

since the acquisition (the Holding Costs). Specifically, the Plan has paid the following Holding Costs since its acquisition of the Property Interest in November, 1980: (i) Real estate taxes, \$2,480.00; (ii) Insurance, \$4,300.00; (iii) Appraisal and other professional fees, \$3,150.00. The Plan's budgeted holding costs for holding the Property Interest for the current Plan year, consisting of, primarily, taxes, insurance and appraisal fees, is \$1,240.00. The applicant states that the Holding Costs for the Property Interest have been approximately \$11,170. Therefore, the total cost for the Property Interest (*i.e.*, the acquisition price of \$127,009, plus the Holding Costs of approximately \$11,170) is approximately \$138,179 as of April 2002.

5. The Property Interest was appraised on May 19, 2002, as having a fair market value of \$180,029.68 (the Appraisal). The Appraisal was prepared by George A. Copeland, Jr., MAI (Mr. Copeland), who is an independent, qualified real estate appraiser in the State of New Jersey. Mr. Copeland is employed by Copeland Appraisal Associates, Inc.

Mr. Copeland states that consideration was given in the Appraisal to three approaches to value, *i.e.*, the cost approach, sales comparison approach, and income approach.

However, Mr. Copeland relied on the sales comparison approach to determine the fair market value of the Property Interest. Mr. Copeland rendered an opinion as to whether and the extent to which the Property Interest has a greater value to the Skeuses (as compared to its value in the hands of an unrelated third party buyer) by reason of its proximity to the Skeuses' residential property. Mr. Copeland represented that he did not believe this to be the case because he believes that the Property Interest would not merit a premium above its fair market value in any sale to an adjacent property owner. In addition, Mr. Copeland represents that an undivided interest within the fee simple title of the Land is neither diminished nor enhanced in proportionate value under an assumed unified sale of the full fee simple title. Hence, in this circumstance, Mr. Copeland represents that the value of an undivided interest of the Land is directly consistent with the appropriate designated percentage of ownership.

6. The applicant now proposes that the Skeuses purchase the Property Interest from the Plan in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the Plan. The Plan will pay no commissions or other expenses associated with the

sale. The Skeuses will pay the Plan the greater of either: (a) \$180,029.68; or (b) the current fair market value of the Property Interest, as established by a qualified, independent appraiser at the time of the transaction.

The sale of the Property Interest will enable the Plan to sell an illiquid non-income producing asset and reinvest the sale proceeds in assets that may yield higher returns. The Plan has been attempting to liquidate its real estate investments and believes that the proposed transaction will occur during what appears to be a market peak, and the Plan should, accordingly, be able to maximize its gain from this real estate investment.

7. In summary, the applicant represents that the transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The proposed sale will be a one-time cash transaction; (b) the Plan will receive the greater of either: (i) \$180,029.68; or (ii) the current fair market value for the Property Interest, as established at the time of the sale by an independent qualified appraiser; (c) the Plan will pay no fees, commissions or other expenses associated with the sale; and (d) the sale will enable the Plan to divest itself of a non-income producing asset and acquire investments which may yield higher returns.

**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 I. Ford of the Department at (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 24th day of December, 2002.

**Ivan Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002-55; Exemption Application No. D-10958, et al.]

#### Grant of Individual Exemptions; Fidelity Management Trust Company and Its Affiliates (Collectively Fidelity)

**AGENCY:** Pension and Welfare Benefits 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 (the Act) and/or

the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The 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, DC. 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 (55 FR 32836, 32847, August 10, 1990) 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.

#### Fidelity Management Trust Company and Its Affiliate (Collectively Fidelity) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 2002-55; Application No. D-10958]

#### Exemption

##### Section I—Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) of ERISA 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 certain lines of credit (the Line of Credit or Lines of Credit), and the Loan and repayment of funds, including accrued interest, thereunder (the Loan or Loans), involving certain employee benefit plans (the Plan or Plans) with respect to which Fidelity acts as directed trustee, investment manager or other administrative service provider; provided that the following conditions are satisfied.

##### Section II—General Conditions

(a) Each Loan is made to the Plan in connection with the administration of a unitized fund (Unitized Fund) as defined in section III (e) in order to facilitate redemptions from the Unitized Fund.

