

of the three highest generic rating categories by a Rating Agency; or (iii) consist of interests in money market mutual funds which are registered investment companies under the Investment Company Act of 1940, which are managed by parties independent of the Sponsor or Servicer, and which invest in securities described in item (i) above or highly rated short-term securities of the type described in item (ii) above, or which are of comparable credit quality to securities having such ratings; are described in the pooling and servicing agreement; and are permitted by the Rating Agency. [emphasis added]

The Department agrees with the proposed revision of the definition and has so revised the language of Section III.Y. of the exemption.

The Department received no other written comments, nor any requests for a hearing.

Accordingly, the Department has determined to grant the exemption as modified.

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

General Information

The attention of interested persons is directed to the following:

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

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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all

material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 20th day of November, 1998.

Ivan Strasfeld,

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

[FR Doc. 98-31510 Filed 11-24-98; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10372, et al.]

Proposed Exemptions; Keystone Financial, Inc.

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 restrictions 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 requests 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.

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, N.W., Washington, D.C. 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, N.W., Washington, D.C. 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.

Keystone Financial, Inc., and Certain of Its Affiliates (Keystone), Located in Harrisburg, Pennsylvania

[Application Nos. D-10372]

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).

Section I—Proposed Exemption for In-Kind Transfers of CIF Assets

If the exemption is granted, the restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the past in-kind transfers of assets of various employee benefit plans for which Keystone served as a fiduciary (the Client Plans), that

were held in certain collective investment funds (CIFs) maintained by Keystone, in exchange for shares of the KeyPremier Funds (the Funds), an open-ended investment company registered under the Investment Company Act of 1940 (the ICA), for which Keystone is an investment adviser and may provide other services (i.e., Secondary Services, as defined below in Section II(h)), which occurred on December 2, 1996, February 3, 1997 and July 1, 1997,¹ provided that the following conditions were met:

(a) A fiduciary (the Second Fiduciary) who was acting on behalf of each affected Client Plan and who was independent of and unrelated to Keystone, as defined in Section II(g) below, received advance written notice of the in-kind transfer of assets of the CIFs in exchange for shares of the Fund and the disclosures described in paragraph (c) below.

(b) On the basis of the information described in paragraph (c) below, the Second Fiduciary provided prior written authorization for the in-kind transfer of the Client Plan's CIF assets in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees to be received by Keystone in connection with its services to the Fund. Such authorization by the Second Fiduciary must have been consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) The Second Fiduciary who was acting on behalf of a Client Plan received in advance of the investment by the Plan in any of the Funds, a full and detailed written disclosure of information concerning the Funds which included, but was not limited to:

(1) A current prospectus for each portfolio of each of the Funds in which

such Client Plan was considering investing;

(2) A statement describing the fees for investment management, investment advisory, or other similar services, and any fees for Secondary Services, as defined in Section II(h) below, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Keystone considered such investments to be appropriate for the Client Plan; and

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

(d) For each Client Plan, the combined total of all fees received by Keystone for the provision of services to the Client Plan, and in connection with the provision of services to any of the Funds in which the Client Plans invested, was not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) Neither Keystone nor an Affiliate received any fees payable pursuant to Rule 12b-1 under the ICA (the 12b-1 Fees) in connection with the transactions.

(f) All dealings between the Client Plans and any of the Funds were on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

(g) No sales commissions were paid by the Client Plans in connection with the in-kind transfers of CIF assets in exchange for shares of the Funds.

(h) The transferred assets constituted the Client Plan's pro rata portion of all assets that were held by the CIF immediately prior to the transfer.

(i) Following the termination of each CIF, each Client Plan received shares of the Funds that had a total net asset value equal to the Client Plan's pro rata share of the assets of the CIFs that were exchanged for such Fund shares on the date of transfer.

(j) With respect to each in-kind transfer of CIF assets to a Fund, each Client Plan received shares of the Fund which had a total net asset value that was equal to the value of the Plan's pro rata share of the assets of the corresponding CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner as of the close of the same business day with respect to all such Plans participating in the transaction on such day, using independent sources in accordance with the procedures set

forth by the Securities and Exchange Commission (SEC) Rule 17a-7(b) under the ICA (Rule 17a-7) for the valuation of such assets. Such procedures must have required that all securities for which a current market price was not obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ² were to be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the in-kind transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Keystone.

(k) Not later than thirty (30) days after completion of each in-kind transfer of CIF assets in exchange for shares of the Funds which occurred on December 2, 1996, February 3, 1997, and July 1, 1997, Keystone sent by regular mail to the Second Fiduciary, a written confirmation which contained:

(i) The identity of each of the assets that was valued for purposes of the transaction in accordance with SEC Rule 17a-7(b)(4) under the ICA;

(ii) The price of each of the assets involved in the transaction; and

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

(l) For each in-kind transfer of CIF assets, Keystone sent by regular mail to the Second Fiduciary, no later than one-hundred and twenty (120) days after completion of the asset transfer made in exchange for shares of the Funds,³ a written confirmation which contained:

(1) The number of CIF units held by each affected Client Plan immediately before the in-kind transfer, the related per unit value, and the aggregate dollar value of the units transferred; and

(2) The number of shares in the Funds that were held by each affected Client Plan immediately following the in-kind transfer, the related per share net asset value, and the aggregate dollar value of the shares received.

(m) Keystone maintains for a period of six (6) years the records necessary to enable the persons, as described in paragraph (n) below, to determine whether the conditions of the exemption have been, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Keystone, the records are lost or

¹ In this regard, Keystone represents that any further in-kind transfers of CIF assets to the Funds will comply with the conditions of Prohibited Transaction Exemption (PTE) 97-41 (62 FR 42830, August 8, 1997.) PTE 97-41 permits the purchase by an employee benefit plan (i.e. a Client Plan) of shares of one or more open-end management investment companies (i.e mutual funds) registered under the ICA, in exchange for assets of the Client Plan transferred in-kind to the mutual fund from a collective investment fund (i.e. a CIF) maintained by a bank or a plan adviser, where the bank or plan adviser is the investment adviser to the mutual fund and also a fiduciary to the Client Plan, if the conditions of the exemption are met. However, as noted further below, Keystone distributed written confirmation to the Client Plans regarding the in-kind transfer of CIF assets made to the Funds within 120 days, rather than within the 105-day period required by Section I(g) of PTE 97-41. Thus, an individual exemption to cover these specific CIF conversions is necessary to provide the appropriate retroactive relief.

² The National Association of Securities Dealers Automated Quotation Nation Market System.

³ See Footnote 1 above.

destroyed prior to the end of the six (6) year period, and

(2) No party in interest, other than Keystone, 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 (n) below.

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

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

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

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

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

Section II—Definitions

For purposes of this proposed exemption,

(a) The term “Keystone” means Keystone Financial, Inc., and affiliates, as defined in Section II(b)(1).

(b) An “affiliate” of a person includes:

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

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

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

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

(d) The term “Fund” or “Funds” means the KeyPremier Funds for which Keystone served as investment adviser, and provided certain “Secondary Services” (as defined paragraph (h) below), for the Funds that were involved in the in-kind transfers of CIF assets which occurred on December 2,

1996, February 3, 1997, and July 1, 1997.

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

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

(g) The term “Second Fiduciary” means a fiduciary of a Client Plan who was independent of and unrelated to Keystone at the time of the subject transaction. For purposes of this proposed exemption, the Second Fiduciary will not be deemed to have been independent of and unrelated to Keystone if:

(1) Such Second Fiduciary was directly or indirectly controlled, was controlled by, or was under common control with Keystone;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary was an officer, director, partner, or employee of Keystone (or is a relative of such persons);

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

With respect to the Client Plans, if an officer, director, partner, or employee of Keystone (or a relative of such persons), was a director of such Second Fiduciary, and if he or she abstained from participation in (i) the choice of the Plan’s investment manager/advisor, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any fees charged to or paid by the Plan, in connection with any of the transactions described in Section I above, then Section II(g)(2) above shall not apply.

(h) The term “Secondary Service” means a service, other than an investment management, investment advisory, or similar service, which was provided by Keystone to the Funds involved in the subject transaction, including but not limited to custodial, accounting, administrative, brokerage or any other service.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of December 2, 1996, February 3, 1997 and July 1, 1997, for transactions described in Section I.

