

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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 5th day of August, 1997.

Ivan Strasfeld,

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

[FR Doc. 97-21004 Filed 8-7-97; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97-42, et al.; Exemption Application No. D-10314, et al.]

Grant of Individual Exemptions; TA Associates, Inc. (TA Associates), et al.

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).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for

exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) 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 exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

TA Associates, Inc. (TA Associates) Located in Boston, MA

[Prohibited Transaction Exemption 97-42; Exemption Application No. D-10314]

Exemption

The restrictions of section 406(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, effective December 29, 1993, to the making, by an employee benefit plan (the Plan), of capital contributions to any venture capital fund (the TA Fund) that is organized, sponsored and/or managed by TA Associates and/or any of its affiliates (collectively, TA) pursuant to a contractual obligation by a plan having an interest in the TA Fund.

This exemption is subject to the following conditions:

(a) At the time the Plan undertakes the obligation to make such capital contributions (the Determination Date), the TA Fund is not a party in interest with respect to the Plan.

(b) The decision to make a capital contribution to a TA Fund is made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to TA and the portfolio company whose interest is acquired by the TA Fund.

(c) TA does not otherwise provide investment advice to the Plan within the meaning of Regulation section 29 CFR 2510.3-21(c) with respect to such Plan's assets that are invested in the TA Fund.

(d) At the Determination Date, the Plan has aggregate assets that are in excess of \$50 million; provided however, that in the case of—

(1) Two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are invested in a TA Fund through a group trust, an insurance company pooled separate account or any other form of entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), the foregoing \$50 million requirement shall in any event be satisfied if such trust, separate account or other entity has aggregate assets which are in excess of \$50 million, provided further that the fiduciary responsible for making the investment decision on behalf of such group trust, insurance company pooled separate account or other entity has—

(i) Full investment responsibility¹ with respect to the plan assets invested therein; and

(ii) Total assets under its management and control, exclusive of the assets invested in the TA Fund, which are in excess of \$100 million, for TA Funds established after the date this grant notice is published in the **Federal Register**.

(2) Two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are invested in a TA Fund through a master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation, the \$50 million requirement shall in any event be satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million, provided, further, that, in the case of a

¹ For purposes of this exemption, the term "full investment responsibility" means that the fiduciary responsible for making the investment decision has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

TA Fund established after the date this grant notice is published in the **Federal Register**, in addition to the \$50 million requirement, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, then such fiduciary has total assets under its management and control, exclusive of the assets invested in the TA Fund, which are in excess of \$100 million.

(e) Subsequent to the Determination Date, the TA Fund is a party in interest with respect to the Plan solely by reason of a relationship to a portfolio company which is a service provider to a Plan, as described in section 3(14) (H) or (I) of the Act, including a fiduciary with respect to such Plan.

(f) At the Determination Date, the capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer, controlled group of corporations or employee organization) with respect to the TA Fund, does not exceed 15 percent of the total capital commitments with respect to such TA Fund.

(g) At the Determination Date, the percentage of the Plan's assets committed to be invested in the TA Fund does not exceed 5 percent of the Plan's total assets.

(h) At the Determination Date, a Plan's aggregate capital commitment to all TA Funds does not exceed 25 percent of the Plan's total assets.

(i) The Plan receives the following initial and ongoing disclosures with respect to the TA Fund:

(1) A copy of the private placement memorandum applicable to the TA Fund or another comparable document containing substantially the same information;

(2) A copy of the limited partnership or other agreement establishing the TA Fund;

(3) A copy of the subscription agreement applicable to the TA Fund, if any;

(4) Copies of the proposed exemption and grant notice related to the exemptive relief described herein; and

(5) Periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the TA Fund including copies of the TA Fund's annual financial statements.

(j) With respect to capital contributions made to a TA Fund by a Plan after the date of issuance of the final exemption, TA maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the

persons described in paragraph (k) 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 TA, the records are lost or destroyed prior to the end of the six year period; and

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

(k)(1) Except as provided in paragraph (k)(2) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan which has an interest in the TA Fund and has the authority to acquire or dispose of the interest of the Plan in the TA Fund, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any Plan which has an interest in the TA Fund or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraph (k)(1)(B) and (k)(1)(C) shall be authorized to examine trade secrets of TA or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: This exemption is effective as of December 29, 1993.

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 Notice) published on March 5, 1997 at 62 FR 10075.

