

I agree with the ARS that the stipend paid to the human subjects for each day they participate in the research (\$35 per day) is an amount so small that it does not have an undue influence on the decision of the individual to participate in the research.

2. Human subjects who voluntarily participate in the ARS nutritional research studies enter into a consent agreement under which they agree to follow research protocols established by the ARS during the duration of the research study. A continuing relationship between the ARS and the human subjects is not established.

3. The human subjects do not produce a product or provide a service to the ARS during these research studies. Providing samples of blood and normal bodily functions is not an activity pursued as a livelihood by the human subjects.

4. The human subjects control the means and methods used to accomplish the task, i.e., the provision of samples of bodily functions. While the ARS controls the research protocols to be followed, including the schedule of sample collection, the human subjects control their own bodily functions.

5. The ARS provides no tools, supplies, or equipment to the human subjects. The ARS does use instruments during the nutritional research to collect and analyze bodily samples provided by the human subjects, however these instruments are not used by the human subjects.

6. Human subjects are not entitled to sick leave or annual leave and are not covered under any Federal Employee Retirement System.

The reasons stated above indicate that an employment relationship does not exist and support the conclusion stated in the first paragraph of this ruling that, for UCFE program purposes, human subjects who participate in nutritional research studies conducted by the USDA, ARS, do not perform "Federal Service" within the meaning of 5 U.S.C. 8501(1).

This coverage ruling is issued pursuant to redelegation of authority from the Assistant Secretary, in Employment and Training Order No. 2-92, dated April 10, 1992, (published at 57 *Fed. Reg.* 13760), which is authorized by Section 6 of Secretary's Order No. 4-75 (40 *Fed. Reg.* 18515) (as amended by Secretary's Order No. 14-75).

Dated: November 26, 1996.

Mary Ann Wyrsh,

Director, Unemployment Insurance Service.

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Pension and Welfare Benefits Administration

[Application No. D-10172, et al.]

Proposed Exemptions; The Chicago Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the

Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

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

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

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

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in

29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

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

The Chicago Corporation (TCC) Located in Chicago, IL

[Application No. D-10172]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.)¹

Section I. Covered Transactions

If the exemption is granted, 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 to the proposed sale, for cash or other consideration, by the Midwest Banc Fund IV Group Trust (the BF IV Group Trust) in which employee benefit plans (the Plans) invest, of certain securities (the Securities) that are held in the BF IV Group Trust Portfolio, to a party in interest with respect to a participating Plan, where the party in interest proposes to acquire or merge with a bank company (the Bank Company) or a financial services company (the Financial Services Company) that issued such securities.

In addition, the restrictions of section 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)(E) of the Code, shall not apply to the payment of a performance fee (the Performance Fee) by Plans investing in the BF IV Group Trust to TCC.

¹ For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

This proposed exemption is subject to the following conditions as set forth below in Section II.

Section II. General Conditions

(a) Prior to a Plan's investment in the BF IV Group Trust, a Plan fiduciary which is independent of TCC and its affiliates (the Independent Fiduciary) approves such investment on behalf of the Plan.

(b) Each Plan investing in the BF IV Group Trust has total assets that are in excess of \$50 million.

(c) No Plan invests more than 10 percent of its assets in beneficial interests (the Beneficial Interests) in the BF IV Group Trust and such Beneficial Interests held by the Plan may not exceed 25 percent of the Group Trust.

(d) No Plan may invest more than 25 percent of its assets in investment vehicles (i.e., collective investment funds or separate accounts) managed or sponsored by TCC and/or its affiliates.

(e) Prior to investing in the BF IV Group Trust,

(1) Each Independent Fiduciary receives a Private Placement Memorandum and its supplement containing descriptions of all material facts concerning the purpose, structure and the operation of the BF IV Group Trust.

(2) An Independent Fiduciary who expresses further interest in the BF IV Group Trust receives—

(A) A copy of the Group Trust Agreement outlining the organizational principles, investment objectives and administration of the BF IV Group Trust, the manner in which Beneficial Interests may be redeemed, the duties of the parties retained to administer the BF IV Group Trust and the manner in which BF IV Group Trust assets will be valued;

(B) A copy of the Investment Management Agreement describing the duties and responsibilities of TCC, as investment manager of the BF IV Group Trust, the rate of compensation that it will be paid and conditions under which TCC may be terminated; and

(C) Copies of the proposed exemption and grant notice covering the exemptive relief provided herein.

(3) If accepted as an investor in the Group Trust, the Independent Fiduciary is—

(A) Furnished with the names and addresses of all other participating Plans;

(B) Required to acknowledge, in writing, prior to purchasing a Beneficial Interest in the BF IV Group Trust that such Independent Fiduciary has received copies of such documents; and

(C) Required to acknowledge, in writing, to TCC that such fiduciary is independent of TCC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF IV Group Trust.

(f) Each Plan, including the trustee (the Trustee) of the BF IV Group Trust, receives the following written disclosures from TCC with respect to its ongoing participation in the BF IV Group Trust:

(1) Within 120 days after the end of each fiscal year of the BF IV Group Trust as well as at the time of termination, an annual financial report containing a balance sheet for the BF IV Group Trust as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual report will also disclose the fees paid or accrued to TCC.

(2) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the BF IV Group Trust, an unaudited quarterly financial report consisting of at least a balance sheet for the BF IV Group Trust as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the fees that are actually paid to or accrued to TCC.

(3) Such other information as may be reasonably requested by the Plans or the Trustee (e.g., certain trading activity and portfolio status reports provided to the Trustee as required by Prohibited Transaction Exemption (PTE) 86-128 (51 FR 41686, November 16, 1986) in order to comply with the reporting requirements of the Act and the Code.

(g) At least annually, TCC holds a meeting of the participating Plans at which time the Independent Fiduciaries of investing Plans are given the opportunity to decide on whether the BF IV Group Trust, the Trustee or TCC should be terminated as well as to discuss any aspect of the BF IV Group Trust and the agreements promulgated thereunder with TCC.

(h) During each year of the BF IV Group Trust's existence, TCC representatives are available to confer by telephone or in person with Independent Fiduciaries on matters concerning such Group Trust.

(i) The terms of all transactions that are entered into on behalf of the BF IV Group Trust by TCC remain at least as favorable to an investing Plan as those

obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the BF IV Group Trust that is done in connection with the payment of Performance Fees is based upon independent market quotations or (where the same are unavailable) determinations made by an independent appraiser (the Independent Appraiser).

(j) In the case of the sale by the BF IV Group Trust of Securities to a party in interest with respect to a participating Plan, the party in interest is not TCC, any employer of a participating Plan, or any affiliated thereof, and the BF IV Group Trust receives the same terms as is offered to other shareholders of a Bank Company or a Financial Services Company.

(k) As to each Plan, the total fees paid to TCC and its affiliates constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(l) TCC's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses. In this regard,

(1) The Performance Fee is not to be paid before December 31, 2001, which represents the completion of the projected acquisition phase (the Acquisition Phase) of the BF IV Group Trust, and not until all participating Plans have received distributions equal to 100 percent of their capital contributions made to the BF IV Group Trust.

(2) Prior to the termination of the BF IV Group Trust, no more than 75 percent of the Performance Fee credited to TCC is withdrawn from such Group Trust.

(3) The Performance Fee account established for TCC is credited with realized gains and losses and charged for net unrealized losses and fee payments.

(4) No portion of the Performance Fee is withdrawn if the Performance Fee Account is in a deficit position.

(5) TCC repays all deficits in its Performance Fee account and it maintains a 25 percent cushion in such account before receiving any further fee payment.

(m) Either TCC or the Trustee, on behalf of Plans participating in the BF IV Group Trust, may terminate the Investment Management Agreement at any time pursuant to the provisions in such agreement.

(n) TCC maintains, for a period of six years, the records necessary to enable the persons described in paragraph (o) 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 TCC and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than TCC 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 (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) of this Section II shall be unconditionally available at their customary location during normal business hours by:

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

(B) Any Independent Fiduciary of a participating Plan or any duly authorized representative of such Independent Fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(o)(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph shall be authorized to examine the trade secrets of TCC or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption,

(a) the term "TCC" means The Chicago Corporation and any affiliate of TCC as defined in paragraph (b) of Section III.

