respect to all aspects of the Rights Offering; (3) all decisions regarding the disposition or exercise of the Rights were made by the individual Plan participants whose accounts in the Plan received the Rights, in accordance with Plan provisions for the individually directed investment of such accounts; and (4) the Plan held less than one-half of one percent of all the Common Stock outstanding as of the Record Date.

*For Further Information Contact:*

Ms. Karin Weng of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

**Holt, Fleck & Free P.A. Profit Sharing Plan (the Plan) Located in Noblesville, Indiana**

[Application No. D-11000]

*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, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) 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 (E) of the Code, shall not apply to the sale (the Sale) by the Plan to a Plan fiduciary (the Applicant) of two parcels of improved real property (the Parcels). This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The Sales price is the greater of \$165,000 or the fair market value of the Parcels as of the date of the Sale;

(c) The fair market value of the Parcels has been determined by an independent, qualified appraiser;

<sup>2</sup> The applicant states that the Preferred Stock is a "qualifying employer security" within the meaning of section 407(d)(5) of the Act. However, the Department expresses no opinion herein as to whether the Preferred Stock is a "qualifying employer security" under section 407(d)(5).

<sup>3</sup> The applicant represents that subsequent sales of the Preferred Stock will be done in accordance with the conditions of section 408(e) of the Act and the regulations thereunder [see 29 CFR 2550.408(e)]. However, the Department expresses no opinion herein as to whether any sales of the Preferred Stock comply with section 408(e) and the regulations thereunder.

(d) The Sale is a one-time transaction for cash; and

(e) The Plan does not pay any commissions, costs or other expenses in connection with the Sale.

#### Summary of Facts and Representations

1. Holt, Fleck & Romine, the sponsor of the Plan, is a law firm located in Noblesville, Indiana. The Plan is a profit sharing pension plan, which, as of May 30, 2001, had 15 participants. The Applicant, Steven Holt, the sponsor of the Plan, proposes to purchase the Parcels from the Plan. The Plan's assets have an aggregate fair market value of \$921,549.

2. In September 1992, the Applicant purchased the Parcels from Hamilton General Corporation, an unrelated third party, for \$145,000. At the time of the acquisition, the Parcels represented 53% of Plan assets. The Parcels have an estimated fair market value of \$165,000 and constitute approximately 18% of the total value of Plan assets.

3. The Applicant represent that the Sale is in the interests of the Plan, and its participants and beneficiaries. The Applicant is seeking to purchase the Parcels from the Plan for cash, thus allowing the Plan to be in a more liquid financial status. There will be no commissions, costs or other expenses incurred by the Plan in connection with the Sale.

4. The Parcels consist of:

A 5,412 square foot parcel of improved real property located at 107 South 8th Street, Noblesville, Indiana (107 South); and

A 4,356 square foot parcel of improved real property located at 123 South 8th Street, Noblesville, Indiana (123 South). The Parcels have generated a minimal rate of return during the Plan's holding of the Parcels.<sup>4</sup>

5. The Parcels were appraised on July 16, 2001, by Therese Lattanzio and Stephen L. Cobb (the Appraisers) for Real Property Evaluations, Inc. located in Indianapolis, Indiana. Both Appraisers are Indiana state Certified General Appraisers. The Appraisers are independent of the Applicant.

The Appraisers determined that the best use and highest value of the Parcels was associated with valuing the Parcels in accordance with the so-called direct sales comparison method. In this

<sup>4</sup> The Department expresses no opinion herein as to whether the acquisition and the holding of the Parcels by the Plan violated section 404(a) of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan.

method, sales of similar use land in the market area are compared to the subject to arrive at an indication of value. In arriving at final value conclusions, factors such as rights conveyed, financing terms, sale conditions, market conditions, location, and physical characteristics are taken into consideration. Therefore, based on the valuation procedure, the fair market value of the Parcels was determined as follows: (i) 107 South = \$110,000; and (ii) 123 South = \$55,000. Accordingly, the total fair market value of the Parcels is \$165,000 as of July 16, 2001 (\$110,000 + \$55,000 = \$165,000). The Plan will receive an amount equal to the greater of: (i) \$165,000; or (ii) The fair market value of the Parcels at the time of the Sale.

6. In summary, the Applicant represent that the subject transaction satisfies the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons:

(a) The Sale will be a one-time transaction for cash;

(b) The Plan will not pay any commissions, costs or other expenses in connection with the Sale; and

(c) The Plan will receive an amount equal to the greater of:

(i) \$165,000; or (ii) The fair market value of the Parcels at the time of the Sale.

*Notice to Interested Persons:* Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**

*For Further Information Contact:*

Khalif Ford of the Department, telephone (202) 693-8540 (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 of the Act and/or the Code, including any prohibited transaction 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional 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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of March, 2002.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
Department of Labor.*

[FR Doc. 02-6431 Filed 3-15-02; 8:45 am]

BILLING CODE 4510-29-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45536; File No. SR-Amex-2002-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the eQPriorty Pilot Program for Six Months

March 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 4, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.