Summary of Facts and Representations

1. *Keystone.* Keystone Financial, Inc., is a bank holding company with its principal offices in Harrisburg, Pennsylvania. Keystone’s subsidiaries include Mid-State Bank and Trust Company, Northern Central Bank and Trust Company, and Martindale Andres & Company, Inc. (collectively, Keystone). Keystone provides trust and banking services to individuals, corporations, and institutions, both nationally and internationally. Keystone serves as trustee, investment manager, and/or custodian to the Plans described below and as an investment adviser to certain of the Funds. As of August 31, 1996, Keystone had total assets under management of approximately \$754 million.

Other Affiliates of Keystone including Mid-State Bank and Trust Company, and Pennsylvania National Bank and Trust Company, Inc., may offer shares of the Funds to their fiduciary customers. However, these Affiliates did not have Client Plan assets or any other customer assets invested in the CIFs that were involved in the subject in-kind transfer of assets to the Funds which occurred on December 2, 1996, February 3, 1997 and July 1, 1997.

2. *The Client Plans.* The Client Plans were retirement plans qualified under section 401(a) of the Code for which Keystone served as a trustee or investment manager. The Client Plans were considered “pension plans” under section 3(2) of the Act. The Client Plans covered by this proposed exemption were those Plans invested in the subject CIFs at the time of each in-kind transfer of CIF assets to the Funds. The Client Plans participated in the conversion of the CIFs to the Funds based solely upon the decisions made in each case by a Plan fiduciary independent of Keystone (collectively, the Second Fiduciaries). In addition to the Client Plans, the CIFs also held assets of two qualified retirement plans sponsored by Keystone (collectively, the Bank Plans), which participated in the subject CIF asset transfer to the Funds. The Bank Plans were:

- (i) The Keystone Financial Pension Plan (the Keystone DB Plan); and
- (ii) The Keystone Financial 401(k) Plan (the Keystone DC Plan).

However, as discussed further below, the Bank Plans are not included in the relief that would be provided by this proposed exemption.

3. *The CIFs.* The CIFs comprised certain individual portfolios of the Client Plans and the Bank Plans.

Specifically, the CIFs were: (i) the Employee Benefit Intermediate Term Income Fund (Intermediate Term Income Fund); (ii) the Employee Benefit Core Equity Fund (Core Equity Fund); (iii) the Employee Benefit Growth Equity Fund (Growth Equity Fund); and (iv) the Short-Term Income Fund (Short Term Fund).

As a result of the transfer of CIF assets to the Funds, each of these CIFs have been terminated and the assets are now held in one of the corresponding Funds described below. These Funds are: (i) the KeyPremier Intermediate Term Income Fund ("Intermediate Income"); (ii) the KeyPremier Established Growth Fund ("Growth Fund"); and (iii) the KeyPremier Aggressive Growth Fund ("Aggressive Growth"); (iv) the KeyPremier Limited Duration Fund ("Limited Duration Fund"). The applicant states that each CIF's assets were transferred to a new Fund that had investment objectives corresponding directly to the investment objectives of the terminating CIF.

The following table shows which particular CIF assets were transferred to which particular Fund.

CIF	Corresponding fund portfolio
Intermediate Term	KeyPremier. Intermediate Term. Income Fund.
Core Equity Fund	KeyPremier. Established Growth. Fund.
Growth Equity Fund ..	KeyPremier. Aggressive Growth. Fund.
Short Term Income ...	KeyPremier Limited. Duration Government. Bond Fund.

4. *The Funds.* The Funds are all part of the KeyPremier Funds of the Session Group (collectively referred to as the "Trust"), an open-end investment company registered under the ICA. The Trust is comprised of a series of Funds (each a "Fund"). Each Fund is a separate investment portfolio available to the Client Plans, as well as certain other investors. Keystone also performs certain Secondary Services for the Funds, including co-administration and shareholder services, for which it receives fees.

Martindale Andres & Company, Inc. (Martindale), a wholly-owned subsidiary of Keystone, serves as investment advisor to the Funds.

Various parties unrelated to Keystone also provide Secondary Services to the

Funds, including custodial, transfer agent, recordkeeping, and other non-advisory services.

Description of the Transactions

5. Keystone represents that the CIFs in which the Client Plans invested were maintained in accordance with the laws that apply to collective investment trusts. Keystone decided to terminate the CIFs and offer to the Client Plans participating therein shares of the corresponding Funds as alternative investments. Because interests in a CIF generally must be liquidated or withdrawn to effect distributions, Keystone believed that the interests of the Client Plans invested in the CIFs would be better served by investment in shares of the Funds which could be distributed in-kind. Keystone also believed that the Funds offered the Client Plans advantages over the CIFs as pooled investment vehicles. For example, as shareholders of the Funds, the Client Plans have opportunities to exercise voting and other shareholder rights. In addition, Client Plans can benefit from lower fees, daily valuation available with the Funds as well as more investment information.

The Plans, as Fund shareholders, periodically receive certain disclosures concerning the Funds. Such information includes: (i) a copy of the Fund prospectus, which is updated at least annually; (ii) an annual report containing audited financial statements of the Funds and information regarding such Funds' investment performance; and (iii) a semi-annual report containing unaudited financial statements. With respect to the Client Plans, Keystone reports all transactions in shares of the Funds in periodic account statements provided to each Client Plan. Further, Keystone maintains that the net asset value of the portfolios of the Funds can be monitored daily from information available in newspapers of general circulation.

Keystone states that the transfers in-kind of the CIF assets in exchange for Fund shares were ministerial transactions which were performed in accordance with pre-established objective procedures which were approved by the Board of Trustees of each Fund. Such procedures required that assets transferred to a Fund: (i) must be consistent with the investment objectives, policies, and restrictions of the Fund; (ii) must be marketable securities; (iii) must satisfy the applicable requirements of the ICA and the Code; and (iv) must have a readily ascertainable market value. Prior to entering into an in-kind transfer, a Second Fiduciary of each affected Client

Plan received certain disclosures from Keystone and approved the transaction in writing.

6. *The Conversion Transactions.* Keystone specifically requests a retroactive exemption for the in-kind transfers of CIF assets to certain corresponding Funds which have already occurred with respect to Client Plans. With respect to the Bank Plans, Keystone states that the in-kind transfer of CIF assets to the Funds representing the interest held by the Bank Plans in such CIFs met the conditions of Prohibited Transaction Exemption (PTE) 77-3 (42 FR 18734, April 8, 1977).⁴

The in-kind transfers of assets with respect to the CIFs occurred on December 2, 1996, February 3, 1998, and July 1, 1997, respectively (the CIF Conversions). Each was a complete termination of the assets held in the CIFs by the Client Plans that elected to participate in the CIF Conversions. No brokerage commissions, fees or expenses (other than customary transfer charges paid to parties other than Keystone) were charged to the Plans or the CIFs in connection with the in-kind transfers of CIF assets to the Funds in exchange for shares of the Funds.

Each in-kind transfer of the assets of each of the CIFs was completed in a single transaction on a single day. In each case, the in-kind transfer transactions were accomplished by

⁴The Department is expressing no opinion as to whether the terms and conditions of PTE 77-3 were met with respect to the conversion of the Bank Plans' pro rata share of CIF assets to the Funds.

In this regard, Keystone filed a request for exemptive relief on October 23, 1996, which included the in-kind transfer of assets of the Bank Plans held in CIFs that were exchanged for shares of the Funds. However, on July 30, 1998, the Department issued Advisory Opinion 98-06 (A.O. 98-6). A.O. 98-06 states that PTE 77-3 provides relief for the acquisition of a proprietary mutual fund's shares by an in-house plan (i.e. an employee benefit plan sponsored by the mutual fund's investment adviser or an affiliate of such adviser) in exchange for assets that are transferred from a CIF, if the conditions of that exemption are met. As a result, Keystone withdrew its request for an individual exemption to cover the in-kind transfer of CIF assets by the Bank Plans.

The Department notes that prior to Keystone's withdrawal of its request for relief to cover the Bank Plans, Keystone retained Wilmington Trust Company (WTC) as a Second Fiduciary for the Bank Plans in connection with the in-kind transfer of CIF assets to the Funds. WTC is a banking corporation with trust powers, organized under the laws of the State of Delaware. As of December 31, 1995, WTC exercised discretionary authority over approximately \$29.8 billion of fiduciary assets, including approximately \$15.5 billion of benefit plan investors. WTC made the same determination and approval for the Bank Plans' participation in the CIF asset transfers, prior to each transaction, as were made by the Second Fiduciary of each Client Plan. Accordingly, Keystone states that a proportionate share of each CIF's assets representing the interests of the Bank Plans therein was transferred to the corresponding Fund.

transferring from the converting CIF a Client Plan's proportionate share of all of the assets then held by the CIF to the corresponding Fund in exchange for an appropriate number of Fund shares. Once all of a CIF's assets were transferred to a Fund, the CIF was terminated and its assets, then consisting of Fund shares, were distributed in-kind to the Plans participating in the CIFs based on each Plan's pro rata share of the assets of the CIFs on the date of the transaction.

