

withdraw the authority to issue waivers if: goals specified are not met for two consecutive years; or the State grants waivers for non-waivable provisions or for provisions of other legislation not subject to waiver.

2. *Duration and Coverage.* Work-Flex authority may be granted for up to five years. States granted such authority may approve waivers requested from all service delivery areas or substate areas or from selected areas.

3. *Notification of the Granting of Waivers.* States will be required to submit reports on a semi-annual basis concerning the administration of the waiver authority and on the accomplishments under this authority. After one year, annual reporting will be required. States shall notify the appropriate ETA Regional Administrator of the granting of a waiver(s) semi-annually. This notification shall include the area for which the waiver is granted, the provision of legislation and/or regulation waived and the duration of the waiver.

4. *Federal Assistance.* States are encouraged to regularly consult with the ETA Regional Office regarding any matters in which the discussion and assistance in the Work-Flex administration would be useful. Because Work-Flex is an important demonstration program with implications for future job training and employment service delivery, it is important that Work-Flex be tested to ensure that appropriate accountability can be maintained. ETA Regional staff will be responsible for providing information on Work-Flex administration and implementation. States granted Work-Flex authority are strongly urged to work closely—on an ongoing basis—with Regional Office staff so that both the federal and State partners are fully informed on the status and issues under Work-Flex. States may be asked to participate with ETA staff in designing and conducting the planned evaluation of the effectiveness of Work-Flex.

Dated: April 2, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97-20; Exemption Application No. D-10227 thru D-10232, et al.]

Grant of Individual Exemptions; Real Estate Equity Trust No. 1 (the Trust), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

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

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

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

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

Real Estate Equity Trust No. 1 (the Trust), et al. Located in Cincinnati, OH

[Prohibited Transaction Exemption 97-20; Exemption Application Nos. D-10227—D-10232]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase of units in the Trust by certain multiemployer pension plans (the Plans) that will enable State Street Global Advisors, Inc. (SSGA), the independent fiduciary for the Plans investing in the Trust, to make initial and subsequent equity investments on behalf of the Trust, in the Cincinnati Development Group Limited Partnership (the Partnership), which may result in a benefit inuring to Fifth Third Bank (Fifth Third), the trustee of the Trust and a party in interest with respect to the Plans.

This exemption is subject to the following conditions:

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

(b) No Plan that purchases units in the Trust that will permit the Partnership investment has, immediately following the acquisition of such units, more than 5 percent of its assets invested therein.

(c) The decision to purchase units in the Trust that will allow SSGA to make the initial and any subsequent equity contributions to the Partnership is made by a Plan fiduciary (the Second Fiduciary) which is independent of Fifth Third and its affiliates and which is not SSGA.

(d) As independent fiduciary for the Trust, SSGA determines whether—

(1) It is in the best interests of the Trust and the Plans participating therein to make the initial and subsequent investments in the Partnership;

(2) It is appropriate for the Trust to assign, transfer, pledge or otherwise encumber its interest in the Partnership provided the Trust obtains written consent from Cincinnati Development Group, LLC (CDG);

(3) It is appropriate for the Trust to withdraw as a limited partner from the Partnership or to withdraw its capital from such Partnership provided the Trust obtains the written consent of CDG;

(4) It is appropriate for the Trust to consent to the sale by CDG of substantially all of the assets of the Partnership or the transfer by CDG of its interest in the Partnership to a third party;

(5) It is appropriate for the Trust to contribute to the Partnership the amount necessary to complete construction of the Fountain Square West Project and to require that CDG release control of the Partnership to an entity designated by the Trust, if CDG fails to provide for construction cost overruns;

(6) It is appropriate for the Trust to elect to continue the Partnership by appointing a successor general partner.

(7) An entity designated by the Trust to serve as general partner is appropriate upon the occurrence of (d)(5) or (d)(6).

(e) At the time the Partnership investment is made, the terms of the transaction are at least as favorable to each Plan participating in the Trust as those obtainable in an arm's length transaction with an unrelated party.

(f) Prior to investing in the Partnership, Fifth Third provides SSGA and the Second Fiduciary of each Plan participating in the Trust with offering materials disclosing all material facts concerning the purpose, structure and operation of the Partnership.

(g) Subsequent to investing in the Partnership, the Trust and SSGA receive the following ongoing information from CDG:

(1) Within 120 days after the end of the Partnership's fiscal year, an unaudited annual report containing—

(A) A balance sheet and statements of income, Partners' equity, changes in financial position and cash flow for the year then ended;

(B) A report of the activities of the Partnership during the period covered by the report; and

(C) An itemization of any fees or payments made to CDG or any related party or affiliate.

(2) Within 60 days of the end of each year, an appraisal report, prepared by a qualified, independent appraiser, of each property held in the Partnership.