Written Comments

The Department received one written comment with respect to the Notice. The comment, which was submitted by the applicant, requested modifications to the conditional language (the Conditions) and the Summary of Facts and Representations (the Summary) of the Notice in the following areas:

1. *Condition (d).* Condition (d) of the Notice establishes a \$50 million threshold for Plans that are or will be covered by the exemption. Specifically,

there is a sentence in Condition (d) which provides that the \$50 million threshold will apply to the aggregate assets of a group trust or a master trust which invests in a TA Fund. TA requests that this concept also be applied to investments in a TA Fund by insurance company pooled separate accounts, large collective investment funds which are organized as partnerships, or other tax pass-through entities, provided the assets of these entities are deemed to be plan assets under the Plan Asset Regulation. Under these circumstances, TA believes that as long as the investing entity has assets in excess of \$50 million and as long as the decision to invest in the TA Fund is made by an independent fiduciary unrelated to TA, then it is appropriate to apply the \$50 million threshold to the aggregate assets held by the investing entity.

Although the Department does not object to this provision, it wishes to emphasize its view that a fiduciary exercising investment discretion over a pooled investment vehicle that is invested in a TA Fund should possess some minimum level of investor sophistication. Therefore, the Department is proposing certain additional requirements for pooled arrangements involving the assets of either Unrelated Plans or Related Plans. These requirements are as follows:

A. Unrelated Plans

For two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are invested in a TA Fund through a group trust, insurance company pooled separate account or other plan asset look-through entity, the \$50 million threshold will apply to the aggregate assets of such entity so long as the fiduciary responsible for making the investment decision on behalf of the group trust, insurance company pooled separate account or other entity has full investment responsibility with respect to plan assets invested therein.

However, in the event the entity holding the assets of Unrelated Plans is invested in a TA Fund established after the date this final exemption is granted, the fiduciary must, in addition to meeting the \$50 million investment threshold, have total assets under its management and control, exclusive of the assets invested in the TA Fund, which are in excess of \$100 million.

B. Related Plans

With respect to two or more Plans, which are maintained by the same employer, controlled group of

corporations or employee organization, whose assets are invested in a TA Fund through a master trust or any other form of plan asset look-through entity, the Department notes that the \$50 million threshold may be satisfied by aggregating the assets of the investing Plans within the pooled vehicle. In this regard, the Department notes that an employer may retain an independent investment manager to manage all or a portion of Plan assets invested in a master trust. Under these circumstances, the Department believes that the independent investment manager must satisfy the outside business test for any TA Fund that is established after the date this grant notice is published in the **Federal Register**. In addition, the pooled vehicle would still have to meet the \$50 million investment threshold.

Accordingly, Condition (d) has been amended to read as follows:

(d) At the Determination Date, the Plan has aggregate assets that are in excess of \$50 million; provided however, that in the case of—

(1) Two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are invested in a TA Fund through a group trust, an insurance company pooled separate account or any other form of entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), the foregoing \$50 million requirement shall in any event be satisfied if such trust, separate account or other entity has aggregate assets which are in excess of \$50 million, provided further that the fiduciary responsible for making the investment decision on behalf of such group trust, insurance company pooled separate account or other entity has—

(i) Full investment responsibility with respect to the plan assets invested therein; and

(ii) Total assets under its management and control, exclusive of the assets invested in the TA Fund, which are in excess of \$100 million, for TA Funds established after the date this grant notice is published in the **Federal Register**.

(2) Two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are invested in a TA Fund through a master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation, the \$50 million requirement shall in any event be satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million, provided, further, that, in the case of a TA Fund established after the date this grant notice is published in the **Federal Register**, in addition to the \$50 million requirement, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, then such fiduciary has total

assets under its management and control, exclusive of the assets invested in the TA Fund, which are in excess of \$100 million.

2. *Condition (k)(1)(B)*. The applicant notes that the word "who" in Condition (k)(1)(B) should be changed to the word "which." The Department concurs and has made the requested change.

3. *Condition (k)(1)(C)*. The applicant requests that Condition (k)(1)(C) be amended to clarify that a participant or a beneficiary of a Plan having an interest "in a TA Fund" (or the authorized representatives of these individuals) may review records that TA maintains with respect to the exemption.

Therefore, the Department has agreed to modify this condition to read as follows:

Any participant or beneficiary of any Plan which has an interest in the TA Fund or duly authorized representative of such participant or beneficiary.