7. *Advance Disclosure/Approval for Client Plans.* Keystone represents that it provided disclosures to each affected Plan in connection with the termination of the particular CIF, summarized the transaction, and complied with all of the provisions of Section I of this proposed exemption. Based on these disclosures, the Second Fiduciary for each affected Client Plan approved in writing the Plan's participation in the CIF Conversion, including the fees that were to be paid by the Funds to Keystone as a result of the CIF Conversion.

8. *Valuation Procedures.* The assets transferred by a CIF to its corresponding Fund consisted entirely of cash and marketable securities. For purposes of a transfer in-kind, the value of the securities in the CIFs were determined based on their market value as of the close of business on the last business date prior to the transfer (the CIF Valuation Date). The values on the CIF Valuation Date were determined using the valuation procedures described in SEC Rule 17a-7 under the ICA. In this regard, the "current market price" for specific types of CIF securities involved in the transaction was determined as follows:

a. If the security was a "reported security" as the term is defined in Rule 11Aa3-1 under the Securities Exchange Act of 1934 (the '34 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the CIF Valuation Date; or, if there were no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1-1 under the '34 Act), as of the close of business on the CIF Valuation Date.

b. If the security was not a reported security, and the principal market for such security was an exchange, then the last sale on such exchange on the CIF Valuation Date or, if there were no reported transactions on such exchange that day, the average of the highest current independent bid and lowest current independent offer on the exchange as of the close of business on the CIF Valuation Date.

c. If the security was not a reported security and was quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on NASDAQ as of the close of business on the CIF Valuation Date.

d. For all other securities, the average of the highest current independent bid and lowest current independent offer, as of the close of business on the CIF valuation date, determined on the basis of reasonable inquiry. For securities in this category, Keystone obtained quotations from at least three sources that were either broker-dealers or pricing services independent of and unrelated to Keystone and, when more than one valid quotation was available, used the average of the quotations to value the securities, in conformance with interpretations by the SEC and practices under SEC Rule 17a-7.

The securities received by a transferee Fund portfolio were valued by such portfolio for purposes of the transfer in the same manner and as of the same day as such securities were valued by the corresponding transferor CIF. The per share value of the shares of each Fund portfolio issued to the CIFs was based on the corresponding portfolio's then-current net asset value. Thus, the value of a Plan's investment in shares of each Fund was, as of the opening of business on the first business day after the CIF Conversion, equal to the value of such Plan's investment in the CIFs as of the close of business on the last business day prior to the CIF Conversion.

Not later than thirty (30) business days after completion of each in-kind transfer transaction, Keystone sent by regular mail to each affected Client Plan a written statement that included a confirmation of the transaction. Such confirmation contained: (i) the identity of each security that was valued in accordance with SEC Rule 17a-7(b)(4), as described above; (ii) the price of each such security for purposes of the transaction; and (iii) the identity of each pricing service or market-maker consulted in determining the value of such securities.

Not later than one-hundred and twenty (120) days after completion of each in-kind transfer of CIF assets in exchange for shares of the Funds, Keystone mailed to the Client Plans a written confirmation of the number of CIF units held by each affected Client Plan immediately before the CIF Conversion (and the related per unit value and the aggregate dollar value of the units transferred), and the number of shares in the Funds that were held by each affected Plan following the CIF Conversion (and the related per share net asset value and the aggregate dollar value of the shares received). In this

regard, Keystone represents that with respect to the CIF Conversions described herein, it was unable to distribute such confirmation to the Client Plans within 105 days, as required by Section I(g) of PTE 97-41. However, for purposes of future CIF Conversions, Keystone represents that it will meet this condition (as required by Section II(g) for transactions which occur after August 8, 1997), as well as the other conditions of PTE 97-41.

Receipt of Fees by Keystone From the Funds

9. Keystone represents that PTE 77-4 (42 FR 18732, April 8, 1977)⁵ permits it to receive fees from the Funds which result from investments made by the Client Plans in the Funds, if the conditions of that exemption are met. Section II(c) of PTE 77-4 requires that either: (i) the Client Plan may not pay any investment management, investment advisory, or similar fees for the assets of such Plan invested in shares of a Fund for the entire period of such investment; or (ii) the Client Plan may pay investment management, investment advisory, or similar fees to Keystone based on the total assets of such Plans invested in shares of a Fund from which a credit has been subtracted representing such Plan's pro rata share of such investment advisory fees paid to Keystone by the Fund. Further, Section II(f) of PTE 77-4 requires that the second fiduciary be notified of any change in the rates of fees charged by the Fund and approve in writing the continued holding of shares acquired by the plan prior to such change.

Keystone represents that its fee structure and any future approval of fee increases with respect to investments by the Client Plans in the Funds will comply with PTE 77-4.⁶ Accordingly, the Applicant has not requested an individual exemption for the receipt of fees by Keystone from the Funds for

⁵PTE 77-4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that the conditions of the exemption are met.

In addition, PTE 77-3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met.

⁶In this regard, the Department is expressing no opinion in this proposed exemption regarding whether any of the transactions with the Funds by Keystone involving either the Bank Plans or the Client Plans met the conditions of PTE 77-3 or PTE 77-4, respectively.

investment management, investment advisory, or similar services provided to the Funds, or for the receipt of fees for any Secondary Services provided by Keystone. Thus, the Department is not providing relief for the receipt of such fees attributable to investment in the Funds by the Client Plans in this proposed exemption.

10. In summary, Keystone represents that the transactions described herein satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Funds provide the Client Plans with a more effective investment vehicle than the CIFs that were maintained by Keystone.

(b) With respect to each in-kind transfer of a Client Plan's CIF assets into a Fund in exchange for Fund shares, a Second Fiduciary for the Client Plan authorized, in writing, such transfer prior to the transaction only after receiving full written disclosure of information concerning the Fund.

(c) Each Client Plan received shares of the Funds, in connection with the in-kind transfer of CIF assets, which had a total net asset value that was equal to the value of the Client Plan's pro rata share of the CIF on the date of the transfer, as determined in a single valuation performed in the same manner and at the close of the business day, using independent sources in accordance with procedures established by the Funds which comply with SEC Rule 17a-7 of the ICA, as amended, for the valuation of such assets.

(d) For all in-kind transfers of CIF assets to a Fund covered by the proposed exemption, Keystone sent to each affected Client Plan written confirmation by regular mail, not later than 30 days after the completion of the transaction, that contained the following information: (1) the identity of each security that was valued for purposes of the transaction in accordance with SEC Rule 17a-7(b)(4) of the ICA; (2) the price of each such security involved in the transaction; and (3) the identity of each pricing service or market maker consulted in determining the value of such securities.

(e) For all in-kind transfers of CIF assets to a Fund, made on behalf of Client Plans, Keystone sent by regular mail, no later than 120 days after completion of each CIF asset transfer, a written confirmation that contained the following information: (1) the number of CIF units held by the Client Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units; and (2) the number of shares in the Funds that were held by the Client Plan following

the Conversion, the related per share net asset value and the total dollar amount of such shares.

(f) The price paid or received by a Client Plan for shares of the Funds was the net asset value per share at the time of the transaction and was the same price for the Fund shares which was paid or received by any other investor at that time.

(g) The transferred assets constituted the Client Plan's pro rata portion of all assets that were held by the CIF immediately prior to the transfer.

(h) No sales commissions were paid by a Client Plan in connection with the in-kind transfers of CIF assets in exchange for shares of the Funds.

(i) Keystone did not receive any 12b-1 fees in connection with the transactions.

