

the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 8th day of September, 1995.

**Ivan Strasfeld,**

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

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**[Prohibited Transaction Exemption 95-81; Exemption Application Nos. D-09511, D-09512 and D-09513, et al.]**

**Grant of Individual Exemptions; Bank of America Illinois, et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

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

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

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No.

4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### **Statutory Findings**

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

(a) The exemptions are administratively feasible;

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

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

#### **Bank of America Illinois, Located in Chicago, IL**

[Prohibited Transaction Exemption 95-81 Exemption Application Nos. D-09511, D-09512 and D-09513]

#### *Exemption*

##### *Section I—Exemption for Purchases and Sales*

Effective September 1, 1993, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase and sale by employee benefit plans (the Plans), to which the Bank serves as fiduciary, of shares in the Prime Fund, the Government Securities Fund, and the Treasury Fund, or each of their Pacific Horizon Fund successors, three open-end money market mutual fund portfolios (collectively referred to as the Funds), to which the Bank of America Illinois, and its affiliates (the Bank) provide investment advisory and other services, in connection with the Supplemental Sweep Service (as defined in paragraph (b) of section IV below), provided that the conditions of Section III are met.

##### *Section II—Exemption for Receipt of Fees*

Effective September 1, 1993, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the receipt of fees by the Bank from the Funds for providing investment advisory and other services to the Funds, in connection with the

investment of the assets of the Plans in the Funds, for which the Bank provides investment advisory and other services, provided that the conditions of Section III are met.

#### *Section III—Conditions*

(a) The Bank does not have investment discretion or render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to the Plan assets invested in the Funds pursuant to this exemption.

(b) No sales commissions or redemption fees are paid by the Plans in connection with the purchase or sale of shares in the Funds.

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

(d) The price paid or received by a Plan for shares in a Fund is the net asset value per share on the date of the transaction, as defined in section IV(d), and is the same price which would have been paid or received for the shares by any other investor on that date.

(e) Prior to the Bank's receipt of fees paid by each Fund with respect to Plan assets invested therein, each Plan receives a credit of such Plan's proportionate share of all fees charged to the Fund by the Bank.

(f) The Plans are not employee benefit plans sponsored or maintained by the Bank.

(g) A second fiduciary who is independent of and unrelated to the Bank or any of its affiliates (the Second Fiduciary), receives full written disclosure of information concerning the Fund(s), including but not limited to:

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

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

(3) The reason why the Bank may consider such investment to be appropriate for the Plan; and

(4) Upon request of the Second fiduciary, a copy of the proposed exemption and/or a copy of the final exemption;

(h) On the basis of the information described above in paragraph (g) of section III, the Second Fiduciary authorizes in writing the investment of assets of the Plan in each particular Fund, the fees to be paid by the Fund and the Plan to the Bank, and the credit to the Plan of fees received by the Bank

from the Funds for investment advisory and other services, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by part 4 of Title I of the Act.

(i) The Second Fiduciary referred to in paragraph (g) of section III, or any successor thereto, is notified of any change in the rates of the fees referred to in paragraph (g) of section III and approves in writing the continued holding of any Fund shares acquired by the Plan prior to such change and still held by the Plan.

(j) The Bank provides annually, written disclosures to the Second Fiduciary which are provided to all shareholders of the Fund(s), which establish the rate of return of the Fund(s) absent the credit paid to the Plans for fees paid by the Funds to the Bank.

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

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

(m) The Bank shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (n) below to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not available for examination as required by section (n) below;

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

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

(B) Any fiduciary of a Plan who has the authority to acquire or dispose of the

interests of the Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan that has an interest in any of the Funds or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any Plan that has an interest in the Funds or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (n)(1)(B) through (D) shall be authorized to examine the trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

#### Section IV—Definitions

For purposes of this proposed exemption:

(a) Pacific Horizon Fund successor means each of the open-end money market mutual funds resulting from the merger of the Pacific Horizon Prime Fund and the Pacific Horizon Treasury Fund respectively with the Prime Fund and the Treasury Fund. In addition, Pacific Horizon Fund successor means the open-end money market mutual fund resulting from the merger of the Government Securities Fund with a similar money market mutual fund among the Pacific Horizon Funds.

(b) Supplemental Sweep Service means the transfer of shares in the Funds between the Bank and the Plans by means of the Banks's internal accounting procedures at the end of the Supplemental Sweep Period, in connection with Plan orders to purchase shares in the Funds that the Bank is otherwise unable to settle prior to the Supplemental Sweep Period, and Plan orders to purchase or redeem shares in the Funds that are received by the Bank during the Supplemental Sweep Period. A Plan order to purchase or redeem shares in the Fund(s) pursuant to the Supplemental Sweep Service occurs solely as a result of investment decisions, deposits or withdrawals, directed by an independent Second Fiduciary.