(b) An "affiliate" of TCC includes—

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

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

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(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) An "Independent Fiduciary" is a Plan fiduciary who is independent of

TCC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of Beneficial Interests in the BF IV Group Trust or an investment manager.

Preamble

On September 22, 1993, the Department granted PTE 93–63 (58 FR 49322), a temporary exemption which is effective for a period of eight years from the date of the grant. PTE 93–63 permits a series of transactions relating to the (a) sale by the Bank Fund III Group Trust (the BF III Group Trust) in which Plans invest, of certain Securities which have been issued by Bank Companies and are held in the BF III Group Trust's portfolio, to a party in interest with respect to a Plan, where the party in interest proposes to acquire or merge with the Bank Company that issued such securities. In addition, PTE 93–63 permits the BF III Group Trust to purchase Bank Company Securities from the Midwest Bank Fund I Limited Partnership (MBF I LP) and the Midwest Bank Fund II, Limited Partnership (MBF II LP), two entities organized by TCC. Further, PTE 93–63, allows Plans investing in the BF III Group Trust to pay a Performance Fee to TCC.

The pooled investment fund that is described herein (i.e., the BF IV Group Trust) is virtually identical to the pooled investment fund that is described in PTE 93–63 as well as other funds organized by TCC. The transactions described herein are generally patterned after the exemptive relief described in PTE 93–63. However, no cross-trading transactions under this exemption will be permitted. Also, permanent exemptive relief is being provided.

Summary of Facts and Representations

1. TCC is an investment services firm founded in 1965 in Chicago, Illinois to serve the needs of financial institutions, corporations, governments, individual investors, fiduciaries and securities and commodities dealers. TCC is a registered investment adviser under the Investment Advisers Act of 1940, as amended. It is also registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member in good standing with various national and regional securities exchanges. By virtue of its exchange memberships, TCC is an exchange specialist for many securities as well as an over-the-counter market maker in other securities. As of March 31, 1995, TCC had total assets of \$507 million.

TCC has four principal lines of business. First TCC provides institutional investors with investment

research and trade execution services for listed and unlisted equity and fixed income securities, options and futures. Second, TCC's investment banking group provides corporations with assistance in capital planning and in facilitating and arranging for corporate mergers and acquisitions as well as underwriting. Third, TCC's asset management group provides investment management services to a broad range of clients, including Plans, through separate accounts. In this regard, TCC currently manages \$3.545 billion in client Plan assets in 259 separate accounts. Fourth, TCC provides securities firms, futures commission merchants and professional investors with exchange floor execution and clearing services.

TCC's relevant specialty is provided by its banking group which, in addition to the services described above, provides management, investment and capital formation services to collective investment vehicles which invest in commercial banks and other financial institutions. The banking group possesses detailed knowledge of the banking industry and other financial institutions such as consumer finance companies and stock insurance companies. It researches financial institutions, underwrites the securities of these institutions and acts as consultants or organizers of merger and acquisition projects.

During 1997, it is anticipated that TCC's parent will be acquired by ABN AMRO North America, Inc., a subsidiary of ABN AMRO Bank N.V., a global bank headquartered in the Netherlands. The acquisition will not involve the purchase of the assets of TCC's parent and TCC will retain its separate corporate identity.

2. In 1989, TCC organized the MBF II LP as a limited partnership with the investors acting as the limited partners. The general partners of MBF II LP are partnerships (MidBanc I and MidBanc II), whose general partners are corporate affiliates of TCC and whose limited partners are the members of TCC staff who are responsible for managing the MBF II LP. Less than 25 percent of the funds invested in the MBF II LP have been provided by Plans. According to the applicant, the portfolios of these funds do not constitute "plan assets" within the meaning of 29 CFR 2510.3–101 and TCC has not assumed the role of a fiduciary with respect to these investing Plans.²

² TCC also organized the MBF I LP in 1986. This limited partnership shared the same general partners and types of investments as MBF II LP.

In 1993, TCC completed the organization of the BF III Group Trust and the Bank Fund III Limited Partnership (the BF III LP)³ whose objectives were somewhat identical to those formulated for the MBF II LP. Taxable investors acquired an interest in the BF III LP, the general partner of which is MidBanc III, L.P., a limited partnership of which Chicorp Management III, Inc. is the general partner.⁴

3. The MBF II LP and the BF III invest in subregional banks that are located in the United States.⁵ In this regard, these entities acquire minority investments in Bank Companies that may be potential candidates for acquisition by other entities or at public offerings. Interests in Bank Companies can be acquired in freely-traded public securities, on either exchanges or in the over-the-counter markets, or in private transactions.

4. The MBF II LP and BF III have pre-defined terms of existence and defined activity periods within those terms. For example, the MBF II LP has an eight year term between organization and liquidation. The first five years represent the acquisition phase (the Acquisition phase). Once those five years elapse, no further acquisitions of Bank Company Securities can be made except under limited circumstances. The last three years of the term of the MFB II LP will be used to liquidate the portfolio.

5. TCC proposes to organize Banc Fund IV (BF IV) as two separate and distinct entities sharing the same investment philosophy and strategy, similar (if not identical) portfolios and operational methods as those formulated for the MBF II LP and the BF III. Taxable investors will acquire an interest in the Banc Fund IV Limited Partnership (the BF IV LP). The general partner of the BF IV LP will be MidBanc IV, L.P., a limited partnership of which Chicorp Management IV, Inc., a wholly owned subsidiary of TCC's parent corporation, is the general partner.

In addition to the BF IV LP, approximately 5–10 Plans will acquire Beneficial Interests in the BF IV Group

Trust which will be a tax-exempt entity pursuant to Revenue Ruling 81–100, 1981–1 C.B. 326.⁶ The BF IV Group Trust and the BF IV LP will not be organized unless \$50 million in capital contribution commitments are subscribed for by investors in both entities. Unless extended, the BF IV Group Trust and the BF IV LP will terminate on December 31, 2003.

Investments by both the BF IV Group Trust and the BF IV LP may be made in the equities and debt instruments of Bank Companies such as commercial banks and other depository institutions. BF IV may also acquire interests in Financial Services Companies such as consumer finance companies and demutualizing insurance companies. All of these entities will be located in the United States.

6. It is anticipated that Citibank will act as the trustee of the BF IV Group Trust. In this capacity, the Trustee will be responsible for retaining TCC or such other investment manager for the BF IV Group Trust. The Trustee will also be responsible for monitoring TCC's compliance with the established investment philosophy of the BF IV Group Trust and for policing TCC's adherence to the provisions of the Investment Management Agreement.

For services rendered, the Trustee is entitled to receive the following annualized fees that will be paid quarterly and in arrears: (a) a base fee of \$1,500; (b) a proportionate fee based upon the combined market value of the BF IV Group Trust and the BF IV LP at the beginning of the quarter representing (i) 0.02 percent of the first \$100 million and (ii) 0.01 percent of any amount over \$100 million; and a transaction fee of \$12 per purchase or sale and a disbursement fee of \$8 per payment of funds from the BF IV Group Trust. In accordance with the provisions of the Group Trust Agreement, the Trustee may be removed by a vote of Plans holding a majority of the Beneficial Interests in the BF IV Group Trust, provided such Plans give the Trustee 30 days' advance written notice of their intent to terminate the Trustee.

Although TCC may have and may have had business relationships with the Trustee, there will be no control relationship or ownership-based affiliation between TCC and the Trustee. Further, no Plan sponsored by TCC will

be permitted to invest in the BF IV Group Trust.⁷

7. Interests in the BF IV Group Trust are referred to as "Beneficial Interests."⁸ All investors that are beneficiaries of the BF IV Group Trust must evidence the following characteristics in order to acquire Beneficial Interests: (a) Each must commit to making at least \$1 million in initial capital contributions; (b) each investor must be a Plan; (c) each Plan must have at least \$50 million in assets; (d) each Plan must agree to incorporate the terms of the Group Trust Agreement into its own trust agreement; (e) no Plan may invest more than 10 percent of its assets in Beneficial Interests in the BF IV Group Trust and such Beneficial Interests held by a Plan may not exceed 25 percent of such Group Trust; and (f) no Plan may subscribe for Beneficial Interests which, when aggregated with all other Plan assets that are subject to investment funds or separate accounts managed by TCC and/or its affiliates, is valued in excess of 25 percent of such Plan's net assets.