(j) All dealings between the Client Plans and any of the Funds were on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

Notice to Interested Persons

Notice of the proposed exemption should be given to Client Plans that had investments in the terminating CIFs, including the Second Fiduciaries from whom approval was sought for the in-kind transfer of Client Plan assets to the Funds. Notice will be provided to each Second Fiduciary by first class mail within 30 days following the publication of this notice of pendency of the proposed exemption in the **Federal Register**. The notice should include a copy of this notice of proposed exemption, as published herein, and make interested persons aware of their right to comment or request a hearing on the proposed exemption. Comments and requests for a public hearing must be received by the Department within 60 days of the publication date for this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

Bankers Trust Company (BTC), Located in New York, New York

[Application Nos. D-10592 through D-10594]

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 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 (1) the proposed granting to BTC by certain employee benefit plans (the Plans) investing in Hometown America L.L.C. (the LLC) of security interests in the capital commitments of the Plans to the LLC, where BTC is the representative of certain lenders (the Lenders) that will fund a so-called "credit facility" providing loans to the LLC, and the Lenders are parties in interest with respect to the Plans; and (2) the proposed agreements by the Plans to honor capital calls made to the Plans by BTC, in lieu of the LLC's sole managing member, in connection with the Plan's capital commitments to the LLC where such capital calls relate to the security interests in the capital commitments previously granted to BTC; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the LLC and to execute such grants and agreements in favor of BTC are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; and (c) with respect to Plans that may invest in the LLC in the future, such Plans will have assets of not less than \$100 million and not more than 5% of the assets of such Plan will be invested in the LLC.

Summary of Facts and Representations

1. The LLC is a Delaware limited liability company, the sole managing member of which is Hometown America Communities, Inc. (the Manager), a Delaware corporation. The Manager is a separate affiliate of Transwestern Investment Company, L.L.C. (TWIC), a Delaware limited liability company, which is the sponsor of the LLC. The LLC shall have a perpetual existence until it is dissolved, wound up or liquidated in accordance with the agreement dated December 10, 1997 which established its organization and functions (the Agreement). The LLC was formed by the Manager (as sole managing member) and Transwestern Hometown America, L.L.C. (TWAHA), an affiliate of TWIC (as non-managing member), with the intent of seeking capital commitments from a limited number of prospective investors who would become members (the Members) of the LLC. There are six current and prospective Members having, in the

aggregate, irrevocable, unconditional capital commitments of at least \$100,000,000; and there are four other Members who have contributed property to the LLC.

2. The LLC has been organized to establish an integrated, self-administered and self-managed real estate operating company (see rep. 11, below) to acquire manufactured housing communities. The LLC will make acquisitions and provide property management services. As described in the Private Placement Memorandum, the LLC believes that significant opportunities exist to achieve superior risk-adjusted returns on its investments in excess of 15% over a five-year period. The LLC will identify and commit to all investments within five years of closing (the Investment Period). Strategies to maximize proceeds and create liquidity for the LLC include single asset sales, portfolio transactions, formation and exchange of assets for equity and a public offering for shares of the Manager in which Members will be granted the right to convert their membership interests into shares of the Manager.

3. The LLC may issue a variety of securities in connection with its investment activities, including operating company units, preferred operating company units, convertible preferred operating company units, warrants, options, debt, participating debt, convertible debt and other securities; the LLC may also purchase real estate manufactured housing-related securities, including publicly-traded or private debt or equity instruments. The LLC will distribute to the Members 100% of the LLC's taxable income from operations, dispositions, financing of investments and other events giving rise to distributable proceeds. Until a public offering occurs, Members will have the right (but not an obligation) to reinvest all or any part of any such distributions for an increased interest in the LLC.

4. The Agreement requires each Member to execute a subscription agreement that obligates the Member to make contributions of capital up to a specified maximum. The Agreement requires Members to make capital contributions to fulfill this obligation upon receipt of notice from the Manager. Under the Agreement, the Manager may make calls for cash contributions (Capital Calls) up to the total amount of a Member's capital commitment upon 10 business days' notice, subject to certain limitations. The Members' capital commitments are structured as unconditional, binding commitments to contribute equity when Capital Calls are made by the Manager.

In the event of a default by a Member, the LLC may exercise any of a number of specific remedies.

The Members constituting over 90% of the equity interests and their investments in the LLC are:

Name of member	Capital commitment (in millions)
Northwestern Mutual Life Ins. Co.	\$20
Public Employees' Ret. Assn. of CO	25
Allstate Life Ins. Co.	25
Ameritech Pension Trust	25
The Manager	1
TWHA	4

5. The applicant states that the LLC will incur indebtedness in connection with many of its investments. In addition to mortgage indebtedness, the LLC will incur short-term indebtedness for the acquisition of particular investments. This indebtedness will take the form of a credit facility (the Credit Facility) secured by, among other things, a pledge and assignment of each Member's capital commitment. This type of facility will allow the LLC to consummate investments quickly without having to finalize the debt/equity structure for an investment or having to arrange for interim or permanent financing prior to making an investment, and will have additional advantages to the Members and the LLC. Under the Agreement, the Manager may encumber Member's capital commitments, including the right to call for capital contributions, to one or more financial institutions as security for the Credit Facility. Each of the Members has appointed the Manager as its attorney-in-fact to execute all documents and instruments of transfer necessary to implement the provisions of the Agreement. In connection with this Credit Facility, each of the Members is required to execute documents customarily required in secured financings, including an agreement to unconditionally honor Capital Calls.

6. BTC will become agent for a group of Lenders providing a \$63 million revolving Credit Facility to the LLC. BTC will also be a participating Lender. Some of the Lenders may be parties in interest with respect to some of the Plans that invest in the LLC by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Plans for assets other than the Plans' interests in the LLC. BTC is requesting an exemption to permit the Plans to enter into security agreements with BTC, as the representative of the

Lenders, whereby such Plans' capital commitments to the LLC will be used as collateral for loans made by the Credit Facility to the LLC, when such loans are funded by Lenders who are parties in interest to one or more of the Plans.

The Credit Facility will be used to provide immediate funds for real estate acquisitions made by the LLC, as well as for the payment of LLC expenses. Repayments will be secured generally by the LLC from the Members' capital contributions, and Capital Calls on the Members' capital commitments. The Credit Facility is intended to be available until December 11, 2000. The LLC can use its credit under the Credit Facility either by direct or indirect borrowings or by requesting that letters of credit be issued. All Lenders will participate on a pro rata basis with respect to all cash loans and letters of credit up to the maximum of the Lenders' respective commitments. All such loans and letters of credit will be issued to the LLC or an entity in which the LLC owns a direct or indirect interest (a Qualified Borrower), and not to any individual Member. All payments of principal and interest made by the LLC or a Qualified Borrower will be allocated pro rata among all Lenders. The applicant represents that the aggregate capital commitments to be pledged will be at least 1.5 times the maximum amount of the credit available under the Credit Facility.

7. The Credit Facility will be a recourse obligation of the LLC, the repayment of which is secured primarily by the grant of a security interest to BTC, as agent under the Credit Facility for the benefit of the Lenders, from the LLC, in both: (a) the Members' capital commitments and (b) a collateral account (the Borrower Collateral Account) under which the LLC must deposit all Members' capital contributions when paid. In addition, the LLC and the Manager will grant BTC, as agent under the Credit Facility for the benefit of the Lenders, a security interest in: (a) the right to call capital under the Agreement; (b) Capital Call notices; and (c) the Members' capital commitments. The Borrower Collateral Account will be assigned to BTC to secure repayment of the indebtedness incurred under the Credit Facility. BTC has the right to apply any or all funds in the Borrower Collateral Account toward payment of the indebtedness in any manner it may elect. The capital commitments are fully recourse to all the Members and to the Manager. In the event of default under the Credit Facility, the agent (i.e., BTC) has the right to unilaterally make capital calls on the Members to pay their unfunded

capital commitments, and will apply cash received from such capital calls to any outstanding debt.

8. Under the Credit Facility, each Member that is a Plan will execute an acknowledgment (the Estoppel) pursuant to which it acknowledges that the LLC and the Manager have pledged and assigned to BTC, for the benefit of each Lender which may be a party in interest (as defined in Act section 3(14)) of such Member, all of their rights under the Agreement relating to capital commitments and Capital Call notices. The Estoppel will include an acknowledgment and covenant by the Plan that, if an event of default exists, such Plan will unconditionally honor any capital call made by BTC in accordance with the Agreement up to the unfunded capital commitment of such Plan to the LLC.

9. The applicant represents that at the present time the Ameritech Pension Trust (the Ameritech Trust) holds the assets of three defined benefit plans (the Ameritech Plans), which own interests in the LLC. The Ameritech Trust has made a capital commitment of \$25 million to the LLC. The applicant states that some of the Lenders may be parties in interest with respect to some of the Ameritech Plans in the Ameritech Trust by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Ameritech Plans with respect to Ameritech Trust assets other than their membership interests in the LLC. Thus, BTC states that there is an immediate need for the Ameritech Trust to enter into the Estoppel under the terms and conditions described herein. The total number of participants in the three Ameritech Plans is approximately 108,000, and the approximate fair market value of the total assets of the Ameritech Plans held in the Ameritech Trust as of December 31, 1996 is \$12.15 billion.

