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General Wage Determination Publication

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Signed at Washington, D.C. this 29th day of August 1997.

Margaret Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 97-23492 Filed 9-4-97; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 97-44; Exemption Application No. D-10346, et al.]

Grant of Individual Exemptions; 1st Source Bank, 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, DC. 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.

1st Source Bank, Located in South Bend, Indiana

[Prohibited Transaction Exemption 97-44; Exemption Application No. D-10346]

Exemption

Section I—Exemption for In-Kind Transfer of Assets

The restrictions of section 406(a) and section 406(b) 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 (F) of the Code, shall not apply, effective September 19, 1996, to the in-kind transfer to separate series of an open-end investment company registered under the Investment Company Act of 1940 (the Funds) to which 1st Source Bank or any of its affiliates (collectively, the Bank) serves as investment advisor, and may provide other services, of the assets of various employee benefit plans (the Plans) that are held in certain collective investment funds (the CIFs) maintained by the Bank or otherwise held by the Bank as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plans, in exchange for shares of such Funds; provided that the following conditions are met:

(A) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (G) of Section III below, receives in advance of the investment by the Plan in any of the Funds a full and detailed written disclosure of information concerning such Fund, including, but not limited to:

(1) A current prospectus for each portfolio of each of the Funds in which such Plan is considering investing,

(2) A statement describing the fees for investment management, investment advisory, or other similar services, any fees for secondary services (Secondary Services), as defined in paragraph (H) of section III below, and all other fees to be charged to or paid by the Plan and by such Funds to the Bank, including the nature and extent of any differential between the rates of such fees,

(3) The reasons why the Bank may consider such investment in the Funds to be appropriate for the Plan,

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Plan may be invested in the Funds, and, if so, the nature of such limitations, and

(5) Upon request of the Second Fiduciary, a copy of this proposed exemption and/or a copy of the final exemption;

(B)(1) With respect to each of the Funds in which a Plan invests, the Bank will provide the Second Fiduciary of such Plan:

(a) At least annually with a copy of an updated prospectus of such Fund,

(b) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information or some other written statement) which contains a description of all fees paid by the Fund to the Bank;

(2) On the basis of the information described above in paragraph (A) of this section I, the Second Fiduciary authorizes in writing the in-kind transfer of assets of the Plans in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees received by the Bank in connection with its services to the Funds, such authorization by the Second Fiduciary to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(C) No sales commissions or other fees are paid by the Plans in connection with the purchase of Fund shares through the in-kind transfer of Plan assets in the CIFs, and no redemption fees are paid in connection with the sale of such shares by the Plans to the Fund;

(D) All or a pro rata portion of the assets of the Plans held in the CIFs or all or a pro rata portion of the assets of the Plans held by the Bank in any capacities as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds;

(E) The Plans receive shares of the Funds that have a total net asset value

that is equal to the value of the assets of the Plans or the CIFs exchanged for such shares on the date of transfer, based on the current market value of the assets of the Plans or the CIFs

(F) The current market value of the assets of the Plans or the CIFs to be transferred in-kind in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a-7(b) (Rule 17a-7), issued by the Securities and Exchange Commission under the Investment Company Act of 1940, and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the day preceding the CIF or Plan transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank;

(G) For all conversion transactions that occur after the date of publication in the **Federal Register** of a notice proposing this exemption: Not later than thirty (30) days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, as defined in paragraph (G) of Section III below, a written confirmation which contains the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4) under the Investment Company Act of 1940;

(2) The price of such asset involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such assets

(H) No later than ninety (90) days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (G) of section III below, a written confirmation that contains the following information:

(1) The number of CIF units held by each affected Plan immediately before

the transfer, the related per unit value, and the aggregate dollar value of the units transferred; and

(2) The number of shares in the Funds that are held by each affected Plan following the transfer, the related per share net asset value, and the aggregate dollar value of the shares received;

(I) The combined total of all fees received by the Bank for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act;

(J) The Bank does not receive any fees payable pursuant to Rule 12b-1 under the Investment Company Act of 1940 in connection with the transactions described herein;

(K) The Plans are not sponsored by the Bank;

(L) All dealings between the Plans and any of the Funds are on a basis no less favorable to the Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans; and

(M) The requirements of Prohibited Transaction Class Exemption 77-4 (42 FR 18732, April 8, 1977) are met with respect to all arrangements under which investment advisory fees are paid to the Bank directly or indirectly by Plans with assets invested in the Funds.

