

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

[Prohibited Transaction Exemption 97-56; Exemption Application No. D-10437, et al.]

Grant of Individual Exemptions; UNUM Life Insurance Company of America

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.

UNUM Life Insurance Company of America (UNUM), Located in Portland, Maine

[Prohibited Transaction Exemption 97-56; Exemption Application No. D-10437]

Exemption**Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by UNUM**

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) Transfers Between Accounts

(1) The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between ERISA-Covered Accounts and the General Account, provided that such transfer is made pursuant to stalemate procedures, described in the notice of proposed exemption, adopted by the independent fiduciary for the ERISA-Covered Account, and provided further that the ERISA-Covered Account pays no more or receives no less than fair market value for its interest in a shared investment.

(b) **Joint Sales of Property**—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than

fair market value for its interest in the shared investment.

(c) **Additional Capital Contributions**—The restrictions of sections 406(a), 406(b)(1) and 406(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 either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) **Lending of Funds**—The restrictions of sections 406(a), 406(b)(1) and 406(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 lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by UNUM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) Additional Capital Contributions—

(1) The restrictions of sections 406(a), 406(b)(1) and 406(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 making of additional pro rata equity capital contributions by one or

more Accounts participating in the joint venture.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(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 lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(3) The restrictions of sections 406(a), 406(b)(1) and 406(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 making of Disproportionate [as defined in section V(e)] additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by one or more Accounts which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(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 making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of sections 406(a), 406(b)(1) and 406(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 acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by UNUM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and "selling" Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(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 acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by UNUM on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal

decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of sections 406(a), 406(b)(1) and 406(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 acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by UNUM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

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, if the conditions in Section IV are met, to any additional equity capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of this exemption.

(b) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) A business organization which has at least five years of experience with respect to commercial real estate investments, or

(2) A committee composed of three to five individuals who each have at least five years of experience with respect to commercial real estate investments.

(c) The independent fiduciary or independent fiduciary committee member shall not be or consist of UNUM or any of its affiliates.

(d) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from UNUM, its affiliates and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his or her annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary.

The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, UNUM, its affiliates, or any Account maintained by UNUM or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(e) The independent fiduciary will approve the initial allocation of a shared investment to an ERISA-Covered Account. In addition, the independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by UNUM or its affiliates for each of the transactions in this exemption. In the case of a possible transfer or exchange

of any interest in a shared investment between the General Account and an ERISA-Covered Account, the independent fiduciary shall also have full authority to negotiate the terms of the transfer. UNUM shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(f) UNUM maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (g) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UNUM or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(g)(1) Except as provided in paragraph (2) of this subsection (g) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (f) of this Section 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 participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (g) shall be authorized to examine trade secrets of UNUM, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An “affiliate” of UNUM includes—

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

(2) Any officer, director or employee of UNUM or person described in section V(a)(1), and

(3) Any partnership in which UNUM is a partner.

(b) An “Account” means the General Account (including the general accounts of UNUM affiliates), any separate account of UNUM or its affiliate, or any investment advisory account, trust, limited partnership or other investment account or fund managed by UNUM.

(c) The “General Account” means the general asset account of UNUM and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An “ERISA-Covered Account” means any Account (other than the General Account) which consists solely of the UNUM Plan or other plans maintained by UNUM or its affiliates.

(e) “Disproportionate” means not in proportion to an Account’s existing equity ownership interest in an investment, joint venture or joint venture interest.

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 August 1, 1997 at 62 FR 41441.

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

**NatWest Securities Corporation,
NatWest Securities Limited, Located in
New York, New York**

[Prohibited Transaction Exemption 97-57;
Exemption Application Nos. D-10464, D-10465]

Exemption

Section I—Transactions

A. Effective May 22, 1997, the restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975 (c)(1) (A) through (D) of the Code, shall not apply to any purchase or sale of a security between an employee benefit plan and a broker-dealer affiliated with NatWest Securities Corporation and subject to British law

(NatWest/UK Affiliate), if the following conditions, and the conditions of Section II, are satisfied:

(1) The NatWest/UK Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer.

(2) Such transaction is on terms at least as favorable to the plan as those which the plan could obtain in an arm's length transaction with an unrelated party.

(3) Neither the NatWest/UK Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets, and the NatWest/UK Affiliate is a party in interest or disqualified person with respect to the plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the NatWest/UK Affiliate shall not be deemed to be a fiduciary with respect to a plan solely by reason of providing securities custodial services for a plan.