The applicant represents that the fiduciary of the Ameritech Plans generally responsible for investment decisions in real estate assets which are managed internally could be, depending on the size and type of the investment, the Ameritech Corporation Asset Management Committee, the Chief Investment Officer of Ameritech Corporation, or the Ameritech Corporation Investment Management Department's Real Estate Committee (comprised of the staff real estate professionals and another Investment Management Department director). The fiduciaries responsible for reviewing and authorizing the investments in the LLC under this proposed exemption currently are William M. Stephens, Chief Investment Officer of Ameritech

Corporation, and the Ameritech Corporation Investment Management Department's Real Estate Committee.

10. The applicant represents that the Ameritech Plans are currently the only employee benefit plans subject to the Act that are Members of the LLC. However, the applicant states that it is possible that one or more other Plans will become Members of the LLC in the future. Thus, the applicant requests relief for any such Plan under this proposed exemption, provided the Plan meets the standards and conditions set forth herein. In this regard, such Plan must be represented by an independent fiduciary, and the Manager must receive from the Plan one of the following:

(1) A representation letter from the applicable fiduciary with respect to such Plan substantially identical to the representation letter submitted by the fiduciaries of the Ameritech Trust, in which case this proposed exemption, if granted, will apply to the investments made by such Plan if the conditions required herein are met; or

(2) Evidence that such Plan and its responsible fiduciaries are eligible for relief under Prohibited Transaction Exemption 96-23 (PTE 96-23, 61 FR 15975, April 10, 1996), the class exemption for transactions by a plan with certain parties in interest where such plan's assets are managed by an in-house asset manager (INHAM) that has total assets under its management, attributable to plans maintained by its affiliates, in excess of \$50 million (see Part IV(a) of PTE 96-23); or

(3) Evidence that such Plan is eligible for another class exemption or has obtained an individual exemption from the Department covering the potential prohibited transactions which are the subject of this proposed exemption.

11. BTC represents that the LLC will obtain an opinion of counsel that the LLC will constitute an "operating company" under the Department's plan asset regulations [see 29 CFR 2510.3-101(c)] if the LLC is operated in accordance with the Agreement and the private placement memorandum distributed in connection with the private placement of the LLC membership interests.⁷

⁷The Department notes that the term "operating company" as used in the Department's plan asset regulation cited above includes an entity that is considered a "real estate operating company" as described therein (see 29 CFR 2510.3-101(e)). However, the Department expresses no opinion in this proposed exemption regarding whether the LLC would be considered either an operating company or a real estate operating company under such regulations. In this regard, the Department notes that it is providing no relief for either internal transactions involving the operation of the LLC or for transactions involving third parties other than

12. BTC represents that the Estoppel constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships or limited liability companies, wherein the financing institutions do not obtain security interests in the real property assets of the partnership or limited liability companies. BTC also represents that the obligatory execution of the Estoppel by the Members for the benefit of the Lenders was fully disclosed in the Private Placement Memorandum as a requisite condition of investment in the LLC during the private placement of the membership interests. BTC represents that the only direct relationship between any of the Members and any of the Lenders is the execution of the Estoppel. All other aspects of the transaction, including the negotiation of all terms of the Credit Facility, are exclusively between the Lenders and the LLC. BTC represents that the proposed execution of the Estoppel will not affect the abilities of the Trust to withdraw from investment and participation in the LLC. The only Plan assets to be affected by the proposed transactions are any funds which must be contributed to the LLC in accordance with requirements under the Agreement to make Capital Calls to honor a Member's capital commitments.

13. BTC represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to the Ameritech Trust's investment in the LLC and that BTC is independent of and unrelated to those fiduciaries (the Ameritech Trust Fiduciaries) responsible for authorizing and overseeing the Ameritech Trust's investments in the LLC. Each Ameritech Trust Fiduciary represents independently that its authorization of Trust investments in the LLC was free of any influence, authority or control by the Lenders. The Ameritech Trust Fiduciaries represent that the Ameritech Trust's investments in and capital commitments to the LLC were made with the knowledge that each Member would be required subsequently to grant a security interest in Capital Calls and capital commitments to the Lenders and to honor requests for cash contributions, also known as "drawdowns", made on behalf of the Lenders without recourse to any defenses against the Manager. Each Ameritech Trust Fiduciary

the specific relief proposed herein. In addition, the Department encourages potential Plan investors and their independent fiduciaries to carefully examine all aspects of the LLC's proposed real estate investment program in order to determine whether the requirements of the Department's regulations will be met.

individually represents that it is independent of and unrelated to BTC and the Lenders and that the investment by the Ameritech Trust for which that Ameritech Trust Fiduciary is responsible continues to constitute a favorable investment for the Ameritech Plans participating in that Trust and that the execution of the Estoppel is in the best interests and protective of the participants and beneficiaries of such Ameritech Plans. In the event another Plan proposes to become a Member, the applicant represents that it will require similar representations to be made by such Plan's independent fiduciary. Any Plan proposing to become a Member in the future and needing to avail itself of the exemption proposed herein will have assets of not less than \$100 million, and not more than 5% of the assets of such Plan will be invested in the LLC.

14. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Ameritech Plans' investments in the LLC were authorized and are overseen by the Ameritech Trust Fiduciaries, which are independent of the Lenders, and other Plan investments in the LLC from other employee benefit plans subject to the Act will be authorized and monitored by independent Plan fiduciaries; (2) None of the Lenders have any influence, authority or control with respect to the Ameritech Trust's investment in the LLC or the Ameritech Trust's execution of the Estoppel; (3) The Ameritech Trust Fiduciaries invested in the LLC on behalf of the Ameritech Plans with the knowledge that the Estoppel is required of all Members investing in the LLC, and all other Plan fiduciaries that invest their Plan's assets in the LLC will be treated the same as other Members are currently treated with regard to the Estoppel; and (4) Any Plan which may invest in the LLC in the future, which needs to avail itself of the exemption proposed herein, will have assets of not less than \$100 million, and not more than 5% of the assets of any such Plan will be invested in the LLC.

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

Toledo Clinic, Inc. Employees 401(k) and Profit Sharing Plan (the T/C Plan); Hart Associates, Inc.; Profit Sharing Plan (the H/A Plan); and Midwest Fluid Power Company, Inc. Savings and Profit Sharing Plan and Trust (the M/F Plan, collectively; the Plans), Located in Toledo, Ohio

[Application Nos. D-10633, D-10634 and D-10635, respectively]

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(c)(1)(A) through (E) of the Code, shall not apply to: (1) the cash sale of certain shares of preferred stock (the Preferred Stock) issued by TTC Holdings Inc. (TTC), by the individually-directed account of Dr. Edward Orrechio in the T/C Plan (the Orrechio Account), by the individually-directed account of Michael Hart in the H/A Plan (the Hart Account), and by the individually-directed account of Larry Peterson in the M/F Plan (the Peterson Account; collectively, the Accounts) to TTC, a party in interest with respect to the H/A Plan and M/F Plan; and (2) the arrangement for the subsequent purchase of certain shares of Common Stock (the Common Stock) issued by TTC by Messrs. Orecchio, Hart and Peterson (collectively; the Participants), in their own name, from TTC pursuant to an agreement with TTC that the purchase will occur immediately after the sale of the Preferred Stock by the Plans to TTC; provided that the following conditions are met:

1. The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants, in their individual capacity, are one-time transactions for cash;

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

3. The amount paid to the Accounts by TTC is the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale;

4. The Participants, in their individual capacity, purchase from TTC shares of the Common Stock which are equal in number to the shares of

Preferred Stock sold by the Accounts to TTC;

5. A qualified independent fiduciary (the Independent Fiduciary) determines that the transactions described herein are in the best interest and protective of the Accounts at the time of the transactions; and

6. The Independent Fiduciary supervises the transactions; assures that the conditions of this proposed exemption are met; and takes whatever actions are necessary to protect the interests of the Accounts, including reviewing amounts paid by TTC for the Preferred Stock.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 1, 1998.

Summary of Facts and Representations

1. The Plans are profit sharing, defined contribution plans that provide for individually directed accounts.

The T/C Plan is sponsored by the Toledo Clinic, Inc. (the Toledo Clinic), an Ohio corporation with its principal place of business in Toledo, Ohio. The Toledo Clinic is a large consortium of physicians and medical specialists which provide a broad range of health and medical services. Dr. Edward Orrechio (Dr. Orrechio) is a physician employed by the Toledo Clinic.