Section II—General Conditions

(A) The Bank maintains for a period of six years the records necessary to enable the persons, as described in paragraph (B) of this section II, 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 the Bank, the records are lost or destroyed prior to the end of the six (6) year period, and

(2) No party in interest, other than the Bank, shall be subject to the civil penalty that may be assessed under section 503(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 (B) of this section;

(B)(1) Except as provided in paragraph (B)(2) of this section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (A) of section II above 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 each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary, and

(c) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (B)(1)(b) and (B)(1)(c) of this section II shall be authorized to examine trade secrets of the Bank or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(A) The term *Bank* means 1st Source Bank and any affiliate of the Bank, as defined in paragraph (B) of this section III.

(B) An *affiliate* of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

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

(D) The term *Fund* or *Funds* means any diversified open-end investment company or companies registered under the Investment Company Act of 1940 for which the Bank serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(E) The term *net asset value* means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(F) The term *relative* means a *relative* as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(G) The term *Second Fiduciary* means a fiduciary of a plan who is independent

of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank,

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of the Bank (or is a relative of such person), or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of the Bank (or a relative of such persons) is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/advisor, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in section I above, then paragraph (G)(2) of section III above shall not apply.

(H) The term, *Secondary Service* means a service, other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds, including but not limited to custodial, accounting, brokerage, administrative or any other service.

EFFECTIVE DATE: This exemption is effective as of September 19, 1996.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on June 23, 1997 at 62 FR 33911.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Ronald L. Chez (Mr. Chez) IRA and Lawrence G. Kuntz (Mr. Kuntz) IRA (Collectively; the IRAs) Located in Chicago, Illinois and Wilmington, Delaware, Respectively

[Prohibited Transaction Exemption 97-45; Exemption Application Nos. D-10359 and D-10360]

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, shall not apply to: (a) The sale by the IRAs of certain

closely held stock (the Stock) to Happy Valley Corporation (the Corporation), the issuer of the Stock and an unrelated third party with respect to the IRAs; and (b) the subsequent repurchase of the Stock from the Corporation by Mr. Chez and Mr. Kuntz, fiduciaries and disqualified persons with respect to the IRAs; provided that the following conditions are met:

1. The sale and the repurchase of the Stock will be one-time transactions for cash;

2. The transactions described in (1) above will take place on the same business day;

3. Mr. Chez and Mr. Kuntz, in their individual capacity, will purchase the same shares of the Stock, as those that were sold to the Corporation by the IRAs. The stock transfer records of the Corporation will evidence that this is the case; and

4. The amount paid to the IRAs for the Stock will be the fair market value of the Stock determined at the time of the sale by a qualified independent appraiser. Mr. Chez and Mr. Kuntz will purchase the Stock from the Corporation for the same consideration as was received by the IRAs for the sale of the Stock.

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 July 11, 1997 at 62 FR 37309.

Written Comments

The Department received one written comment on the proposed exemption and no requests for a hearing. The attorney for the applicant submitted the written comment as follows:

1. Paragraph 1 at the top of the of the third column on page 37309 and section 7 of the Summary of Facts and Representations on page 37310 state that "the sale and repurchase of the Stock will be one-time transactions for cash." The applicant requests that the phrase "check or bank transfer" be added at the end of that sentence to permit payment by check or bank transfer.

The Department notes that the term *cash* includes payment by "check or bank transfer." In this regard, the Department wishes to assure that, as a result of the transactions, the IRAs receive payment by cash, as distinguished from an in-kind transfer of assets other than cash, and there will be no extension of credit associated with the transactions.

2. The second paragraph of section 3 of the Summary of Facts and Representations states that "On August 1, 1995, Mr. Kuntz subscribed for Stock shares in his own name. On December

20, 1995, at the request of Mr. Kuntz, the Corporation issued a replacement Stock certificate to Mr. Kuntz's IRA."

The applicant clarified that although the Stock was originally issued by the Corporation to Mr. Kuntz, the intent of Mr. Kuntz was always to make his investment in the Corporation through his IRA.

3. Section 5 of the Summary of the Facts and Representations states that "By letter dated May 22, 1997, the attorneys for the Corporation represent that the transaction must be structured through the Corporation" (emphasis added).

In this regard, the applicant clarified that it believed that the taint of having a non-permitted shareholder of the Corporation was most completely removed where the parties were put back in the position they would have been in had the stock been issued to the individuals concerned and not to the IRAs.

After giving full consideration to the record and the comment submitted to the Department, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219-8883. (This is not a toll-free number.)