B. Effective May 22, 1997, the restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the lending of securities that are assets of an employee benefit plan to an NatWest/UK Affiliate if the following conditions, and the conditions of Section II, are satisfied:

(1) Neither the NatWest/UK Affiliate (the Borrower) nor an affiliate of the Borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

(2) The plan receives from the Borrower, either by physical delivery or by book entry in a securities depository located in the United States, by the close of business on the day on which the securities lent are delivered to the Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a person other than the Borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day,

a market value (or, in the case of letters of credit, a stated amount) equal to not less than 100 percent of the then market value of the securities lent. The collateral referred to in this Section I(B)(2) must be held in the United States;

(3) Prior to the making of any such loan, the Borrower shall have furnished the following items to the fiduciary for the plan who is making decisions on behalf of the plan with respect to the lending of securities (the Lending Fiduciary): (1) the most recent available audited statement of the Borrower's financial condition, (2) the most recent available unaudited statement of the Borrower's financial condition (if more recent than such audited stated), and (3) a representation that, at the time the loan is negotiated, there has been no material adverse change in the Borrower's financial condition since the date of the most recent financial statement furnished to the plan that has not been disclosed to the Lending Fiduciary. Such representation may be made by the Borrower's agreement that each such loan shall constitute a representation by the Borrower that there has been no such material adverse change;

(4) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as those which the plan could obtain in an arm's-length transaction with an unrelated party. Such agreement may be in the form of a master agreement covering a series of securities-lending transactions;

(5) The plan (1) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the Borrower, if such fee is not greater than the plan would pay an unrelated party in an arm's-length transaction;

(6) The plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities;

(7) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of trading on that day, the Borrower shall deliver, by the close of business on the following business day, an additional amount of collateral (as described in paragraph (2)) the market

value of which, together with the market value of all previously delivered collateral, equals at least 100 percent of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to the Borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities;

(8) The loan may be terminated by the plan at any time, whereupon the Borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) three business days, or (3) the time negotiated for such delivery by the plan and the Borrower, whichever is lesser; and

(9) In the event the loan is terminated and the Borrower fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (8) above, then (i) the plan may, under the terms of the loan agreement, purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Borrower under the agreement, and any expenses associated with the sale and/or purchase, and (ii) the Borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the plan, the amount of any remaining obligations and expenses not covered by the collateral plus interest at a reasonable rate. Notwithstanding the foregoing, the Borrower may, in the event the Borrower fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the Lending Fiduciary.

(10) If the Borrower fails to comply with any condition of this exemption, in the course of engaging in a securities-lending transactions, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1) (A) through (D) of the Act solely by reason of the Borrower's failure to comply with the conditions of the exemption.

C. Effective May 22, 1997, the restrictions of sections 406(a)(1) (A)

through (D) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code shall not apply to any extension of credit to an employee benefit plan by an NatWest/UK Affiliate to permit the settlement of securities transactions or in connection with the writing of options contracts provided that the following conditions are met:

(a) The NatWest/UK Affiliate is not a fiduciary with respect to any assets of such plan, unless no interest or other consideration is received by such fiduciary or any affiliate thereof in connection with such extension of credit; and

(b) Such extension of credit would be lawful under the Securities Exchange Act of 1934 and any rules or regulations thereunder if such act, rules or regulations were applicable.

Section II—General Conditions

A. The NatWest/UK Affiliate is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom (the S.F.A.);

B. The NatWest/UK Affiliate is in compliance with all requirements of Rule 15a-6 (17 CFR 240.15a-6) under the Securities and Exchange Act of 1934, which provides for foreign broker-dealers a limited exemption from U.S. registration requirements;

C. Prior to the transaction, the NatWest/UK Affiliate enters into a written agreement with the plan in which the NatWest/UK Affiliate consents to the jurisdiction of the courts of the United States with respect to the transactions covered by this exemption;

D. (1) The NatWest/UK Affiliate maintains or causes to be maintained within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in this section to determine whether the conditions of this exemption have been met; except that a party in interest with respect to an employee benefit plan, other than the NatWest/UK Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the NatWest/UK Affiliate, such records are lost or destroyed prior to the end of such six year period;

(2) The records referred to in subsection (1) above are unconditionally available for examination during normal business hours by duly authorized

employees of (a) the Department of Labor, (b) the Internal Revenue Service, (c) plan participants and beneficiaries, (d) any employer of plan participants and beneficiaries, and (e) any employee organization any of whose members are covered by such plan; except that none of the persons described in (c) through (e) of this subsection shall be authorized to examine trade secrets of NatWest Securities Corporation or the NatWest/UK Affiliate or any commercial or financial information which is privileged or confidential.

Section III—Definitions

“Affiliate” of a person shall include:

(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. For purposes of this definition, the term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

“Security” shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term “security” does not include swap agreements or other notional principal contracts.

EFFECTIVE DATE: This exemption is effective as of May 22, 1997.

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 September 5, 1997 at 62 FR 47060.