(c) Supplemental Sweep Period means the period of time on each business day after the Funds stop accepting orders for the purchase or redemption of shares in the Funds and before the Bank's close of business.

(d) The term "net asset value" means the amount for purposes of pricing all purchase and sale of shares in the Funds calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or

portfolio of the Fund, less the liabilities charged to each such portfolio or fund, by the number of outstanding shares.

(e) An "affiliate" of a person includes:

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

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

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

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

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

(h) A fiduciary will not be deemed to be an independent fiduciary with respect to the Bank and its affiliates if:

(1) The fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank or any affiliate:

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

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

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

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

*Written Comments*

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 30 days of the date of publication of the Notice in the **Federal Register** on April 7, 1995.

During the comment period, the Department received no requests for a hearing. However, the Department received a comment letter and subsequent clarifications, dated May 18, August 2, and August 4, 1995 from the Bank.

First, the Bank states that item 8 of the Summary of Facts and Representations in the Notice indicates that the books of the Fund's transfer agent carry only one account for all purchases and redemptions of Fund shares by the Bank. The Bank represents that it is possible in the future that, solely for bookkeeping purposes, the transfer agent may record separate accounts in the Bank's name to reflect orders from different Bank departments or divisions, or for other purposes, such as reflecting the Bank's own provisional accounts. Nonetheless, all such shares would be held in the name of the Bank. The Department concurs.

Second, the Bank notes a typographical error in the **Federal Register** at page 17812: the reference to the Bank's cash management fee reads "12" percent rather than "0.12 percent." The Department concurs.

Third, the Bank states that the Prime Fund and the Treasury Fund may be respectively merged into the Pacific Horizon Prime Fund and the Pacific Horizon Treasury Fund, which are money market mutual funds with respect to which a BAI affiliate serves as investment adviser. In addition, although the Government Securities Fund has not been used as a cash management vehicle for any plan to date, it may be merged into a similar money market mutual fund among the Pacific Horizon Funds which is also advised by a BAI affiliate. Further, the Bank represents that the prior representations regarding the Prime Fund, the Treasury Fund and the Government Securities Fund will remain accurate with respect to the Pacific Horizon Fund successors. In this regard, the Bank has requested that relief be extended to the Pacific Horizon Funds which succeed the Prime Fund, the Treasury Fund and the Government Securities Fund. The Department concurs.

After giving full consideration to the record, including the comments by the Bank, the Department has determined to

grant the exemption as described herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5507, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption published refer to the notice of proposed exemption published Friday April 7, 1995, at 60 FR 17809.

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

**PMS Profit Sharing and Retirement Savings Plan and Trust (the Plan), Located in Cleveland, Ohio**

[Prohibited Transaction Exemption 95-82; Exemption Application No. D-09824]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale (the Sale) of a certain parcel of improved real property (the Property) from the Plan to M. A. Hanna Company (Hanna), a party in interest with respect to the Plan provided that the following conditions are met:

- (1) The fair market value of the Property is established by a qualified and independent real estate appraiser;
- (2) Hanna pays the greater of \$990,800 or the current fair market value of the Property;
- (3) The Sale is a one time transaction for cash;
- (4) The Plan pays no fees or commissions related to the Sale; and
- (5) Hanna pays any excise taxes to the Internal Revenue Service owed pursuant to section 4975(a) of the Code resulting from Hanna's lease of the Property from the Plan through the effective date of the final grant of the exemption within 90 days of such date.

Effective Date: This exemption will be effective as of September 1, 1995.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on July 12, 1995 at 60 FR 35941.

Written Comments: With respect to the notice of proposed exemption, the Department received one comment in which the applicant requests that the exemption be effective September 1, 1995. The Department has modified the final exemption accordingly in response to the comment.

For Further Information Contact: Allison Padams, of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

**Mercury Asset Management International Ltd. (Mercury International) Located in London, England**

[Prohibited Transaction Exemption 95-83; Exemption Application No. D-09998]

*Exemption*

The restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the proposed cross-trading of securities between various accounts managed by Mercury International or its Affiliates (the Accounts) where at least one Account involved in any cross-trade is an employee benefit plan account (Plan Account) for which Mercury International acts as a fiduciary; provided that both the General Conditions of Section I and the Specific Conditions of Section II below are met.