8. The Group Trust Agreement provides that each Plan's commitment to contribute will be divided into 20 equal segments. TCC, as investment manager, may call any amount of these installments, upon 14 days' advance written notice, when cash is needed to fund the acquisition of the Securities.⁹ However, there are two limitations upon TCC's power to call contributions. First,

⁷ Although TCC and the Trustee will not be affiliated with, or under the control of or controlling any participating Plan, the applicant represents that it is likely that certain participating Plans may have a pre-existing relationship with TCC in the form of investment in the MBF II LP or the BF III. The applicant believes it is possible that a Plan participating in the BF IV Group Trust may utilize the services of the Trustee with respect to certain of its other assets that are not invested in such Group Trust. In this regard, the applicant is not requesting, nor is the Department providing, exemptive relief with respect thereto.

⁸ The Department is not proposing, nor is the applicant requesting herein, exemptive relief for the purchase and sale of Beneficial Interests in the BF IV Group Trust between the Trustee and the investing Plans beyond that provided under section 408(b)(8) of the Act.

⁹ If an investing Plan cannot or does not meet a capital call, the Trust Agreement provides that ten days after the investor receives notice of default on a capital call, TCC may (a) permit the investor's continued participation in the BF IV Group Trust with a commensurate reduction in both the investor's proportionate interest in such Group Trust and aggregate size of the Group Trust; (b) declare the investor's entire capital commitment due and pursue collection of the same; or (c) expel, at fair market value, the defaulting investor and offer its interest in the BF IV Group Trust first to the non-defaulting investors and then to non-investors who are qualified to invest in such Group Trust. In making the choice between these alternatives, it is represented that TCC will be guided by then-current investment strategies and the best interest of the non-defaulting investors.

Moreover, less than 25 percent of its assets were provided by Plans. On January 1, 1995, MBF I LP reached the end of its term and final liquidations were made.

³ The BF III Group Trust and the BF III LP are collectively referred to herein as BF III.

⁴ The limited partners of the MidBanc III, L.P. are the individuals who are responsible for the management of BF III. Chicorp Management III, Inc. is a wholly owned subsidiary of Chicorp, Inc., which is the holding company of TCC.

⁵ In the case of MBF II LP, these banks are located in the Midwestern United States. In the case of BF III and proposed BF IV Group Trust, there are no geographic restrictions.

⁶ TCC believes it is appropriate to organize the BF IV Group Trust separate from the BF IV LP in order that the assets of the Group Trust may be regarded as "plan assets" and the requirements of the Act may otherwise be complied with in a separate entity.

no more than 50 percent of the contribution commitment may be called in any twelve month period. Second, TCC cannot call any contributions after the sixth anniversary date of the inception of the BF IV Group Trust (the period running from the date on which initial capital contributions are made to such sixth anniversary being referred to as "the Acquisition Period").

9. The terms of the BF IV Group Trust prescribe the content of the Investment Management Agreement. For example, TCC, at its own expense, will provide the BF IV Group Trust with personnel who are able to perform the administrative functions of the Group Trust. In addition, TCC, at its own expense, will provide the BF IV Group Trust with office space, telephones, copying machines, postage and all other necessary items of office services. Further, TCC will control proxy voting on all portfolio securities.¹⁰

The Investment Management Agreement permits TCC to provide brokerage services in an agency capacity. To the extent that TCC utilizes its own services in connection with brokerage services provided to the BF IV Group Trust, it will comply fully with state and federal securities laws as well as with PTE 86-128.¹¹

The Investment Management Agreement may be terminated by either the Trustee, on behalf of the Plans, or by TCC at any time, subject to the following provisions. If the termination is a "Justified Termination,"¹² the Investment Management Agreement can be terminated by the Trustee unilaterally. However, if the termination is a "Non-Justified Termination," it cannot be terminated unilaterally by the Trustee. In such case, the Trustee must first obtain the approval of Plans holding at least two-thirds of the Beneficial Interests in the BF IV Group Trust. Further, as a precondition to a "Non-Justified Termination," the terminating party must provide the

other party with 60 days' advance written notice of its intent to terminate.

10. In general, Beneficial Interests in the BF IV Group Trust will not be assignable, and no Plan may assign or otherwise transfer, pledge or otherwise encumber any or all of its interest in the Group Trust except for the purpose of redemption. Redemptions are limited to situations where (a) a replacement Plan is available from either current Plans investing in BF IV or there are new, qualified investors; (b) a Plan submits to TCC and the Trustee, a written opinion of counsel to the effect that the Plan's continued participation in the BF IV Group Trust would violate the Act and that relief from the violation cannot be obtained; (c) the Plan loses its tax-exempt status and that loss threatens the tax-exempt status of the BF IV Group Trust; and (d) the BF IV Group Trust loses its tax-exempt status or fails to obtain the exemptive relief proposed herein for the necessary operation of such Group Trust. This information will be disclosed to investors.

11. The decision to participate in the BF IV Group Trust will be made by a plan fiduciary who is independent of TCC and the Trustee. In each instance, the Plan fiduciary who makes the investment decision will agree not to rely on either the advice of TCC or the Trustee as the primary basis for a Plan's investment and the Independent Fiduciary will be specifically required to do so in every instance.¹³ TCC represents that the decision of a Plan to invest in the BF IV Group Trust will be made by an unrelated Plan fiduciary acting on the basis of his or her own investigation into the advisability of investing in the Group Trust.¹⁴

12. An Independent Fiduciary of each Plan proposing to invest in the BF IV Group Trust will be provided with a copy of the Private Placement

¹³ The Department notes that the general standards of fiduciary conduct promulgated under the Act would apply to the participation in the BF IV Group Trust by an Independent Fiduciary. Section 404 of the Act requires that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, an Independent Fiduciary must act prudently with respect to the decision to invest in the BF IV Group Trust. The Department expects that an Independent Fiduciary, prior to investing in the BF IV Group Trust, to fully understand all aspects of such investment following disclosure by TCC of all relevant information. (For a further discussion of these disclosures, see Representation 12 above.)

¹⁴ The Department is not expressing an opinion on whether TCC or the Trustee would be deemed to be fiduciaries under section 3(21)(A)(ii) of the Act with respect to a Plan's investment in the BF IV Group Trust. The Department is also not proposing relief for the rendering of investment advice in connection with the acquisition of Beneficial Interests in the BF IV Group Trust.

Memorandum by TCC. The Private Placement Memorandum will describe all material facts concerning the purpose, structure and operation of the BF IV Group Trust. If the Independent Fiduciary expresses further interest in participating in the BF IV Group Trust, such Independent Fiduciary will be provided with copies of the Group Trust Agreement outlining the organization principles, investment objectives and administration of the BF IV Group Trust, the procedure for the redemption of Beneficial Interests, the duties of the parties retained to administer the BF IV Group Trust and the manner in which Group Trust assets will be valued. The Independent Fiduciary will also be provided with a copy of the Investment Management Agreement which describes the duties and responsibilities of TCC, as investment manager of the BF IV Group Trust, the fees that will be paid to TCC, the conditions under which TCC may be terminated and the functions of the Independent Appraiser which may be retained under certain circumstances. Once the Independent Fiduciary has made a decision to invest in the BF IV Group Trust, TCC will provide such Independent Fiduciary with the names and addresses of all other participating Plans. The Independent Fiduciary will be required to acknowledge, in writing, prior to purchasing a Beneficial Interest in the BF IV Group Trust that such fiduciary has received copies of such documents.

The Independent Fiduciary will also be required to acknowledge, in writing, to TCC that such fiduciary is independent of TCC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF IV Group Trust.

13. TCC will prepare, or cause to be prepared on behalf of the BF IV Group Trust, the following reports with respect to the ongoing operations of the Group Trust: (a) Trading Activity and Portfolio Status Reports, for the Trustees, as required by PTE 86-128; (b) annual audited financial statements for the Trustee and the Plans; and (c) quarterly unaudited financial statements for the Trustee and Plan investors. The annual financial statements will contain a balance sheet for the BF IV Group Trust as of the end of the applicable fiscal year and a statement describing changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual financial report

¹⁰ The Department is not providing exemptive relief herein for any prohibited transactions that may arise as a result of proxy voting on the part of TCC. The Department also notes that the general standards of fiduciary conduct promulgated under the Act would apply to such voting practices.