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

Carl M. Callaway Individual Retirement Account (IRA), Located in Huntington, West Virginia; [Prohibited Transaction Exemption No. 97-58; Application No. D-10469]

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 transaction involving a sale or exchange of certain securities (the Sale) by the IRA to Carl M. Callaway and his wife, Marianna F. Callaway, both

disqualified persons with respect to the IRA; provided the following conditions are satisfied: (a) the sale or exchange is a one-time transaction constituting an exchange of securities approximately equal in value and any difference in value occurring is immediately eradicated with cash payments by either the Callaways or the IRA, in order to equalize the value of the exchanged assets, (b) the IRA incurs no commissions or other expenses in connection with the transaction, (c) the transaction involves only securities that have a fair market value on the date of the exchange which is objectively determinable through independently and regularly published market prices and quotations, and (d) the IRA tenders as consideration stock valued at an amount equal to the reported closing price of the stock on the date of the Sale and the IRA receives U. S. Treasury notes valued at the reported closing bid on the date of the Sale, plus the accrued interest the notes earned to the date of the Sale.

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 September 5, 1997 at 62 FR 47604.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver 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 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 accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 23rd day of October, 1997.

Ivan Strasfeld,

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

[FR Doc. 97-28593 Filed 10-28-97; 8:45 am]

BILLING CODE 4510-29-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

October 23, 1997.

TIME AND DATE: 10:00 a.m., Thursday, October 30, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor v. Berwind Natural Resources Corp., et al.*, Docket Nos. KENT 94-574, etc. (Issues include whether the judge correctly determined that to qualify as an "operator" under the Mine Act an entity must directly or indirectly substantially participate in the operation, control, or supervision of the day-to-day operations of the mine, or have authority to do so; correctly rejected the Secretary's claim that the cited parent and its cited subsidiaries constituted a "unitary operator" under the Mine Act; and correctly determined that one of those subsidiaries was an "operator," while the parent and two other subsidiaries were not).

TIME AND DATE: 2:00 p.m., Thursday, October 30, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of a quorum of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor v. Berwind Natural Resources Corp., et al.*, Docket Nos. KENT 94-574-R, etc. (See oral argument listing, *supra*, for issues).

TIME AND DATE: 10:00 a.m., Thursday, November 6, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Secretary of Labor v. Gouverneur Talc Co.*, Docket No. YORK 95-70-M (Issues include whether the judge erred in determining that the operator did not violate 30 C.F.R. § 57.4362, which requires that, following evacuation of a mine in a fire emergency, only persons wearing and trained in the use of mine rescue apparatus shall participate in rescue and firefighting operations in advance of the fresh air base).

TIME AND DATE: 10:00 a.m., Thursday, November 13, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor v. Extra Energy, Inc.*, Docket No. WEVA 96-13 (Issues include whether the judge erred in finding that the Secretary properly cited the operator for its independent contractor's violation of 30 C.F.R. § 77.404(a)'s requirement that mobile equipment and machinery be maintained in safe operating condition and properly found that the operator violated 50 C.F.R. § 50.10's requirement that the Mine Safety and Health Administration be notified of accidents).

TIME AND DATE: 2:00 p.m., Thursday, November 13, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of a quorum of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor v. Extra Energy, Inc.*, Docket No. WEVA 96-13 (See oral argument listing, *supra*, for issues).

TIME AND DATE: 10:00 a.m., Thursday, November 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Secretary of Labor v. REB Enterprises, Inc.* Docket No. CENT 95-29-M, etc. (Issues include whether the judge erred in concluding that the

operator's violations of 30 C.F.R. 57.14107(a), 57.14130(g), and 57.14131(a) were not the result of unwarrantable failure based on his refusal to assign any probative weight to hearsay testimony adduced by the Secretary; erred in concluding that two individuals were not personally liable for violations of 30 C.F.R. 57.14130(g); erred in concluding that a violation of 30 C.F.R. 14130(a)(3) was not established because it was not demonstrated that a backhoe unequipped with a seat belt was a "wheel loader" or "wheel tractor" within the meaning of that standard; and erred in dismissing an order on the basis that it alleged a violation of the wrong standard, even though it was amended prior to hearing to allege a violation of the correct standard).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay / 1-800-877-8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97-28711 Filed 10-24-97; 4:03 pm]

BILLING CODE 6735-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Chemistry (1191) will be holding panel meetings for the purpose of reviewing proposals submitted to the Faculty Early Career Development (CAREER) Program. In order to review the large volume of proposals, panel meetings will be held on November 13-14, November 17-18, November 20-21, and December 8-9. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:30 AM to 5:00 PM each day.

Contact Person: Dr. Margaret A. Cavanaugh, Program Director, Inorganic, Bioinorganic and Organometallic program, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306-1842.