*Section I—General Conditions*

(a) Each employee benefit plan comprising a Plan Account participating in Mercury International's cross-trading program has total assets equal to at least \$25 million. In the case of multiple employee benefit plans maintained by a single employer or controlled group of employers, the \$25 million requirement may be met by aggregating the assets of such plans if the assets are commingled for investment purposes in a single master trust.

(b) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a qualified Plan Fiduciary which is independent of Mercury International and its Affiliates (the Independent Fiduciary).

(c) The authorization referred to in paragraph (b) above is terminable at will without penalty to the Plan Account, upon receipt by Mercury International of written notice of termination.

(d) Before an authorization is made for any Plan Account, the Independent Fiduciary is furnished with any reasonably available information necessary for the Independent Fiduciary

to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, a description of Mercury International's cross-trade practices, and any other reasonably available information regarding the matter that the Independent Fiduciary requests.

(e) Each cross-trade transaction involves only equity or debt securities for which there is a generally recognized market. With respect to any non-U.S. securities, only those securities traded on a recognized foreign securities exchange for which market quotations are readily available shall be covered by the exemption.<sup>1</sup>

(f) Each cross-trade transaction is effected at the current market value for the security on the date of the transactions. For equity securities, this shall be the closing price for the security on the date of the transaction. The "closing price" shall be the last trade price on exchanges where dealing is order-driven and the closing mid-market price (i.e. the average of the closing bid and offer prices) where dealing is quote-driven. For debt securities, the current market value shall be the fair market value determined in accordance with paragraph (b) of Rule 17a-7 issued by the Securities and Exchange Commission under the Investment Company Act of 1940.

(g) Neither Mercury International nor its Affiliates charges a Plan Account affected by a cross-trade transaction any fee or commission for such transaction.

(h) At least every three months, and not later than 45 days following the period to which it relates, Mercury International furnishes the Independent Fiduciary with a report disclosing: (1) a list of all cross-trade transactions engaged in on behalf of the Plan Account, and (2) with respect to each cross-trade transaction, the prices at which the securities involved in the transaction were traded on the date of such transaction.

(i) The Independent Fiduciary is furnished with a summary of certain additional information at least once per year. The summary must be furnished

within 45 days after the end of the period to which it relates, and must contain the following: (1) a description of the total amount of the Plan Account's assets involved in cross-trade transactions during the period, (2) a description of Mercury International's cross-trade practices, if such practices have changed materially during the period covered by the summary, (3) a statement that the Independent Fiduciary's authorization of cross-trade transactions may be terminated upon receipt by Mercury International of written notice to that effect, and (4) a statement that the Independent Fiduciary's authorization of the Plan Account's participation in the cross-trade program will continue in effect unless it is terminated.

(j) For all Accounts participating in the cross-trading program, if the number of shares of a particular security which any Accounts need to sell on a given day is less than the number of shares of such security which any Accounts need to buy, or vice versa, the direct cross-trade opportunity is allocated among the buying or selling Accounts on a pro rata basis.

(k) The Accounts involved in cross-trade transactions do not include assets of any Plan established or maintained by Mercury International or its Affiliates.

#### *Section II—Specific Conditions*

(a) An Independent Fiduciary of each Plan specifically authorizes each cross-trade transaction in accordance with the following procedure:

(1) No more than three business days prior to the execution of any cross-trade transaction, Mercury International shall inform an Independent Fiduciary of each Plan Account involved in the cross-trade transaction that Mercury International proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available, the current trading price for such securities, and the total number of shares to be acquired or sold by each such Plan Account;

(2) Prior to each cross-trade transaction, the transaction shall be authorized either orally or in writing by the Independent Fiduciary of each Plan Account involved in the cross-trade transaction;

(3) If a cross-trade transaction is authorized orally by an Independent Fiduciary, Mercury International shall provide written confirmation of such authorization in a manner reasonably calculated to be received by such Independent Fiduciary within one business day from the date of such authorization;

(4) The authorization referred to in this Section II shall be effective for a period of three business days; and

(5) No more than ten days after the completion of a cross-trade transaction, the Independent Fiduciary shall be provided with a written confirmation of the transaction and the price at which the transaction was executed.

(b) A cross-trade transaction is effected only where the transaction involves less than five (5) percent of the aggregate average daily trading volume for the securities involved in the transaction for the week immediately preceding the authorization of the transaction. A cross-trade transaction may exceed this limit only by express authorization of Independent Fiduciaries on behalf of Plan Accounts affected by the transaction, prior to the execution of the cross-trade.

(c) The cross-trade transaction is effected at a price which is within ten (10) percent of the closing price of the security on the day before the date on which Mercury International received authorization by the Independent Fiduciary to engage in the cross-trade transaction.