John Hancock Mutual Life Insurance Company (JH), Located in Boston, Massachusetts,

[Prohibited Transaction Exemption 97-46; Exemption Application Nos. D-10416-10420]

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 to the: (1) The acquisition by a separate account maintained by JH (the FPGT Account) from Willamette Industries, Inc. of certain oil and gas rights (the Deer Creek Oil and Gas Rights), subject to existing leases (the Leases) of such rights to Enerfin Resources Northwest Limited Partnership (Enerfin), a party in interest with respect to the plans invested in the FPGT Account; and (2) the continuation of the Leases following the acquisition by the FPGT Account, provided the following conditions are satisfied: (a) As part of its decision to enter into the separate account contract establishing the FPGT Account, an independent fiduciary determines that the acquisition of the Deer Creek Oil and Gas Rights is in the interest of the participants of the plans investing in the FPGT Account and that the price paid

for the rights is no more than the fair market value of such rights; (b) an independent fiduciary determines that the continuation of the Leases is in the best interests of the FPGT Account; and (c) an independent fiduciary will monitor the performance of Enerfin under the Leases, as well as any proposed modifications or renewals of the Leases, and will take such steps as are necessary to protect the interests of the FPGT Account with respect to the Leases.

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 June 23, 1997 at 62 FR 33915.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

AmSouth Bank of Alabama (AmSouth), Located in Birmingham, Alabama

[Prohibited Transaction Exemption 97-47; Application No. D-10422]

Exemption

Section I—Transactions

The restrictions of section 406(a) and 406(b) 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 (F) of the Code, shall not apply to the receipt of fees by AmSouth from the AmSouth Mutual Funds, or any other diversified open-end investment companies registered under the Investment Company Act of 1940 (the Funds), for acting as an investment adviser for the Funds as well as for providing other services to the Funds which are "Secondary Services" as defined in Section III(h), in connection with the investment by the Client Plans in shares of the Funds, provided that the conditions set forth in Section II below are met.

Section II—Conditions

(a) Each Client Plan satisfies either (but not both) of the following:

(1) The Client Plan receives a cash credit of such Plan's proportionate share of all fees charged to the Funds by AmSouth for investment advisory services, including any investment advisory fees paid by AmSouth to third party sub-advisers, no later than one business day after the receipt of such fees by AmSouth. The crediting of all such fees to the Client Plans by AmSouth is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Plan; or

(2) The Client Plan does not pay any Plan-level investment management fees, investment advisory fees, or similar fees to AmSouth with respect to any of the assets of such Plan which are invested in shares of any of the Funds. This condition does not preclude the payment of investment advisory or similar fees by the Funds to AmSouth under the terms of an investment management agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the 1940 Act), nor does it preclude the payment of fees for Secondary Services to AmSouth pursuant to a duly adopted agreement between AmSouth and the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section III(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) AmSouth, including any officer or director of AmSouth, does not purchase or sell shares of the Funds from or to any Client Plan.

(d) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(e) For each Client Plan, the combined total of all fees received by AmSouth for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(f) AmSouth does not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by AmSouth.

(h) The Second Fiduciary receives, in advance of any initial investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section III(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why AmSouth may consider such investment to be appropriate for the Client Plan

(4) A statement describing whether there are any limitations applicable to AmSouth with respect to which assets of a Client Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption as published in the **Federal Register**.

(i) After consideration of the information described above in paragraph (h), the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund and the fees to be paid by such Funds to AmSouth.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to AmSouth are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by AmSouth of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually; provided that the Termination Form need not be supplied to the Second Fiduciary pursuant to this paragraph sooner than six months after such Termination Form is supplied pursuant to paragraph (l) below, except to the extent required by such paragraph in order to disclose an additional service or fee increase. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by AmSouth of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of AmSouth to engage in the transactions described in paragraph (i) on behalf of the Client Plan.

(k) For each Client Plan using the fee structure described in paragraph (a)(1) above with respect to investments in a particular Fund, the Second Fiduciary of the Client Plan receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by AmSouth to the Funds for investment advisory services, prior to the effective date of such increase.

(l)(1) For each Client Plan using the fee structure described in paragraph (a)(2) above with respect to investments in a particular Fund, an increase in the rate of fees paid by the Fund to AmSouth regarding any investment management services, investment advisory services, or similar services that AmSouth provides to the Fund over an existing rate for such services that had been authorized by a Second Fiduciary in accordance with paragraph (i) above; or

(2) For any Client Plan under this exemption, an addition of a Secondary Service (as defined in Section III(h) below) provided by AmSouth to the Fund for which a fee is charged, or an increase in the rate of any fee paid by the Funds to AmSouth for any Secondary Service that results either from an increase in the rate of such fee or from the decrease in the number of kind of services performed by AmSouth for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan in accordance with paragraph (i) above.

AmSouth will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service for which a fee is charged or of the increase in fees) to the Second Fiduciary of the Client Plan. Such notice shall be accompanied by a Termination Form with instructions as described in paragraph (j) above.

(m) On an annual basis, AmSouth provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds in which the Client Plan invests and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to AmSouth;

(2) A copy of the annual financial disclosure report prepared by AmSouth which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with AmSouth, AmSouth will provide the Second Fiduciary of

such Plan at least annually with a statement specifying:

(1) The total, expressed in dollars, of brokerage commissions of each Fund that are paid to AmSouth by such Fund;

(2) The total, expressed in dollars, of brokerage commissions of each Fund that are paid by such Fund to brokerage firms unrelated to AmSouth;

(3) The average brokerage commissions per share, expressed as cents per share, paid to AmSouth by each Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each Fund to brokerage firms unrelated to AmSouth.