¹¹ The Department expresses no opinion on whether the effecting of securities transactions by TCC will comply with the terms and conditions of PTE 86-128.

¹² A Justified Termination will occur if it is caused by: (a) a material breach of the Investment Management Agreement by the party that is not seeking to terminate such Agreement; (b) a material violation of the Act that has already occurred or will occur absent termination of the Investment Management Agreement; or (c) the disassociation of key personnel (i.e., those upon whom the Plans relied in making their investment) from TCC without being replaced by individuals who are approved by a majority of the Plans.

will also specify the fees that are payable or accruable to TCC. TCC will make the annual financial report available to the Trustee and each Plan within 120 days after the end of each fiscal year of the BF IV Group Trust. Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the BF IV Group Trust, TCC will prepare and distribute an unaudited quarterly financial report to the Trustee and each Plan investor. The report will consist of at least a balance sheet for the BF IV Group Trust as of the end of fiscal year quarter and a profit and loss statement for such quarter. The quarterly financial report will also disclose the fees that are payable or accruable to TCC.

In addition to the foregoing reports, TCC will prepare and distribute to the BF IV Group Trust and each Plan such other information as may be reasonably requested by the Plans, including such information as a Plan may request in order to comply with the reporting requirements of the Act or Code.

14. A meeting of the participating Plans and TCC will be held at least annually. The meeting will afford Independent Fiduciaries an opportunity to decide on whether the BF IV Group Trust should be terminated, whether the Trustee should be removed or whether the Investment Management Agreement should be terminated, if the situation warrants. However, before any termination can take place, the advance notification requirements for termination discussed above must be complied with. Also at the annual meeting, TCC representatives will be available to discuss any aspect of the BF IV Group Trust and the agreements promulgated thereunder with Independent Fiduciaries. Such meetings will be conducted in either TCC's offices or in the offices of the Independent Fiduciaries.

15. During the Acquisition Phase for the BF IV Group Trust, any net gains realized on portfolio sales will be distributed to Plan investors but the original cost of the Security that is sold will be reinvested.¹⁵ From the seventh year of the Group Trust through its termination, the net proceeds from sales of portfolio Securities will be distributed unless the proceeds are needed to honor pre-seventh year

¹⁵ According to the applicant, cash dividends that are received by the BF IV Group Trust from investments in Securities will be distributed to investors on an annual basis. Stock dividends will be retained by the BF IV Group Trust until the original portfolio investment is sold.

investment commitments or to protect pre-seventh year investments.¹⁶

16. Under the Investment Management Agreement, two types of fees will be payable to TCC by the BF IV Group Trust. These fees are the Management Fee and the Performance Fee, the components of which are described below. TCC's Management Fee, which is independent of the Performance Fee, is intended to cover the day-to-day operating expenses of the BF IV Group Trust. TCC represents that the Management Fee is covered by the statutory exemptive relief available under section 408(b)(2) of the Act.¹⁷ With respect to the Performance Fee, TCC is requesting administrative exemptive relief from the Department.

(a) The annualized *Management Fee* will be payable to TCC monthly in arrears during each fiscal year the BF IV Group Trust is in existence. The Management Fee will be based upon a percentage of the aggregate capital contributions committed to both the BF IV Group Trust and the BF IV LP (the Management Fee Base). It will be equal to (1) the sum of 5 percent of the first \$35 million of the Management Fee Base plus (2) 0.84 percent of the Management Fee Base in excess of \$35 million, multiplied by (3) a fraction (the Trust Share), the numerator of which is the amount of capital contributions committed to the BF IV Group Trust and the denominator of which is the aggregate of the capital contributions made to the BF IV Group Trust and the BF IV LP.¹⁸ The Management Fee will

¹⁶ The applicant explains that these exceptions to the general distribution rules are disclosed to investors in the Group Trust Agreement. With respect to the commitment exception, the applicant states that it is meant to cover situations where the BF IV Group Trust enters into an installment-type purchase agreement or some other contingency contract prior to the seventh year of its existence. In this connection, the applicant explains that TCC may have determined that the BF IV Group Trust should own a certain percentage of the Securities of a Bank Company or a Financial Services Company, but the requisite number of shares might not be available at that time. Under these circumstances, the applicant states that the BF IV Group Trust might enter into an agreement to purchase such Securities as they become available, even if the availability does not occur until after the sixth year.

¹⁷ The Department expresses no opinion herein on whether TCC's receipt of the Management Fee will satisfy the terms and conditions of section 408(b)(2) of the Act.

¹⁸ By aggregating capital contributions that are made by the BF IV Group Trust with those made to the BF IV LP and by allocating the dollar amount between both entities in proportion to their respective size, TCC represents that all investors will be charged a lower Management Fee. TCC believes that by computing the Management Fee in this manner more appropriately reflects the unified investment management of the BF IV Group Trust and the BF IV LP. The Department, however, expresses no opinion as to whether this

not exceed 2 percent of committed capital when all capital is contributed, even if BF IV is capitalized at less than \$125 million.

After the end of the Acquisition Phase, the Management Fee will be subject to certain adjustments, particularly as distributions are made to Plan investors.¹⁹ If, as a result of distributions to Plan investors, capital contributions made by Plans are reduced to 50 percent or less of the original aggregate capital contributions to the BF IV Group Trust, the Trust Share of the Management Fee will be reduced to 70 percent of the amount otherwise payable, effective for fiscal years subsequent to the year in which said payment was completed, and upon the payment to the Plans of an amount sufficient to reduce to 25 percent or less of their total capital contributions to the BF IV Group Trust, the Trust Share of the Management Fee will be reduced to 50 percent of the amount otherwise payable, effective for fiscal years subsequent to the year in which said payment was completed.

(b) *The Performance Fee* that will be accruable to TCC for each fiscal year of the Group Trust, will be equal to 20 percent of ((1) the excess, if any of (a) the cumulative total of realized capital gains from the inception of the BF IV Group Trust through the end of such fiscal year over (b) the cumulative total of realized capital losses during the term, less (2) any unrealized losses in the BF IV Group Trust portfolio at the end of such period in excess of unrealized appreciation in the Portfolio) and, the amount of such fee previously accrued. The amount of the annual Performance Fee that is accruable to TCC will be determined after the annual audit of the BF IV Group Trust as described in Representation 13. The calculation of the Performance Fee will be made within 60 days of the BF IV Group Trust's fiscal year end. Specifically, Securities will be valued as of the close of business on the last day of the Group Trust's fiscal year.

The Performance Fee will be further subject to the following terms and conditions:

(1) *Fee Base*. As stated above, the amount credited to TCC as the Performance Fee will be equal to a percentage of realized gains minus realized and net unrealized losses. Such

arrangement for computing the Management Fee satisfies the "reasonable compensation" requirements of section 408(b)(2) of the Act and the applicable regulations.

¹⁹ All distributions, with the exception of interest income and cash dividends, count as returns of capital.

amount will be credited to TCC annually.

(2) *Limited Deferral/Return of Capital.* The Performance Fee will be paid after December 31, 2001 which is the completion of the Acquisition Phase for the BF IV Group Trust and it cannot be paid until all participating Plans have received distributions equal to 100 percent of their capital contributions made to the BF IV Group Trust.²⁰

(3) *Reduced Availability.* Prior to the termination of the Group Trust, only 75

percent of what is credited to TCC as the Performance Fee may be withdrawn from the BF IV Group Trust after the Acquisition Phase.

(4) *Charges.* The Performance Fee account will be charged for realized losses, net unrealized losses and fee payments. Thus, the fee cannot be drawn when the Performance Fee account is in a deficit position.

(5) *Fee Repayment/25 Percent Cushion.* TCC must repay any deficit in the Performance Fee account and it

must also maintain a 25 percent cushion in such account.

The following examples illustrate the calculation of TCC's Performance Fee. Although the Performance Fee is paid annually and there are only two years of the BF IV Group Trust's expected term during which this fee can be drawn upon (i.e., 2002 and 2003), for purposes of illustration, four draw years have been assumed.

EXAMPLE #1

Year	Cumulative net position	Performance fee account	Maximum draw	Draw or refund
1	\$800	\$160	\$120	\$120
2	200	40	30	(90)
3	1,000	200	150	120
4	700	140	105	(45)

Year 1 Assume that when the Performance Fee first becomes payable in 2002, the BF IV Group Trust's Cumulative Net Position is \$800. TCC's Performance Fee is 20% of \$200 or \$160. TCC may draw 75% of the \$160 or \$120.²¹

Year 2 The BF IV Group Trust's Cumulative Net Position at the end of the Year 2 is \$200. The Performance Fee

is 20% of \$200 or \$40. TCC is entitled to draw \$30, but since it has previously drawn \$120, it must refund \$90.