(3) Periodically (but not less frequently than quarterly), operating and development budgets of the Partnership as well as unaudited operations and financial reports. (Information with respect to the Partnership is disseminated by Fifth Third to the Second Fiduciaries of Plans investing in the Trust through annual audited financial statements of the Trust, prepared by independent, certified public accountants and in quarterly communications setting forth

Partnership financial data. SSGA will also be given copies of this information.)

(h) As to each Plan participating in the Trust, the total fees paid to Fifth Third will constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(i) Fifth Third maintains, for a period of six years, the records necessary to enable the persons described in paragraph (j) 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 Fifth Third 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 Fifth Third 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 below by paragraph (j).

(j)(1) Except as provided in section (i)(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 (i) are 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 fiduciary of a participating Plan or any duly authorized representative of such 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.

(j)(2) None of the persons described above in paragraphs (j)(1)(B)–(j)(1)(D) of this paragraph (j) are authorized to examine the trade secrets of Fifth Third or commercial or financial information which is privileged or confidential.

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 December 17, 1996 at 61 FR 66314.

Written Comments

The Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The written comment was submitted by the applicant, Fifth Third,

and is intended to clarify the notice of proposed exemption in the following areas:

(1) *Role of the Independent Fiduciary.* Fifth Third notes that SSGA serves as the independent fiduciary with respect to investments by the Trust in the Partnership. Because the Trust is a limited partner in the Partnership and many actions that may be undertaken by the Trust would require the consent of CDG, the general partner of the Partnership, Fifth Third represents that the opportunity for the Trust to act unilaterally would be extremely rare. In this regard, Fifth Third explains that the operative and conditional language of the proposal state that SSGA will make the initial and any subsequent investments in the Trust as well as monitor the Trust on behalf of the investing Plans. Although Fifth Third represents that this language is not inconsistent with the provisions of the proposal, it asserts that it will remain the Trustee of the Trust and that it will not be replaced by SSGA.

In response, the Department notes that SSGA has been appointed to serve as the independent fiduciary for the Trust with respect to the initial, and possibly, future equity investments made by the Trust to the Partnership. In undertaking these duties, we further note that SSGA is responsible for monitoring and protecting the rights of the Trust and the Plans investing therein to the extent that any actions by Fifth Third may impact adversely on the Partnership. Because actions that may be taken by Fifth Third could result in a conflict of interest by reason of the Trust's investment, through the Partnership, in the Fountain Square West Project, we would expect that SSGA will have a continuing role in enforcing the rights of the Plans investing in the Trust.

(2) *Assets Required for Investment.* Footnote 5 of the proposed exemption states, in relevant part, that if "less than" \$6.5 million in units are subscribed for by the investing Plans, the Trust will combine those proceeds with its existing liquid assets to make the \$7 million investment in the Partnership. Fifth Third wishes to modify the language in the footnote by clarifying that if "at least" \$6.5 million in units are subscribed for by the Plans, the Trust will combine those proceeds with existing assets to make the investment in the Partnership.

(3) *Rents under the Lease with the City of Cincinnati (the City Lease).* Fifth Third notes that a portion of Footnote 7 of the proposal indicates that no gross rents in excess of \$3 million for any year are projected during the initial 10 years

of the Fountain Square West Project. Fifth Third wishes to emphasize that no gross rents in excess of \$3 million are actually projected for any year during the initial term of the Fountain Square West Project. Fifth Third also points out that the issue of gross rents in excess of \$3 million is relevant because such rents would result in additional payments being made to the City of Cincinnati under the City Lease.

Thus, after giving full consideration to the entire record, including the written comment, the Department has made the aforementioned changes to the proposed exemption. In addition, the Department has decided to grant the exemption subject to the clarifications described above. The comment letter has been included as part of the public record of the exemption application. The complete application file, as well as all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

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

Orders Distributing Co., Inc. Profit Sharing Plan and 401(k) Retirement Savings Plan (the Plan) Located in Greenville, South Carolina

[Prohibited Transaction Exemption 97-21; Exemption Application No. D-10341]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan of certain units of limited partnership interests (the Units) to Orders Distributing Co., Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) The terms of the sale were at least as favorable to the Plan as those the Plan could have obtained in a comparable arm's length transaction with an unrelated party; (2) the sale was a one-time transaction for cash; (3) the Plan paid no commissions nor other expenses relating to the sale; (4) the Plan received an amount no less than the fair market value of the Units as of the date of the sale, as determined by an independent appraisal; and (5) within 30 days of publication in the **Federal Register** of the notice of the grant of this

exemption, the Employer makes an additional cash contribution to the Plan to make up for opportunity costs attributable to the Units.

EFFECTIVE DATE: The exemption is effective as of January 1, 1995.

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 January 31, 1997 at 62 FR 4802.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 3rd day of April, 1997.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10345, et al.]

Proposed Exemptions; Washington National Retirement Plan et al.

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

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing 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) number of the person making the comment or request, and (3) 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