(o) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Plans than dealings with other shareholders of the Funds.

(p) AmSouth maintains for a period of six years the records necessary to enable the persons described below in paragraph (q) 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 AmSouth, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than AmSouth or an affiliate 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 (q) below.

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

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (q)(1) (ii) and (iii) shall be authorized to examine trade secrets of AmSouth, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(a) The term *AmSouth* means AmSouth Bank of Alabama and any affiliate thereof as defined below in paragraph (b) of this section.

(b) An *affiliate* of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

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

(d) The term *Fund* or *Funds* shall include the AmSouth Mutual Funds or any other diversified open-end investment company or companies registered under the 1940 Act for which AmSouth serves as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other "Secondary Service" (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

(e) The term *net asset value* means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term *relative* means a *relative* as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term *Second Fiduciary* means a fiduciary of a Client Plan who is independent of and unrelated to AmSouth. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to AmSouth if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with AmSouth;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of AmSouth (or is a relative of such persons); or

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner or employee of AmSouth (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of this section shall not apply.

(h) The term *Secondary Service* means a service other than an investment management, investment advisory, or similar service, which is provided by AmSouth to the Funds, including (but not limited to) custodian services, transfer and dividend disbursing agent services, administrator or sub-administrator services, accounting services, shareholder servicing agent services and brokerage services.

(i) The term *Termination Form* means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (i) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify AmSouth in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by AmSouth of the form; provided that if, due to circumstances beyond the control of AmSouth, the sale cannot be executed within one business day, AmSouth shall have one additional business day to complete such sale.

EFFECTIVE DATE: This exemption is effective as of April 16, 1997.

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 June 23, 1997, at 62 FR 33917.

WRITTEN COMMENTS: The Department received one written comment from an officer of a Client Plan sponsor, which supported the granting of an exemption for the subject transactions. No other written comments, and no requests for a hearing, were received by the Department. Accordingly, the

Department has determined to grant the requested exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

Martin D. Ross Individual Retirement Account (the IRA) Located in Boca Raton, Florida

[Prohibited Transaction Exemption 97-48; Exemption Application No. D-10451]

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, shall not apply to the March 4, 1996 sale by the IRA of certain debentures (the Debentures) to Mr. Martin D. Ross (Mr. Ross), a disqualified person with respect to the IRA, provided the following conditions were satisfied: (1) The sale of the Debentures by the IRA was a one-time transaction for cash; (2) the IRA received no less than the fair market value of the Debentures as of the time of the sale; and (3) as soon as Mr. Ross became aware that the transaction was prohibited, he reversed the transaction.¹

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 July 21, 1997 at 62 FR 39030.

EFFECTIVE DATE: This exemption is effective March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz 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 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 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, DC, this 2nd day of September, 1997.

Ivan Strassfeld,

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

[FR Doc. 97-23641 Filed 9-4-97; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10393]

AEW Capital Management, L.P. (AEW); Located in Boston, Massachusetts

AGENCY: Pension and Welfare Benefits Administration.

ACTION: Notice of proposed exemption, U.S. Department of Labor to replace Prohibited Transaction Exemption (PTE) 93-40 Involving Aldrich, Eastman & Waltch, L.P. and Aldrich, Eastman & Waltch, Inc. (collectively, Old AEW).

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would replace PTE 93-40 (58 FR 34821, June 29, 1993). PTE 93-40 permitted the payment to Old AEW of certain investment fees and disposition fees relating to real estate

investments by employee benefit plans for which Old AEW provided investment management services, as well as the investment by such plans in a multiple client commingled account managed by Old AEW, subject to certain conditions. These transactions were described in a notice of pendency that was published in the **Federal Register** on April 27, 1993 at 58 FR 25662. PTE 93-40, which was effective as of April 27, 1993, expired by operation of law, as discussed below. The proposed exemption would provide conditional relief identical to that provided by PTE 93-40 for a newly-merged entity known as "AEW Capital Management, L.P."

DATES: Written comments and/or requests for a public hearing should be received by the Department within 45 days of the date of publication of this notice of proposed exemption in the **Federal Register**. The proposed exemption, if granted, will be effective December 10, 1996.

ADDRESSES: All written comments and/or requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Attention: Application No. D-10393. The application pertaining to the proposed 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-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would replace PTE 93-40. PTE 93-40 provided an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed by AEW pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures (the Procedures) set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978,

¹ Pursuant to 29 CFR 2510.3-2(d), the IRA 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.