United Missouri Bank of Kansas City, N.A. is the trustee of the T/C Plan. As of July 1998, the T/C Plan had 490 participants and approximately \$79,000,000 in assets. Dr. Orrechio is a participant in the T/C Plan. The Orrechio Account referred to herein is his individually-directed account in the T/C Plan.

2. TTC, the issuer of the Preferred Stock, is an Ohio corporation that was incorporated in April 1990. The Trust Company of Toledo (TTCOT) is a wholly-owned subsidiary of TTC. The applicant represents that TTCOT is a "bank" as that term is defined in Section 202(a)(2) of the Investment Advisers Act of 1940.⁸

⁸The applicant represents that under Section 202(a)(2) of the Investment Advisers Act of 1940, a "Bank" means (A) banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other institution or trust company, whether incorporated or not, doing business under the laws of any State of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the U.S. Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

3. The H/A Plan is sponsored by Hart Associates, Inc. (the Hart Associates), an Ohio corporation in the business of marketing and public relations. Michael Hart (Mr. Hart) is the president and chief executive officer of Hart Associates.

TTCOT became the directed trustee for the H/A Plan effective March 31, 1991. As of July 1998, the H/A Plan had 30 participants and approximately \$2,000,000 in assets. Mr. Hart is a participant in the H/A Plan. The Hart Account referred to herein is his individually-directed account in the H/A Plan.

4. The M/F Plan is sponsored by Midwest Fluid Power Company, Inc. (the MFP Company), an Ohio corporation which is a distributor of industrial materials and parts used in fluid power applications in certain industries. Larry Peterson (Mr. Peterson) is the president and chief executive officer of the MFP Company.

As of July 1998, the M/F Plan had 70 participants and approximately \$4,800,000 in assets. TTCOT became the directed trustee for the M/F Plan effective July 1, 1993. Mr. Peterson is a participant in the M/F Plan. The Peterson Account referred to herein is

his individually-directed account in the M/F Plan.

5. The following table illustrates the percentage of assets of each Account which was represented by the shares of Preferred Stock at the time of original acquisition by the Accounts, and at the time of the sale of such Preferred Stock by the Accounts to TTC. In addition, this table shows the percentage of each Account's assets which was represented by the related debentures (the Debentures, as discussed below) at the time of original acquisition and prior to the sale of the Preferred Stock.

Accounts in the plans	Shares of preferred stock	Cost	Debenture	% assets at orig. purchase	% assets at sale
Orrechio	200	\$20,000	\$10,000	9.0	6.4
Hart	200	\$20,000	10,000	55.5	18.1
Peterson	200	\$20,000	10,000	16.5	10.6

6. It is represented that the Participants did not own shares of Preferred Stock as individuals prior to the subject transactions. In addition, the purchasing of shares of the Common Stock by the Participants from TTC did not cause any of the Participants to become majority shareholders of TTC. None of the Participants was or is currently an officer, director, principal or employee of TTC or TTCOT. At the time of original acquisition of the Preferred Stock by the Accounts, neither TTC nor TTCOT was a fiduciary or other party in interest under the Act with respect to the Plans.

Further, it is represented that TTCOT does not have the authority to make investment decisions for any of the Plans to which it acts as directed trustee (i.e., the H/A Plan and the M/F Plan) without written directions from the Participants.

7. TTC had two classes of Stock—the Preferred Stock and the Common Stock. There were 3,531 shares of the Common Stock outstanding prior to the subject transactions, which were owned in equal amounts by Theodore T. Hahn, Julie B. Higgins and David A. Snavelly. These individuals are the three founders, principals and partners of TTC.

In addition, there were 20,000 shares of Preferred Stock outstanding prior to the subject transactions, which were held by 65 different shareholders. Among the shareholders of the Preferred Stock were the Orrechio Account in the T/C Plan, the Hart Account in the H/A Plan, and the Peterson Account in the M/F Plan.

8. The Preferred Stock was issued by TTC through a private offering that was made in 1990. The Initial Offering Memorandum (the Memorandum) was prepared on May 31, 1990. The offering allowed an investor to acquire 200 shares of Preferred Stock and a \$10,000 subordinated debenture (the Debenture). The Debenture was issued in October 1990, with a due date of December 31, 2000. The Debenture accrued a nine percent (9%) per annum coupon rate, which was payable, along with installments of principal, on a semiannual basis. The Stock and the Debenture were offered to investors as constituent parts of a single offering unit which could not be severed by the investor. The price for each unit was \$30,000, of which \$20,000 was allocated to the Preferred Stock and \$10,000 was allocated to the Debenture. Thus, each of the Accounts paid TTC \$30,000 in cash and purchased one unit which consisted of 200 shares of the Preferred Stock and the Debenture, as described above.

Under the information described in the Memorandum, dividends were not expected to be paid on the Preferred Stock, and no dividends were paid on such shares.

It is represented that the Participants were aware of the identity of TTC as the issuer of the Preferred Stock and the Debentures. As a result of the acquisitions of the Preferred Stock, each of the Accounts became a minority shareholder in TTC. No fees or commissions were incurred or paid in connection with the acquisition of the Preferred Stock or the Debenture. No subsequent acquisitions of Preferred

Stock or other Debentures were made by the Accounts.

The outstanding principal amount of the Debentures held by the Accounts and other investors will be prepaid by TTC in December 1998, prior to the subject transactions, in accordance with terms of the Debentures.⁹

9. The subject transactions were precipitated by TTC's desire to amend its Articles of Incorporation (the Articles). The amendment of the Articles enabled TTC to change its tax status to a Subchapter "S" corporation in accordance with Section 1362(a) of the Code. The change in tax status will be effective as of January 1, 1999. The Board of Directors of TTC determined that by eliminating its "C" Corporation tax status, TTC could increase the return to its shareholders. Furthermore, the switch by TTC to a Subchapter "S"

⁹The Department notes that the holding of the Debentures by the Plans at any time during which TTCOT was a directed trustee to the Plans would have resulted in a prohibited transaction under section 406(a)(1)(B) of the Act because TTC, the parent corporation of TTCOT, was the issuer of the Debentures. TTCOT, as the directed trustee of the H/A Plan and the M/F Plan, was a party in interest with respect to these Plans under section 3(14)(B) of the Act. Thus, TTC was a party in interest under section 3(14)(H) of the Act as a 10 percent or more shareholder of a person described in section 3(14)(B). However, TTC was not a "disqualified person" under section 4975(e)(2)(H) of the Code because that provision of the Code does not include the parent corporation of a service provider within the definition of that term. As a result, the holding of the Debentures would not constitute a prohibited transaction under section 4975(c)(1)(B) of the Code. In addition, the Department notes that under section 502(i) of the Act, no civil penalty shall apply to a transaction with respect to a plan described under section 4975(e)(1) of the Code. In any event, no relief is being provided herein for the past acquisition and holding of the Debentures.

status under the Code (the Conversion) required the conversion of the outstanding shares of the Preferred Stock into Common Stock.

The applicant states that the Participants and their respective Accounts in the Plans would have suffered adverse federal income tax consequences if they had continued to hold shares of the Preferred Stock in their Accounts after the Conversion. The Participants were informed by TTC that if the Plans continued to hold shares of the Preferred Stock after the Conversion, the Plans would be subject to unrelated business taxable income on all Subchapter "S" distributions, which could have resulted in a loss of each Plan's tax-free status under section 501(a) of the Code.

Accordingly, the Participants concluded that it was in the best interest of their Accounts and of the Plans to dispose of the investment in the Preferred Stock, to avoid the tax liabilities that would be incurred, once TTC becomes a Subchapter "S" corporation.

10. On May 1, 1998, TTC sent certain documents to its shareholders, including the Participants, as a result of their ownership of Preferred Stock and the Debentures in the Accounts. The documents stated that TTC desired to redeem, via cancellation, all shares of the Preferred Stock which were held by any shareholders that would have adverse tax consequences from continued ownership of shares in an "S" corporation after the conversion.

TTC has provided a mechanism whereby eligible shareholders and those who own shares through exempt employee benefit plans (i.e., the Accounts in the Plans) would designate a related party to purchase shares of TTC Stock equal to the number of shares sold by the Accounts in the Plans. Such purchase would be for cash and would be at the same price per share as that paid by TTC for redemption of the Stock.

11. Therefore, the Participants and TTC are requesting relief for the following transactions: (1) the proposed cash sale of shares of the Preferred Stock by the Orrechio Account in the T/C Plan, by the Hart Account in the H/A Plan, and by the Peterson Account in the M/F Plan to TTC; and (2) the arrangement for the subsequent purchase under the above described agreement with TTC of an equal number of shares of the Common Stock by Messrs. Orrechio, Hart and Peterson (i.e., the Participants), in their own name, from TTC immediately after the sale by the Accounts to TTC.