#### *Section III—Definitions*

For purposes of this exemption:

(a) "Account" means a Plan Account or Non-Plan Account;

(b) "Affiliate" means any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Mercury International;

(c) "Buying Account" means the Account which seeks to purchase securities in a cross-trade transaction;

(d) "Cross-trade transaction" means a purchase and sale of securities between Accounts for which Mercury International or an Affiliate is acting as investment manager;

(e) "Plan Account" means an Account managed by Mercury International consisting of assets of one or more employee benefit plans which are subject to the Act;

(f) "Non-Plan Account" means an Account managed by Mercury International consisting of assets of clients which are not employee benefit plans subject to the Act; and

(g) "Selling Account" means the Account which seeks to sell its securities in a cross-trade transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on June 15, 1995, at 60 FR 31517.

<sup>1</sup> With respect to all non-U.S. securities that are "plan assets" managed by Mercury International or an Affiliate, the applicant represents that the requirements of section 404(b) of the Act and the regulations thereunder will be met (see 29 CFR 2550.404b-1). In this regard, section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor. The Department is providing no opinion herein as to whether such requirements will be met.

Written Comments and Modifications: The applicant submitted a comment letter on the Proposal to inform the Department regarding changes in the corporate structure of S.G. Warburg Group plc (the Warburg Group). In this regard, the Proposal was published for Warburg Investment Management International Ltd. (Warburg International) and its Affiliates.

The applicant states that at the time of the Proposal, Warburg International was a wholly-owned subsidiary of Mercury Asset Management plc, which was a wholly-owned subsidiary of Mercury Asset Management Group plc (MAM Group). At such time, MAM Group was 75% owned by the Warburg Group and 25% owned by the public. MAM Group is a public company listed on the London Stock Exchange with its own independent board of directors.

The applicant represents that on July 2, 1995, the investment banking business of the Warburg Group was acquired by Swiss Bank Corporation Investment Banking Ltd. (SBCI), a wholly-owned subsidiary of Swiss Banking Corporation. However, the applicant states that the MAM Group was not one of the companies within the Warburg Group that was acquired by SBCI. Following completion of the sale of the Warburg Group's investment banking business to SBCI, a reconstruction of the Warburg Group took place whereby MAM Group became an independent company and all of its shares became owned entirely by the public. The applicant states that the 75% holding of MAM Group owned by the Warburg Group was distributed to the current shareholders of the Warburg Group.<sup>2</sup> As a result, the MAM Group became fully independent of the Warburg Group as of July 26, 1995.

The applicant represents further that part of the terms of the sale of the Warburg Group's investment banking business to SBCI required that companies within the MAM Group can no longer trade under the "Warburg" name. Therefore, on July 27, 1995, the name of "Warburg Investment Management International Ltd" was changed to "Mercury Asset Management International, Ltd". The applicant states

<sup>2</sup>The details of transaction are described as follows: Under a Scheme of Arrangement (a form of reorganization under English law the terms of which are approved by an English court), the MAM Group allotted new ordinary shares, equivalent to the shares held by the Warburg Group, to the current ordinary and deferred shareholders of the Warburg Group on a pro rata basis. The 75% holding of ordinary MAM Group shares held by the Warburg Group was then converted to deferred MAM Group shares, which were purchased by the MAM Group and cancelled, as required under English law.

that there have been no other changes in the MAM Group and its subsidiaries as a result of the reorganization.

In response to the applicant's additional information, the Department has modified the Proposal by deleting references made to "Warburg International" and has substituted therefor the name "Mercury International". The Department notes that the exemption would apply only to Mercury International and its Affiliates, as defined in Section III(b), and not to any of the other companies formerly within the Warburg Group that were sold to SBCI.

No other comments, and no requests for a hearing, were made on the Proposal.

Accordingly, the Department has determined to grant the proposed 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.)

#### **LEGENT Retirement Security Plan (the Plan) Located in Pittsburgh, PA**

[Prohibited Transaction Exemption 95-84; Exemption Application No. D-10015]

#### **Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan of a limited partnership interest in BPT Union City Associates, Inc. (the BPT Interest) to LEGENT Corporation, a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (1) all terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price which is not less than the greater of: (a) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost plus opportunity costs attributable to the BPT Interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 29, 1995 at 60 FR 33870.

For Further Information Contact: Ms. Jan D. Broady of the Department,

telephone (202) 219-8881. (This is not a toll-free number.)

#### **General Information**

The attention of interested persons is directed to the following:

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

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

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

Signed at Washington, D.C., this 8th day of September 1995.

**Ivan Strasfeld,**

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

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