Year 3 The BF IV Group Trust now has a Cumulative Net Position of \$1,000. The Performance Fee is \$200 with a permitted draw of \$150. Because TCC has previously draw a net amount of \$30 at the end of Year 2 (i.e., \$120-\$90), it may now draw an additional \$120.

Year 4 The BF IV Group Trust's Cumulative Net Position falls to \$700 and the Performance Fee falls to \$140. The 75% draw equals \$105, but TCC has previously drawn a total of \$150 (i.e., \$120-\$90+\$120). Therefore, TCC must make a refund to the BF IV Group Trust of \$45.

EXAMPLE #2

Year	Cumulative net position	Performance fee account	Maximum draw	Draw or refund
1	\$2,000	\$400	\$300	\$300
2	1,000	200	150	(150)
3	500	100	75	(75)
4	900	180	135	60

Year 1 Assume that when the Performance Fee first becomes payable in 2002, the Cumulative Net Position for the BF IV Group Trust is \$2,000. TCC's Performance Fee is 20% of \$2,000 or \$400. TCC may draw 75% of the \$400 fee or \$300. \$100 or 25% of the draw amount must be left in the BF IV Group Trust as a cushion.²²

Year 2 The Cumulative Net Position for the BF IV Group Trust at the end of Year 2 has fallen to \$1,000. The Performance Fee is 20% of \$1,000 or \$200. TCC is entitled to draw \$150, but since it has previously drawn \$300, it must refund \$150.

Year 3 The Cumulative Net Position for the BF IV Group Trust has fallen to \$500. The Performance Fee now falls to \$100 (i.e., 20% of \$500) with a permitted draw of \$75 and a cushion of \$25. Because TCC has previously drawn \$150 (\$300-\$150), it must make a refund to the BF IV Group Trust of \$75.

Year 4 The Cumulative Net Position for the BF IV Group Trust is \$900 at the end of Year 4. TCC's Performance Fee is 20% of \$900 of \$180. The 75% draw on the Performance Fee equals \$135. However, since TCC has previously drawn a total of \$75 (\$300-\$150-\$75), it may now draw a Performance Fee of \$60.

17. In the event of a premature termination of the Investment Management Agreement, special fee arrangements will be effective as follows:

(a) If the termination occurs prior to the third full fiscal year of the Investment Management Agreement's existence (i.e., before January 1, 1999) and it is either a Justified Termination by TCC or a non-Justified Termination by the Trustee, TCC will be entitled to receive a fee equal to the sum of (1) 20 percent of net realized gains to the date the agreement was terminated plus (2) 20 percent of the aggregate of unrealized gains net of unrealized losses

²⁰ For purposes of calculating the Performance Fee, cash dividends and interest are not included in the computation of the return of capital to Plan investors. As such, cash dividends do not affect the calculation of the amount of the Performance Fee

or the time such fee can be first paid, even if the return of capital occurs before December 31, 2001.

²¹ The assumption is, for purposes of this example, that all Plans investing in the BF IV Group Trust have received a 100 percent return of their capital contributions.

²² The assumption is again, for purposes of this example, that all Plans investing in the BF IV Group Trust have received a 100 percent return of their capital contributions.

determined on the date the agreement was terminated. (For purposes of determining net unrealized gains or net unrealized losses, TCC will utilize an independent appraiser to value Securities for which there are no independent market quotations.) Payment of this fee will be deferred until the termination of the BF IV Group Trust. In addition, TCC will not be required to make payments to the BF IV Group Trust in the event a loss to such Group Trust occurs.

(b) If the termination of the Investment Management Agreement occurs after the third full fiscal year of the BF IV Group Trust and is either a Non-Justified Termination by the Trustee or a Justified Termination by TCC, TCC will be entitled to its regular Performance Fee. However, payment will be deferred to the termination of the Group Trust.

(c) If TCC declares a Non-Justified Termination at any time, it has no enforceable right to receive a Performance Fee under the terms of the Investment Management Agreement.

(d) If the Trustee, on behalf of the BF IV Group Trust, declares a Justified Termination at any time, TCC has no enforceable right to receive a Performance Fee under the terms of the Investment Management Agreement. However, if the Justified Termination involves a violation of the Act and such violation has not been caused by TCC's gross misconduct (e.g., the law changes in a manner that would prohibit prospectively an important part of TCC's management of the BF IV Group Trust), TCC will be entitled to the Performance Fee it would have earned through the date of the termination of the Investment Management Agreement. Payment will again be deferred until the termination of the BF IV Group Trust.²³

18. The BF IV Group Trust will terminate upon the earliest to occur of (a) the complete distribution of its assets, (b) a vote in favor of termination by two-thirds of the Plans holding Beneficial Interests or (c) December 31, 2003. The Group Trust may be extended by a two-thirds affirmative vote of those Plans holding Beneficial Interests therein. (For termination of the Trustee under the Group Trust Agreement and the termination of TCC under the Investment Management Agreement, see Representations 6, 9 and 17 of this proposed exemption.)

²³ If an early termination of the Investment Management Agreement occurs, the applicant states that the Trustee, on behalf of the BF IV Group Trust, and TCC will initially attempt to agree on whether the termination is Justified or Non-Justified. If the parties are unable to agree, judicial proceedings will be instituted as a final means of resolution.

Upon termination of the BF IV Group Trust, all portfolio positions will be liquidated, Group Trust expenses (including TCC's Performance Fee) will be paid and distributions will be made. If all assets cannot be converted into cash or if it would be disadvantageous to liquidate every asset, remaining assets may be distributed in-kind. TCC will then receive a fractional portion of its fee in-kind.

TCC has exclusive authority over the sale of portfolio securities so it will make liquidation decisions. The Trustee will pay all expenses of the BF IV Group Trust at the direction of TCC. Although TCC will be responsible for directing the Trustee to make distributions, TCC's discretion will not be unlimited. Rather, as amounts are available for distribution, TCC will be required to make distributions in accordance with the provisions of the Group Trust Agreement.

The following example illustrates the manner in which in-kind distributions will be made by TCC:

Assume that all Plans investing in the BF IV Group Trust have received a 100% return of capital. Assume also that there are only two Plans investing in the BF IV Group Trust. Plan A has a Beneficial Interest worth \$60 and Plan B has a Beneficial Interest worth \$40.

The BF IV Group Trust holds 100 shares of Securities in Bank X which it acquired for \$5 per share. Upon termination of the Group Trust, Bank X Securities is worth \$7 per share.

The total unrealized gain attributable to Bank X Securities is $(\$7 - \$5) \times 100 = \$200$.

TCC's Performance Fee is equal to $\$200 \times 20\% = \40 . TCC receives $\$40 \div \$7 = 5.7$ shares of Bank X Securities.

Plan A receives $60\% \times 94.3 = 56.6$ shares of Bank X Securities.

Plan B receives $40\% \times 94.3 = 37.7$ shares of Bank X Securities.

19. Valuations of (and for) the BF IV Group Trust will be needed for redemptions, acquisitions by the BF IV Group Trust, in connection with in-kind distributions and to pay TCC's Performance Fee. The valuations will be made by TCC for Securities for which independent market quotations are readily available. In situations where no independent market quotations are readily available, an Independent Appraiser will be appointed as described below.

(a) *National Exchange—Regular Trades.* Any Security which is listed on a national securities exchange will be valued based on its last sales price on the national securities exchange on which the security is principally traded

on the valuation date.²⁴ If the valuation date is not a date on which the exchange was open for trading, the value will be determined in the same manner as if the valuation date was the last prior date on which the exchange was open for trading.

(b) *National Exchange—No Trades.* If no sale of a Security listed on a national securities exchange occurred on either of the dates described in clause (a) above, the security will be valued based on the last bid price on the exchange on which the security was publicly-traded.²⁵

(c) *No Independent Market or No Listing—Use of the Independent Appraiser.* In the event that there is no independent market for a Security or the Security is not listed on a national securities exchange (e.g., a small bank with 5 shareholders), the Independent Appraiser will be required to value such securities. TCC will utilize the Independent Appraiser to value Securities in connection with the in-kind distributions by the BF IV Group Trust, the redemption of Beneficial Interests in the BF IV Group Trust or to determine TCC's Performance Fee.