(b) Each Line of Credit will be negotiated by Fidelity on behalf of the Plan with a bank, as defined under the Investment Advisers Act of 1940, as amended, having total assets of at least \$5 billion (the Lender or Lenders);

(c) Each Loan is initiated, accounted for and administered by Fidelity, which will monitor the transactions on behalf of the Plans to ensure that the terms and conditions of the exemption are met at all times;

(d) The Line of Credit provides that each Loan thereunder, including accrued interest thereon, will be repaid by the Unitized Fund promptly in the ordinary course of business upon settlement of the transaction that triggered the need for the Loan;

(e) The maximum amount loaned with respect to a Unitized Fund on any business day that a Loan is initiated does not, after the Loan is made, exceed 25% of the total fair market value of the Unitized Fund (such value determined as of the most recent close of the New York Stock Exchange or as otherwise provided in the applicable Line of Credit, provided such determination is substantially contemporaneous with the Loan);

(f) The fair market value of the assets in the Unitized Fund is determined by an objective method specified in the Line of Credit;

(g) The Lender's recourse with respect to any Loan from a Unitized Fund is limited to the assets of such Unitized Fund. No commitment fees, or commissions are paid by the Plan and no compensating balance is required by the Lenders in connection with these loans. Any set-off will be limited to the assets of the Unitized Fund borrowing the funds;

(h) Interest payable by the Plan on each Loan is based on rates quoted to Fidelity by the Lenders under the Lines of Credit and accepted by Fidelity on

behalf of the Plan in accordance with the Lines of Credit;

(i) The Plan enters into a written agreement with Fidelity pursuant to which Fidelity is authorized to borrow on behalf of the Plan. Prior to borrowing on behalf of a Plan pursuant to this exemption, Fidelity provides the Plan with written notice explaining the Line of Credit program. The notice shall state that Fidelity agrees to act as a fiduciary on behalf of the Plan in connection with the following activities involving the Line of Credit agreements with the Lenders: the negotiation of the Plan's participation in the Line of Credit agreements; the negotiation of interest rates; the terms of the Loans, and the terms of repayment under the Lines of Credit agreements. The notice shall set forth Fidelity's objective methodology for allocating favorable interest rates or credit availability equitably among those Unitized Funds seeking to borrow under the Line of Credit agreements on any given day, *i.e.*, "the applicable ordering rules and limitations." Each notice shall also address under what circumstances Fidelity may exclude the Plan from participation in the program, either temporarily or permanently;

(j) Fidelity, on behalf of the Plan, enters into a written agreement with each of the Lenders offering these Line of Credit Agreements to the Plan. The agreement shall address, among other things, the maximum Line of Credit available, the terms for the Loan and repayment, the formula or method for determining the interest rate payable with respect to each Loan, and the conditions for terminating the agreement;

(k) The Plan may elect to terminate participation in the Lines of Credit at any time, without penalty and subject to the Plan's repayment of any outstanding Loan;

(l) No later than 15 business days after month end, Fidelity shall provide the Plan Sponsor of each Plan that has any outstanding Loan during a calendar month with a written report showing the Plan's outstanding Loans on each day during such month, the amount repaid on each such day, the interest rate and the amount of interest paid on each such day, the aggregate balance of all Loans outstanding on the last business day of such month and the aggregate amount of interest paid during such month;

(m) The Loans are made on terms at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(n) Each Lender is not related to Fidelity and is a party in interest (including a fiduciary), solely by reason

of providing services to the Plan, or solely by reason of a relationship to a service provider to the Plan described in section 3(14)(F), (G), (H) or (I) of the Act;

(o) The agreements and the any loans contemplated thereunder are not a part of an agreement, arrangement, or understanding designed to benefit any party in interest with respect to any plan;

(p) No fees, or other compensation are paid to Fidelity in connection with the Loans by either the Plan or the Lenders;

(q) Where a Unitized Fund covered by this exemption invests in employer securities, such securities constitute "qualifying employer securities" as defined in section 407(d)(5) of the Act (QES) for which market quotations are readily available from independent sources within the meaning of Rule 17a-7, of the Investment Advisers Act of 1940, 17 CFR 270.17a-7. The exemption shall also apply to convertible preferred stock that qualifies as QES and is convertible, under an objective formulation, into securities for which market quotations are readily available as described above.