4. *Representation 3*. Representation 3 of the Summary states that TA's most recent venture capital fund is Advent VII. Although Advent VII was the most recent TA Fund at the time the exemption application was filed, TA states that it subsequently closed a new TA Fund, TA/Advent VIII, L.P. (Advent VIII), which as of December 31, 1996, had aggregate capital commitments of approximately \$800 million from 96 individual and institutional investors. Of the institutional investors, 17 investors are Plans that are covered by the Act. As of December 31, 1996, these Plans had made a total capital commitment to Advent VIII of approximately \$188 million. In addition, TA wishes to clarify that it currently has organized, sponsored and/or managed 22 venture capital funds involving total capital commitments of approximately \$2.25 billion. The Department has noted these clarifications.

5. *Representation 7*. To correct an inadvertent error on its part, TA wishes to clarify that the fourth line of Representation 7 of the Summary should refer to "a greater than 10 percent interest in a portfolio" rather than a "100 percent interest." The Department notes this revision.

6. *Representation 8*. TA wishes to clarify that in the sixth line of Representation 8 of the Summary, the word "on" should be changed to the word "after." Again, the Department notes this revision.

Thus, after giving full consideration to the entire record, including the written comment, the Department has made the aforementioned changes to the Notice and has decided to grant the exemption subject to the clarifications described above. The comment letter has been

included as part of the public record of the exemption application. The complete application file, as well as all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

First Savings Bank, F.S.B. Profit Sharing and Employee Stock Ownership Plan (the Plan) Located in Clovis, New Mexico

[Prohibited Transaction Exemption 97-43
Exemption Application No. D-10409]

Exemption

The restrictions of sections 406(a), 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, effective December 26, 1996 to (1) the acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) by Access Anytime Bancorp, Inc. (the Parent), which is the parent corporation of First Savings Bank, F.S.B., the sponsor of the Plan; (2) the holding of the Rights by the Plan during the subscription period of the Offering; and (3) the exercise of certain of the Rights by the Plan; provided that the following conditions are met:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Parent;

(B) All holders of the common stock of the Parent were treated in the same manner with respect to the Offering, including the Plan;

(C) All decisions regarding the holding and potential exercise of the Rights by the Plan were made in accordance with Plan provisions for individually-directed investment of participant accounts by the individual Plan participants whose accounts in the Plan received Rights in the Offering; and

(D) With respect to any participants' accounts in the Plan for which no valid instructions were timely filed regarding the Rights during the Offering, such Rights expired unexercised in the same manner as unexercised Rights issued to all other holders of the common stock of the Parent, since the Rights were not transferable and could not be sold.

EFFECTIVE DATE: This exemption is effective as of December 26, 1996.

WRITTEN COMMENTS: The Department no requests for a hearing and one written comment with respect to the proposed exemption. The comment was submitted by the applicant, the First Savings Bank, in correction of information submitted by the applicant which appeared in the Summary of Facts and Representations (the Summary) in the Notice of Proposed Exemption. The fourth paragraph of the Summary includes the Employer's representation that 5,000 Rights were exercised by Invested Participants, and that the remaining 4,798 Rights expired on the Expiration Date. The applicant notes that this representation was in error, reflecting a misunderstanding about the information that was requested. The applicant represents that the actual number of Rights exercised by Invested Participants was 367.

After consideration of the entire record, as corrected by the applicant, the Department has determined to grant the exemption.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on June 4, 1997 at 62 FR 30620.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219-8881. (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 exemptions do 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 these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 5th day of August, 1997.

Ivan Strasfeld,

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

[FR Doc. 97-21005 Filed 8-7-97; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Soft Dollar Arrangements and Commission Recapture: Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held September 17 of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group formed to study Soft Dollar Arrangements and Commission Recapture.

The session will take place in Room N-5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is to conclude the taking of testimony from members of the financial community discussing their views on soft dollar and directed brokerage practices.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before

September 7, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Soft Dollar Arrangements and Commission Recapture should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 7, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 7.

Signed at Washington, D.C. this 4th day of August 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97-21014 Filed 8-7-97; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

99th Full Council Meeting; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held September 17, 1997 of the Advisory Council on Employee Welfare and Pension Benefit Plans.

The session will take place in Room N-5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. The purpose of the open meeting, which will run from 1:00 p.m. to approximately 2:30 p.m., is for the Council's three Working Group chairs to update the full Advisory Council on their committees' progress in studying their specific topics for the year. The progress reports will be made by chairs of the Working Groups on Employer Assets in Employer-Sponsored Plans, on Defined Contribution vs. Defined