Although TCC will nominate the Independent Appraiser, Plans will be given the option of either approving or disapproving of the nominee. The Independent Appraiser will not be appointed absent the affirmative written approval of a majority of the Plans investing in the BF IV Group Trust. However, the Plans will have no veto power over TCC's decision that an Independent Appraiser is required.

Each member of the Independent Appraiser (currently, the same advisory committee serving in this capacity for the MBF II LP and the BF III) must be experienced in the valuation of subregional banks as well as in the business of performing valuations. In addition, each member of the Independent Appraiser must not be

²⁴ The applicant explains that the phrase "principally traded" means that if a Security is traded on more than one exchange and if the trade prices differ between exchanges, the value will be taken from the exchange on which the largest volume of that security has traded.

²⁵ The applicant explains that the most recent trade price is not used to value a Security in this instance because it may be too dated to provide an accurate estimate of value. Instead, the applicant considers the bid price to be indicative of the current value at which someone would be willing to acquire a Security on the valuation date. The applicant further notes that the use of the bid price rather than the previous trading or closing price in valuing a Security provides a conservative valuation approach which will result, in most instances, in a lower Performance Fee payable to TCC.

The Department assumes that the bid price described herein represents active bids and is a true indicator of market prices.

controlled by (or control) TCC and must not receive more than 5 percent of their lowest annual income from TCC or the Trustee, either during the term of BF IV or in the three years preceding its creation. Individual members of the Independent Appraiser or the entire committee may be removed by Plans holding 50 percent or more of the Beneficial Interests in the Group Trust. A majority of the Plans and TCC must approve a replacement Independent Appraiser. If the Plans and TCC cannot agree, upon such replacement, the firm of Peat Marwick Main & Co. will be appointed.

The Independent Appraiser will use the principles set forth in Revenue Ruling 59-60 and the Department's proposed "Adequate Consideration" regulations (53 FR 17632, May 17, 1988) to determine fair market value. The valuations made by the Independent Appraiser will be binding upon TCC. In addition, the Independent Appraiser will issue reports to TCC, the Trustee and the Plans participating in the BF IV Group Trust which set forth the Independent Appraiser's pricing methodology and rationale for Securities it has been asked to value. Such reports will be issued after each required valuation and they will comply with the aforementioned regulations.

20. With respect to transactions which may arise during the existence of the BF IV Group Trust and which involve parties in interest to participating Plans, TCC requests exemptive relief from the Department from the provisions of section 406(a) of the Act. Specifically, TCC requests exemptive relief where the BF IV Group Trust sells Securities held in its portfolio for cash or other securities to a party in interest with respect to a participating Plan in the context of an acquisition or a merger by the party in interest, provided the party in interest is not an affiliate of TCC. TCC represents that the BF IV Group Trust will receive the same offer that other shareholders of the Bank Company or Financial Services Company will receive. Because the BF IV Group Trust will always be a minority shareholder in such situation, TCC states that the BF IV Group Trust will be in the position of a beneficiary of the acquisition offer and it will not be in the position of an active player in the merger or acquisition transactions.

21. In summary, it is represented that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The participation of Plans in the BF IV Group Trust will be approved by an Independent Fiduciary.

(b) Each Plan investing in the BF IV Group Trust will have assets that are in excess of \$50 million.

(c) No Plan will invest more than 10 percent of its assets in Beneficial Interests in the BF IV Group Trust and such Beneficial Interests held by the Plan will not exceed 25 percent of such Group Trust.

(d) No Plan will invest more than 25 percent of its assets in investment vehicles (i.e., collective investment funds and separate accounts) managed or sponsored by TCC and/or its affiliates.

(e) Prior to making an investment in the BF IV Group Trust, each Independent Fiduciary contemplating investing therein will receive offering materials which disclose all material facts concerning the purpose, structure and operation of the Group Trust and the fees paid to TCC.

(f) Each Plan investing in the BF IV Group Trust will be required to acknowledge, in writing, prior to purchasing Beneficial Interests that such fiduciary has received copies of such documents and to acknowledge, in writing, to TCC that such fiduciary is (1) independent of TCC and its affiliates, (2) capable of making an independent decision regarding the investment of Plan assets and (3) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF IV Group Trust.

(g) TCC will make quarterly and annual written disclosures to participating Plans with respect to the financial condition of the BF IV Group Trust and the total fees that it will receive for services rendered to the BF IV Group Trust.

(h) TCC will hold annual meetings and conduct periodic discussions with Independent Fiduciaries of Plans participating in the BF IV Group Trust to address any matters pertaining to such Group Trust.

(i) The terms of all transactions that are entered into on behalf of the BF IV Group Trust by TCC shall remain at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets of the BF IV Group Trust will be based upon independent market quotations or determinations made by an Independent Appraiser.

(j) Either TCC or the Trustee, on behalf of the Plans participating in the BF IV Group Trust, may terminate the Investment Management Agreement at any time.

(k) As to each Plan, the total fees paid to TCC and its affiliates will constitute no more than reasonable compensation.

(l) TCC's Performance Fee will be based upon a percentage of net realized gains minus net unrealized losses. In this regard,

(1) The Performance Fee will be paid after December 31, 2001, which is the completion of the Acquisition Phase for the BF IV Group Trust, and it cannot be paid until all participating Plans have received distributions equal to 100 percent of their capital contributions to the BF IV Group Trust.

(2) Prior to the termination of the BF IV Group Trust, only 75 percent of what is credited to TCC as the Performance Fee may be withdrawn by such Group Trust.

(3) TCC will repay all deficits in its Performance Fee account.

Notice to Interested Persons

Notice of the proposed exemption will be given to Plans participating in the BF IV Group Trust within 5 days as of the date of publication of the notice of pendency in the Federal Register. Such notice will include a copy of the notice of proposed exemption, as published in the Federal Register, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and hearings requests with respect to the proposed exemption are due 35 days after the date of publication of the proposed exemption in the Federal Register.

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

Hughes Non-Bargaining Retirement Plan, Hughes Bargaining Retirement Plan, Hughes Subsidiary Retirement Plan (Collectively, the Plans)

[Applications No. D-10295, D-10296 and D-10297] Located in New York, N.Y.

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR, part 2570, Subpart B (55 FR 32847, August 10, 1990). Effective October 6, 1995, if the exemption is granted, 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 leasing by the Plans of 10,106 square feet of office space (Suite 300) in a commercial office building which is owned by the Plans (the Building) to Sarofim Realty Advisors (SRA), a party in interest with respect to the Plans, for a period ending February 28, 2000 pursuant to the terms of a lease amendment (the Lease) provided the following conditions are satisfied: (1) An independent third party determines that the terms of the Lease represent not less than fair rental value as of the date of the Lease; (2) the terms of the Lease are reviewed and approved by a qualified independent fiduciary of the Plans who determines that the terms of the transaction are at least as favorable as the terms generally available to the Plans in arm's length transactions between unrelated parties and that SRA's improvements to Suite 300 are acceptable; (3) the qualified independent fiduciary concludes that the transaction is in the best interests of the Plans and the Plans' participants and beneficiaries; (4) on behalf of the Plans, the qualified independent fiduciary continues to monitor SRA's performance under the Lease; and (5) within sixty (60) days of the publication in the Federal Register of a notice granting this proposed exemption, SRA will file Form 5330 with the Internal Revenue Service and pay the excise taxes applicable under section 4975(a) of the Code that are due by reason of the prohibited Lease transaction during the period beginning March 1, 1995 and ending on the effective date of this exemption.

EFFECTIVE DATE: The effective date of this exemption is October 6, 1995.

Summary of Facts and Representations

1. The Plans involved in the transaction, the Hughes Non-Bargaining Retirement Plan, the Hughes Bargaining Retirement Plan and the Hughes Subsidiary Retirement Plan, are covered by the Hughes Master Retirement Trust (the Trust). The Plans are defined benefit plans. The Plans' sponsor is Hughes Electronic Corporation (Hughes). Prior to March 29, 1995, the Plans' sponsor was Hughes Aircraft Company. As of November 30, 1995, the Plans had a total of 91,006 participants and beneficiaries. As of November 30, 1995, the approximate aggregate fair market value of the total assets of the Plans was \$6.376 billion. The Building is a commercial office building known as Preston Sherry Plaza with 147,008 square feet of rentable space and located in Dallas, Texas. As of November 30, 1995, the value of the Building was .34

percent of the fair market value of the total assets of the Plans.