(r) Where a Unitized Fund, other than an employer securities fund or a stable value fund, invests directly or indirectly in securities, no less than 75 percent of such securities are securities for which market quotations are readily available from independent sources, within the meaning of Rule 17a-7, of the Investment Advisers Act of 1940, 17 CFR 270.17a-7;

(s) Fidelity maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (t) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fidelity, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than Fidelity, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by sections 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (t);

(t)(1) Except as provided in paragraph (t)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (s) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries in the Plan and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities; and

(D) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (t)(1)(B), (C) or (D) shall be authorized to examine the trade secrets of Fidelity or commercial or financial information that is privileged or confidential;

(3) Should Fidelity refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (t)(2) above, Fidelity shall, by the close of the thirtieth (30th) day following the request, provide a written or electronic notice advising that person (i) of the reasons for the refusal and (ii) that the Department may request such information.

#### Section III—Definitions

(a) "Fidelity" refers to Fidelity Management Trust Company and its affiliates.

(b) "Affiliate" means (i) any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner.

(c) "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) Fidelity is "related" to a Lender if the Lender (or a person controlling, or controlled by, the Lender) owns a five percent or more interest in Fidelity or if Fidelity (or a person controlling, or controlled by, Fidelity) owns a five percent or more interest in the Lender. For purposes of this definition: (1) The term "interest" means with respect to ownership of an entity (A) the combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation, (B) the capital interest or the profits interest of the entity if the entity is a partnership,

or (C) the beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and (2) a person is considered to own an interest held in any capacity if the person has or shares the authority (A) to exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or (B) to dispose or to direct the disposition of such interest.

(e) A "Unitized Fund" is a fund that, to facilitate trading and/or accounting, has established "units" representing undivided interests in all of the assets of such fund.

**EFFECTIVE DATE:** The exemption is effective as of the date this notice of final exemption is published in the **Federal Register**.

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 (the Proposal) published on October 8, 2002, at 67 FR 62818.

*Clarification:* Based on discussions with the applicant, the Department hereby wishes to clarify that all written communications that may be made by Fidelity pursuant to the requirements of this exemption can be made electronically (e.g., e-mail) in lieu of regular mail, provided that the Plans agree to receive such communications in that form.

*Notice to Interested Persons:* The Proposal indicated that notice would be provided to interested persons by first class mail (see 67 FR at 62822, column 2). However, the applicant informed the Department after the publication of the Proposal that it also wished to provide notice to interested persons electronically via electronic mail on or before November 2, 2002. In this regard, the Department notes that all interested persons were notified of the Proposal and informed of their right to comment thereon, either by first class mail or electronic mail, by November 2, 2002. No written comments on the Proposal were received by the Department. Accordingly, the Department hereby grants the exemption as proposed.

*For Further Information Contact:* Ms. Andrea W. Selvaggio of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

#### **The Profit Sharing Trust of Dr. Ferdinand G. Mainolfi (the Plan) Located in Baltimore, MD**

[Prohibited Transaction Exemption 2002-56 Exemption Application No. D-11108]

#### *Exemption*

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<sup>1</sup> shall not apply to the sale of parcels of improved real property (the Property) by the Plan to Ferdinand G. Mainolfi, a disqualified person with respect to the Plan; provided that: (1) The sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan will receive the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the transaction; (3) the Plan will pay no commissions, fees, or other expenses in connection with the sale; and (4) the terms of the sale will be no less favorable to the Plan than terms it would have received under similar circumstances in arm's length negotiations with unrelated third parties.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., 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 18, 2002, at 67 FR 69569.

*For Further Information Contact:* Angelena C. Le Blanc 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 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) This exemption is 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 this 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 in Washington, DC, this 24th day of December, 2002.

**Ivan Strasfeld,**

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

[FR Doc. 02-32895 Filed 12-27-02; 8:45 am]

**BILLING CODE 4510-29-P**

## **NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

### **Records Schedules; Availability and Request for Comments**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before February 13, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-837-3698 or by e-mail to [records.mgt@nara.gov](mailto:records.mgt@nara.gov). Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: 301-837-3120. E-mail: [records.mgt@nara.gov](mailto:records.mgt@nara.gov).

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of

<sup>1</sup> Pursuant to 29 CFR 2510.3-2(d), the Plan is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.