12. The redemption price for the shares of the Preferred Stock was determined by the parties based upon a written valuation dated May 6, 1998, prepared by Austin Financial Services, Inc. (Austin), a consulting firm with experience in the financial services industry. Austin was retained by the Board of Directors of TTC for the purpose of valuing TTC and its shares of Preferred Stock and Common Stock (together, the Stock). In determining fair market value of the Stock, Austin relied on the discounted cash flow method and the capitalization of earnings method. After weighing these two methods, Austin determined that the fair market value of all the outstanding shares of the Stock was approximately \$7,263,035. This amount equates to \$308.66 per share for each outstanding share of Preferred and Common Stock. Austin's valuation of the Stock was updated at the time of the transaction, but its conclusions for the fair market value of the Stock were unchanged. Therefore, based on the Austin valuation, each Account received a total of \$61,732 for its shares of Preferred Stock, as of the date of Conversion.

13. TTC also engaged the law firm of Callister Nebeker & McCullough of Salt Lake City, Utah (CNM) to serve as the Independent Fiduciary for the Plans to review the offer of redemption of the Preferred stock, to render an opinion as to the prudence of the investment decisions relating thereto, and to direct the sale of shares as appropriate. In a report dated April 29, 1998 (the Report), CNM acknowledged its appointment as the Independent Fiduciary for the Plans in connection with TTC's proposed change from a Subchapter "C" corporation to a Subchapter "S" corporation.

As the Independent Fiduciary for the Plans, CNM determined whether the subject transactions, and the actions taken by the Plans in connection with the transactions, were in the best interest of such Plans and the Accounts, in accordance with the requirements of the Act. In this regard, each of the Participants (i.e., Dr. Orrechio, Mr. Hart and Mr. Peterson) made separate determinations that the proposed transactions would be in the best interests of their Accounts. Upon arriving at this conclusion, a determination was made to retain CNM as an independent fiduciary for the Plans in order to ensure that the terms of such transactions, including the appraisal made of the fair market value of the Stock, would be protective of the Plans and the Accounts.

In a supplemental statement dated August 25, 1998 (the Statement), CNM

acknowledged its duties as an independent fiduciary for the transactions described herein. CNM represented that it had experience in acting as an independent fiduciary for employee benefit plans. CNM concluded that the subject transactions would be prudent and in the best interest of each of the Accounts. CNM represented that it would ensure, among other things, that the fair market value of the Stock, as determined by Austin, would be updated on the date of the transactions, and that each Account would receive the correct amount of cash for its shares of Preferred Stock. Thus, the Independent Fiduciary supervised the subject transactions to protect the interests of the Plans and the Accounts.

14. The applicant also obtained an opinion regarding the subject transactions from Houlihan Valuation Advisors dated June 16, 1998 (the Fairness Opinion). The Fairness Opinion stated that the Preferred Stock was essentially equivalent to the Common Stock because the Preferred Stock: (i) was convertible at the option of the holder into Common Stock; (ii) had voting privileges identical to the Common Stock; and (iii) paid no preferred dividends. The differences between the Preferred Stock and the Common Stock in terms of the liquidation value of the Preferred Stock was determined to be meaningless because the fair market value of the Preferred and Common Stock is much higher than its liquidation value.

The Fairness Opinion concluded that the sale of the Preferred Stock by the Accounts to TTC would be fair to the Accounts because the Accounts would receive adequate consideration for their shares of the Preferred Stock, based on an independent appraisal.

15. In summary, the applicant represents that the subject transactions satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

a. The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants were one-time transactions for cash;

b. The transactions described in (1) above took place on the same business day;

c. The amount paid to the Accounts by TTC was the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale; and

d. The Independent Fiduciary determined that the subject transactions were in the best interest and protective of the Accounts. The Independent

Fiduciary supervised the subject transactions to protect the interests of the Accounts.

Notice to Interested Persons

Because the only assets of the Plans' involved in the subject transactions are those held in the Accounts, and no other participants in the Plans are affected by the transactions, it has been determined that there is no need to distribute this notice of proposed exemption to any interested persons other than the Participants. Comments and requests for a hearing on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Ekaterina A. Uzlyan of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

Sprinx Inc. Retirement Plan (the Plan), Located in Grand Prairie, Texas

[Application No. D-10660]

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 C.F.R. 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 of \$90,000 (the Loan) by the Plan to Sprinx, Inc. (the Employer), the sponsor of the Plan; and (2) the guarantee of repayment of the Loan by Harry D. Spring, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

1. The Loan does not exceed 25% of the total assets of the Plan at any time;

2. The terms of the Loan are at least as favorable to the Plan as those terms which would exist in an arm's-length transaction with an unrelated party;

3. The Loan is secured by common stock issued by the Employer, which has a fair market value, as determined by an independent qualified appraiser, which will remain at least 200% of the outstanding principal balance of the Loan throughout its duration;

4. The Plan has a first priority perfected security interest in the Stock, which is properly filed and perfected under applicable state law;

5. An independent fiduciary reviews the terms and conditions of the Loan and determines that the Loan is in the

best interest and protective of the Plan and its participants and beneficiaries;

6. An independent fiduciary monitors the Loan throughout its duration and takes whatever action is necessary to protect the interests of the Plan; and

7. The independent fiduciary monitors the parties' compliance with the terms and conditions of this proposed exemption, if granted.

Summary of Facts and Representations

1. The Plan is a pension plan that was established on August 18, 1993. The Plan currently has approximately eighteen (18) participants and beneficiaries. As of June 30, 1998, the Plan had total assets of \$435,368. Harry D. Spring (Mr. Spring) is the trustee of the Plan.

2. The sponsor of the Plan is Sprinx, Inc. (the Employer). The Employer is a Subchapter "S" corporation, incorporated in the State of Texas. The Employer is in the business of health care consulting and billing. A primary part of the Employer's business is consulting with medical service companies to bill the health care services provided by these companies. Mr. Spring is an officer and director of the Employer, and is the sole shareholder of the Stock.

3. The Loan will have a principal amount of \$90,000 and a ten year duration. The Loan will bear an interest rate equal to the lesser of (i) nine and one-half percent (9.5%) per annum, or (ii) the highest lawful non-usurious rate of interest permitted under Texas law provided that such rate is never less than 9.5% per annum.¹⁰ The Loan provides for equal amortization of principal and interest, and will be payable in forty (40) quarterly installments. The first thirty-nine (39) installments, based on an interest rate of 9.5% per annum, will be equal to \$3,510.20. The 40th and final installment on the Loan will be equal to the total unpaid balance at that time. The applicant represents that the Loan will at all times represent less than twenty-five percent (25%) of the Plan's total assets.

The Loan proceeds will be used to purchase additional equipment for the Employer, and to hire additional employees.

4. The Loan will be secured at all times by the total outstanding shares of the Stock, all of which is owned by Mr. Spring. The Plan will have a first

priority perfected security interest in the Stock, which will be properly filed and perfected under applicable state law.

The Stock was appraised by Saville, Dodgen & Company, Professional Corporation, Certified Public Accountants (the SDC Appraisal) as of June 30, 1998, as having a fair market value of \$3.8 million. The SDC Appraisal used the capitalization of earnings method to estimate the fair market value of the Stock, and the Employer's business as evidenced thereby. The capitalization of earnings method is based on the future estimated earnings of the Employer. The SDC Appraisal has been supplemented by a statement from Clint Pugh (Mr. Pugh) of Saville, Dodgen & Company, P.C. (SDC) which states that the procedures and analysis utilized in the SDC Appraisal represent a reasonable estimate of fair market value of the Stock and the Employer's business at the present time. There are currently 10,800 shares of the Stock with an estimated value per share of \$351.85, based on the SDC Appraisal.

In a further statement dated November 5, 1998, Mr. Pugh represents that SDC is independent of the Employer and Mr. Spring. In this regard, SDC performs tax compliance work for the Employer, but the fees collected from the Employer for these services represent less than one percent (1%) of the total annual revenue of SDC. Mr. Pugh also states that he is a qualified appraiser of the Stock and that he has been performing appraisals for ten (10) years for various corporations. Mr. Pugh represents that he adheres to the guidelines provided by the American Institute of Certified Public Accountants for business valuations.