2. SRA states that it is a fiduciary, within the meaning of section 3(21) of the Act, to the Plans and a party in interest under section 3(14)(A) of the Act with respect to the Plans by virtue of its appointment by the Plans as an investment manager for certain of the Plans' real estate investments. SRA is headquartered in Dallas, Texas. As of December 31, 1995, SRA employed 18 full-time employees and had approximately \$772 million in aggregate market value of employee benefit plan assets under management. SRA oversees the acquisition, development, leasing, management, financing and sale of select property types in select regions and major cities throughout the country for the Plans and eight other pension plans and endowment funds. SRA provides recommendation to the Plans as to the types of properties to be purchased, the number and location of the properties, the structure of the transactions and the amount of third-party financing, if any, that is appropriate. In addition, SRA is responsible for ensuring that the Plans' properties are managed in accordance with the Plans' investment objectives.

3. From October 1, 1991 to February 28, 1995, SRA leased 6,018 square feet of space on the fourth floor of the Building from the Plans. SRA represents that its lease of the fourth floor space complied with the requirements of Part III of PTE 84-14 which permits a qualified professional asset manager (QPAM) to lease not in excess of the greater of 7500 square feet or 1 percent of the rentable space of the office building in which the investment fund managed by the QPAM has the investment.²⁶ In order to accommodate another Building tenant and to facilitate a cost effective reconfiguration of space within the Building to the benefit of the Plans, SRA relocated to the third floor of the Building on March 1, 1995. SRA occupied this space pursuant to the terms of the Lease entered into on March 1, 1995.

4. The Lease relates to 10,106 square feet of office space and is for a term of five years ending February 28, 2000, at a base rent of \$16,000 per square foot. The annual base rent adjusts at a rate of \$.25 per square foot per year to \$17.00 per square foot in the year 2000. The Lease also provides for a one-time-only tenant improvement or construction allowance of \$18.25 per square foot. The allowance enabled SRA to build additional walls, replace the carpet and

²⁶ SRA represents that it is a QPAM as that term is defined in PTE 84-14.

repaint the walls of the third floor. Under the terms of the Lease, SRA is responsible for its proportionate share of common area maintenance, insurance and property taxes over the 1994 base year amount. The applicant states that the Lease terms are comparable to the terms of the leases of other similar tenants in the Building, as well as the terms of leases in similar buildings in the area.

5. The applicant states that the Lease between SRA and the Plans is not eligible for relief from the prohibited transaction provisions of the Act pursuant to PTE 84-14 because the Lease is for an amount of space in excess of the greater of 7,500 square feet or one percent of the rentable space in the Building.

6. The applicant represents that on or about March 8, 1995, SRA contacted Price Waterhouse LLP (Price) and requested that Price serve as the independent fiduciary with respect to the Lease. The applicant states that Price agreed to the engagement and SRA asked Price to begin work immediately to determine whether the terms and conditions of the Lease represented an arm's length lease of office space between unrelated parties and to prepare a report summarizing Price's conclusions (Price Report). During the period March 14 to March 31, 1995, Price performed a market review of the Lease. Price reviewed the Lease and the leases of five comparable tenants. Price inspected and evaluated the Building and interviewed the Building's management. Price performed a present value analysis on the comparable leases in order to evaluate the economic terms of the leases. Based on Price's research and analysis, the March 31, 1995 Price Report determined that the Lease was under terms which are not less than fair market value.

7. According to the Amendment, the applicant states that SRA circulated several drafts of an independent fiduciary agreement to Price and to the Plans. On March 30, 1995, the Plans requested that SRA revise the independent fiduciary agreement to substitute "independent advisor" for "independent fiduciary." SRA objected to the change and advised the Plans that the agreement should refer to Price as an "independent fiduciary." On April 4, 1995, the Plans advised SRA that Price could not serve as an independent fiduciary to the Plans because Price was not a registered investment adviser under the Investment Advisers Act of 1940 and the Plans documents required all fiduciaries appointed by the Plans to be registered investment advisers.

Subsequently, SRA and the Plans discussed several alternatives with respect to the appointment of an independent fiduciary. On October 6, 1995, the Plans and RREEF America L.L.C. (RREEF) entered into an agreement for RREEF to act on behalf of the Plans as an independent fiduciary to review the Price Report, review and approve the Lease terms and monitor SRA's performance under the Lease (the Agreement). This Agreement was essentially an extension of RREEF's duties as a qualified professional asset manager to the Plans pursuant to the agreement dated March 3, 1992 between the Plans and RREEF America Partners L.P., now known as RREEF (the Investment Management Agreement).

8. The applicant states that RREEF is a qualified independent fiduciary who actively manages commercial real estate in Dallas, Texas. Further, neither RREEF nor its affiliates has any ownership interest in SRA or its affiliates and neither SRA nor its affiliates has any ownership interest in RREEF or its affiliates. The Applicant represents that the Plans will pay RREEF's fee for serving as an independent fiduciary. In view of RREEF's other unrelated business relationships with the Plans, RREEF has agreed to perform these additional services for the Plans for the sum of \$1.00 per annum in lieu of any additional fee which otherwise would be due under the Investment Management Agreement.

9. According to the Statement of Independent Fiduciary dated September 12, 1996, RREEF states that it is an investment adviser registered under the Investment Advisers Act of 1940 and oversees the acquisition, development, leasing, management, financing and sale of commercial real estate throughout the country including real estate located in Dallas, Texas. RREEF serves as an investment advisor and fiduciary for approximately 150 employee benefit plans including the Plans. RREEF represents that it understands its ERISA duties and responsibilities in acting as a fiduciary with respect to the Plans. RREEF states that as of December 31, 1995, it had approximately \$6 billion in aggregate market value of employee benefit plan assets under management and that, as of December 31, 1995, RREEF and its affiliates received less than 1 percent of their annual income from SRA or its affiliates.

10. The applicant represents that under the Investment Management Agreement, RREEF may be removed with or without cause at any time by the Plans (acting through fiduciaries of the Plans that are unrelated to SRA or RREEF) upon written notice of such

termination. Further, RREEF's appointment is subject to annual confirmation by the fiduciaries of the Plans. The applicant states that RREEF may not be removed by SRA and the appointment of RREEF as independent fiduciary shall remain in effect until 60 days after receipt by the Plans of a notice of resignation from RREEF, or 60 days after RREEF receives a notice of removal from the Plans.

11. The applicant states that upon the termination of RREEF's appointment, a successor independent fiduciary (Successor) will be designated by the Plans. The Successor will be subject to annual confirmation by fiduciaries of the Plans. In addition, any Successor must be an individual, group of individuals, or a business entity which has substantial experience and expertise in the commercial real estate field. Neither the Successor nor any affiliate of the Successor may have any ownership interest in SRA or any of its affiliates, nor may SRA or any of its affiliates have any ownership interest in the Successor or its affiliates. Moreover, neither the Successor itself, nor the Successor and its affiliates in the aggregate, may receive more than 1 percent of their total annual gross revenues, determined as of the end of their last fiscal year, from business transactions with SRA or its affiliates. Furthermore, any Successor would be removable with or without cause at any time by the Plans acting through a fiduciary or fiduciaries unrelated to SRA or the Successor. Any Successor would not be removable by SRA for any reason.

12. RREEF states that on the Plan's behalf, RREEF has reviewed and approved the terms of the Lease. RREEF states that it has reviewed: the Lease; SRA's proposed improvements to the property; the Price Report concerning the proposed transaction, including all accompanying data and analyses; physically inspected the property; and compared the Lease with other leases for space in the Building and leases for space at comparable properties. RREEF also interviewed four local brokers active in the Building's submarket to identify comparable market rent terms. Based on RREEF's review and analysis, RREEF concluded that the terms of the Lease are in the best interest of the Plans and the Plans' participants and beneficiaries, the terms of the Lease are at least as favorable as the terms generally available to the Plans in arm's length transactions between unrelated parties, and that SRA's proposed improvements to the office space are acceptable and will not cause the premises to be untenable.

13. Under the Agreement, RREEF is also obligated to monitor SRA's performance under the Lease. RREEF agreed to review any matter which requires the approval of the landlord under the terms of the Lease and determine on behalf of the Plans whether or not to grant approval and take any other action with regard to the Lease which the landlord would have the authority and/or obligation to take, on behalf of the Plans.

14. The applicant represents that the Lease allows the Plans to accommodate existing tenants, to retain SRA as a stable and reliable tenant, and to realize income that might not otherwise be received. The Plans derive a benefit by virtue of SRA's occupancy of space in the Building and its ability to better evaluate the day-to-day performance of the other tenants, the property manager and the physical upkeep of the asset. If the Lease is not granted an exemption, the applicant represents that the Plans would be subjected to the risks of downtime and additional refit costs for the current SRA space.

15. The applicant represents that within sixty (60) days of the publication in the Federal Register of a notice granting this proposed exemption, SRA will file Form 5330 with the Internal Revenue Service and pay the excise taxes applicable under section 4975(a) of the Code that are due by reason of the prohibited Lease transaction during the period beginning the date the Lease was entered into, March 1, 1995, and ending on October 6, 1995, the effective date of this exemption, the date of the appointment of an independent fiduciary with respect to the Lease.

16. In summary, the applicant represents that the proposed exemption meets the criteria of section 408(a) of the Act because: (1) Price, an independent third party, has determined that the terms of the Lease represent not less than fair rental value as of the date of the Lease; (2) the terms of the Lease were reviewed and approved by RREEF, a qualified independent fiduciary who determined that the terms of the transaction were at least as favorable as the terms generally available to the Plans in arm's length transactions between unrelated parties and that SRA's improvement to Suite 300 were acceptable; (3) RREEF, a qualified independent fiduciary, concluded that the Lease is in the best interests of the Plans and the Plans' participants and beneficiaries; (4) RREEF, on behalf of the Plans, continues to monitor SRA's performance under the Lease; and (5) within sixty (60) days of the publication in the Federal Register of a notice granting this proposed exemption, SRA

will file Form 5330 with the Internal Revenue Service and pay the excise taxes applicable under section 4975(a) of the Code that are due by reason of the prohibited Lease transaction during the period beginning March 1, 1995 and ending on the effective date of this exemption.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons by either mail or hand delivery within 30 days of the date of publication of the notice of pendency in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments are due within 60 days of the date of publication of the proposed exemption in the Federal Register.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed replacement exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced applications at the address set forth above.

FOR FURTHER INFORMATION CONTACT: Wendy McColough of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

APA, Inc. 401(k) Profit Sharing Plan (the Plan) Located in Pleasant Hill, California

[Application No. D-10375]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(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: (1) The proposed loan (the Loan) of \$30,000 to Mr. Gary Petsuch (Mr. Petsuch), a party in interest with respect to the Plan, from

Mr. Petsuch's segregated account (the Account) in the Plan, and (2) the personal guarantee of the Loan by Mr. Petsuch, provided the following conditions are satisfied: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan does not exceed 25% of the assets of the Account; (c) the Loan is secured by a pledge of Mr. Petsuch's interest in an investment account which has been currently valued by an independent party as having a fair market value approximately 280% of the principal amount of the Loan; (d) the account collateralizing the Loan will be maintained at a collateral-to-Loan ratio of not less than 200% throughout the duration of the Loan; (e) Mr. Petsuch has also personally guaranteed the Loan; and (f) Mr. Petsuch is the only Plan participant to be affected by the Loan.

Summary of Facts and Representations

1. Action Personnel Agency, Inc. d.b.a. United Staffing Services (APA), a California Subchapter S Corporation, is the sponsor of the Plan. Mr. Petsuch is the 100% owner of APA and, as such, is a party in interest with respect to the Plan.

2. Mr. Petsuch, as the owner of a Subchapter S Corporation, is unable to participate in the Plan's participant loan program. Mr. Petsuch has a segregated rollover Account in the Plan which had a value of \$124,875 as of August 23, 1996. This Account is composed of publicly traded stock.

3. Mr. Petsuch has requested an exemption that would permit him to borrow \$30,000 from his Account in the Plan. Since the Loan is to come from his Account, Mr. Petsuch is the only Plan participant who will be affected by this proposed transaction. The Loan amount would represent less than 25% of the value of the Account. The term of the Loan will be for a period of five years at an interest rate of Prime plus two, based on the published Prime Rate in the Western Edition of the Wall Street Journal, which currently would be 10.75%. The interest rate will be adjusted during the term of the Loan whenever there is a change in the Prime Rate of Interest. The new interest rate will be effective immediately and will remain in effect until the next time the Prime Rate changes. The Loan will be repaid in equal monthly installments of principal and interest. Ms. Jeanne Marx, Vice President of The Bank of San Ramon Valley (the Bank) in San Ramon, California, has represented that the Bank would require identical terms to make a five year loan to Mr. Petsuch.

4. In addition to giving his personal guarantee for the Loan, Mr. Petsuch will pledge as security for the Loan his interest in a Charles Schwab & Co., Inc. (Schwab) investment account. The account consists of publicly traded securities, which according to Schwab had a fair market value of \$84,855 as of August 26, 1996. Thus, the pledged security has a fair market value approximately 2.8 times greater than the principal amount of the proposed Loan. The applicant represents that the collateral-to-Loan ratio will always remain at least 200%. If the collateral-to-Loan ratio ever falls below this level, Mr. Petsuch represents that he will add additional collateral to the Schwab account.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Code because: (a) The Loan represents less than 25% of the assets of the Account; (b) the terms of the Loan will be identical to those required by a third party lender, the Bank, if it were to make a similar loan; (c) the Loan will be secured by Mr. Petsuch's personal guarantee and his interest in an investment account which has been currently valued by an independent party as having a fair market value approximately 280% of the principal amount of the Loan; (d) the collateral-to-Loan ratio will remain not less than 200% throughout the duration of the Loan; and (e) Mr. Petsuch is the only Plan participant to be affected by the Loan, and he desires that the transaction be consummated.

NOTICE TO INTERESTED PERSONS: Since Mr. Petsuch is the only Plan participant to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

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 of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction

provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, DC, this 9th day of January, 1997.

Ivan Strasfeld,

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

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BILLING CODE 4510-29-M

**[Prohibited Transaction Exemption 97-01;
Exemption Application No. D-10143, et al.]**

Grant of Individual Exemptions; Univar Corporation UniSaver Tax

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.

Univar Corporation UniSaver Tax Savings Investment Plan (the Plan) Located In Kirkland, Washington

[Prohibited Transaction Exemption 97-01; Exemption Application No. D-10143]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the

extension of credit in the form of guarantees and loans of funds (the Loans), not to exceed \$1,466,785.38, to the Plan by Univar Corporation (the Employer), the sponsor of the Plan, or its successors, with respect to Guaranteed Investment Contract No. 62127 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the repayment of the Loans by the Plan to the Employer, or its successors, provided the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those the Plan could receive in arm's length transactions with unrelated parties; (b) No interest payments or other expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Loans will be made from proceeds realized from the GIC (the GIC Proceeds) as paid to the Plan by Confederation, its successors, or any other third party, and made only if the repayments do not interfere with the liquidity needs of the Plan for payment of benefits, transfers of investments, hardship withdrawals, or loans as determined by BZW Barclays Global Investors, N.A., the Plan trustee; (d) Repayment of the Loans will be waived by the Employer and its successors to the extent the Loans exceed the GIC Proceeds; and (e) All unpaid principal and interest that was due under the GIC on August 12, 1994, minus any Loans from the Employer and its successors, and/or payments received under the GIC after August 12, 1994, will be completely paid by January 1, 2000, by a Loan to the Plan from the Employer or its successors.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 6, 1996, at 61 FR 57467.

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

Wayne Obstetrical Group, P.A. Money Purchase Retirement Plan (the Wayne Plan); Pediatric Professional Associates, P.A. Profit Sharing Plan (the Pediatric Plan); Physicians for Women, P.A. Profit-Sharing Plan and Trust (the Physicians Plan; collectively, the Plans) Located in Wayne, New Jersey

[Prohibited Transaction Exemption 97-02; Exemption Application Nos. D-10262, D-10263, and D-10264]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the