5. Frost National Bank (the Bank) has examined the terms of the Loan. By letter dated August 19, 1998, the Bank represents that it would make the same loan on the same terms to the Employer, based on its assumptions regarding the creditworthiness of the Employer and Mr. Spring.

6. The Loan will be monitored by Richard S. Tucker (Mr. Tucker), who will serve as the independent fiduciary (the Independent Fiduciary) on behalf of the Plan for purposes of the Loan. Mr. Tucker has submitted a statement in which he discusses his proposed role as the Independent Fiduciary. Mr. Tucker states that the Loan will be in the best interest of the Plan and its participants and beneficiaries. Mr. Tucker believes that the Loan will be an appropriate investment for the Plan with adequate safeguards and protections to ensure repayment of all principal and interest. The Loan will also permit the Employer to satisfy its needs for additional

¹⁰The Department agreed to this provision at the request of the applicant in order to comply with Texas usury law. However, for purposes of this proposed exemption, the Department understands that the rate on this Loan will in no event be less than 9.5% per annum.

equipment and employees, which will increase its profitability.

Mr. Tucker states that the Loan will be protective of the Plan because the principal amount of the Loan will be adequately secured and will represent less than twenty-five percent (25%) of the Plan's total assets. The Stock, as collateral for the Loan, will have a fair market value which exceeds the outstanding principal amount of the Loan by at least two hundred percent (200%) at all times.

With respect to Mr. Tucker's qualifications to act as the Independent Fiduciary for the Plan for purposes of the Loan, Mr. Tucker represents that he is attorney with experience in evaluating transactions, such as the Loan, and ensuring that such transactions have proper legal documentation. Thus, Mr. Tucker states that he has experience in protecting the rights of the parties involved in such transactions.

Mr. Tucker represents that he is independent of the Employer, Mr. Spring and their affiliates for purposes of his proposed duties as the Independent Fiduciary. In this regard, Mr. Tucker states that he performs legal services for the Employer. However, Mr. Tucker's fees from the Employer for such services are less than one percent (1%) of his total revenues. In addition, the fees generated from the Employer represent less than one percent (1%) of the annual revenues received by Mr. Tucker's firm.

Mr. Tucker represents that he has been apprised of the duties and responsibilities of a fiduciary under the Act. Mr. Tucker states that he will obtain, if necessary, appropriate advice from an experienced ERISA counsel as to what is required to properly execute the duties of an independent fiduciary for the Plan. Mr. Tucker acknowledges and accepts his responsibilities and duties as the Independent Fiduciary for this Loan transaction.

As the Independent Fiduciary, Mr. Tucker will represent the interests of the Plan at all times. Mr. Tucker will monitor compliance by the Employer with the terms and conditions of the Loan, and take whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries.¹¹

¹¹ In this regard, the applicant makes a request regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace Mr. Tucker, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will have the responsibilities, experience and independence similar to those of Mr. Tucker.

7. Mr. Spring also unconditionally guarantees the prompt and full repayment of the Loan, pursuant to the terms of a written guarantee agreement (the Guarantee). Mr. Tucker, as the Independent Fiduciary, has examined the terms of the Guarantee. Mr. Tucker believes that the Guarantee is in the best interest of the Plan for several reasons: (a) it is an unconditional Guarantee, which is not conditioned on any other actions that may occur on the part of the Plan or the Employer; (b) the Guarantee covers the full amount of the indebtedness, including any additional costs or expenses associated with the liability; (c) if there are any changes in the collateral provided by the Employer for the Loan (i.e., the Stock), such changes will not affect the obligations of Mr. Spring under the Guarantee; and (d) the Guarantee is a guarantee of payment, under which the guarantor (i.e., Mr. Spring) is immediately required to perform by making payments.

Mr. Tucker represents that the Guarantee satisfies the applicable requirements for such agreements under Texas law and is protective of the Plan because it creates the maximum enforceable rights against Mr. Spring, as the Loan guarantor. Mr. Spring represents that he has an adequate net worth to honor the Guarantee, if necessary. Mr. Tucker states that Mr. Spring has sufficient personal assets, in addition to the Stock, to satisfy his obligations under the Guarantee. Mr. Tucker also states that he will monitor the financial status of Mr. Spring, as guarantor, and will ensure that the Loan remains adequately secured by the Stock and the Guarantee.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

- a. The Loan will not exceed 25% of the total assets of the Plan at any time;
- b. The terms of the Loan are at least as favorable to the Plan as those terms which would exist in an arm's-length transaction with an unrelated party;
- c. The Loan will be secured by the Stock, which has a fair market value, as determined by an independent qualified appraiser, of at least 200% of the outstanding principal balance of the Loan;
- d. The Plan has a first priority perfected security interest in the Stock, which will be properly filed and perfected under applicable state law;
- e. Mr. Tucker, as the Independent Fiduciary, has reviewed the proposed terms and conditions of the Loan and determined that the Loan would be in the best interest and protective of the

Plan and its participants and beneficiaries;

f. Mr. Tucker, as the Independent Fiduciary, will monitor the Loan throughout its duration and take whatever actions are necessary to safeguard the interests of the Plan and its participants and beneficiaries; and

g. The Loan is personally and unconditionally guaranteed by Mr. Spring, who has an adequate net worth to honor the Guarantee, if necessary.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219-8883. (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 the 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 20th day of November, 1998.

Ivan Strasfeld,

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

[FR Doc. 98-31511 Filed 11-24-98; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98-163]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Thursday, December 3, 1998, 9:00 a.m. to 4:30 p.m. and Friday, December 4, 1998, 9:00 a.m. to Noon.

ADDRESSES: Jet Propulsion Laboratory, National Aeronautics and Space Administration, Building 180, Room 101, 4800 Oak Grove Drive, Pasadena, CA 91109-8099.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- JPL Update
- AXAF
- SOHO
- TRIANA
- MARS Exploration Architecture
- Faster-Better-Cheaper
- ISS Software
- IORTF Status Report
- Committee/TaskForce/Working Group Reports
- Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 18, 1998.

Lori B. Garver,

Acting Associate Administrator For Policy and Plans.

[FR Doc. 98-31496 Filed 11-24-98; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission, Regulation, Enforcement, & Internet Subcommittee.

ACTION: Notice of public meeting.

DATES: Tuesday, December 1, 1998, 5:00 p.m. to 7:00 p.m. (EST).

ADDRESSES: The meeting site will be: 800 North Capitol Street, NW, Suite 450, Washington, D.C. 20002.

DATES: Wednesday, December 2, 1998, 8:00 a.m. to 4:30 p.m. (EST).

ADDRESSES: The meeting site will be: 2358 Rayburn House Office Building, Washington, D.C. 20515.

STATUS: The meeting will take place in two separate locations on different days. The meeting is open to the public both days. However, seating may be limited. Members of the public wishing to attend should contact Craig Stevens at (202) 523-8217 to make arrangements for attendance.

SUMMARY: At the December 1 meeting of the Regulation, Enforcement, and Internet Subcommittee of the National Gambling Impact Study Commission, established under Public Law 104-169, dated August 3, 1996, the Members of the Subcommittee will discuss and hear telephonic presentations related to gambling and the Internet. On December 2, the Subcommittee will hold further discussions and hear additional in-person presentations, as well as hold a public comment period.

CONTACT PERSONS: For further information on the agenda, meeting location or other matters contact Craig Stevens at (202) 523-8217 or write to 800 North Capitol St., N.W., Suite 450, Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: An open forum for public participation will be held from 4:00 to 4:30 p.m. on December 2. Anyone wishing to make an oral presentation must contact Craig Stevens by telephone at (202) 523-8217 no later than November 30, 1998.

Written comments can be sent to the Commission at any time at 800 North Capitol St., N.W., Suite 450, Washington, D.C. 20002. Visit the Commission's Website at www.ngisc.gov.

Tim Bidwill,

Special Assistant to the Chairman.

[FR Doc. 98-31548 Filed 11-24-98; 8:45 am]

BILLING CODE 6802-ET-U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-387 and 388]

PP&L, Inc.; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PP&L, Inc. (the licensee) to withdraw its March 20, 1996, application for proposed amendments to Facility Operating License Nos. NPF-17 and NPF-22 for the Susquehanna Steam Electric Station, Unit Nos. 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendments would have revised the Susquehanna Steam Electric Station's Technical Specifications (TSs) to eliminate the high pressure coolant injection pump auto-transfer on high suppression pool level.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on December 18, 1996 (61 FR 66713). However, by letter dated October 29, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated March 20, 1996, and the licensee's letter dated October 29, 1998, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 18th day of November 1998.

For The Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-31500 Filed 11-24-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has