Dated: October 20, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–25660 Filed 10–16–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–09973, et al.

Proposed Exemptions; Kay Alden, 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 restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

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

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

Notice to Interested Persons

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

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

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

Kay Alden, Inc. Money Purchase Plan (the Plan), Located in Chicago, Illinois

[Application No. D–09973]

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 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase of real property (the Purchase) by the Plan from Mr. Vernon Nelson (Nelson), a party in interest with respect to the Plan provided that: (a) The Purchase is a one time transaction for cash; (b) the Plan will pay no more than fair market value for the Property, as determined by an independent qualified real estate appraiser at the time of the transaction; (c) the fair market value of the Property represents no more than 25% of the value of the Plan's assets; (d) the Plan's interests with respect to the Purchase are represented by two independent fiduciaries (e) the Plan will pay no fees or commissions associated with the Purchase; and (f) all terms and conditions of the Purchase are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan having three participants and assets with a fair market value of $1,533,292 as of January 12, 1995. The trustees of the Plan are Nelson and Kay Alden Nelson. The Plan sponsor is in the business of script writing for day time soap operas.

2. The Property consists of eighteen undeveloped building sites located in Spyglass Hills, a subdivision in Hutchinson, Kansas. The Spyglass subdivision is located to the North and East of Hutchinson, Kansas. The sewer, natural gas, underground electrical and telephone wires are accessible to all lots. Over the last twenty years, the development in Hutchinson has been in the general area of Spyglass Hills. Spyglass Hills currently is the only development with growth potential which has sewer and utilities in place. Spyglass Hills should be completely developed within the next five to ten years.

In 1989, Nelson acquired twenty-five lots. During the past three years, Nelson has been preparing the subdivision for development. He has encouraged housing starts by working with developers and individuals willing to build homes. There is a fully occupied five unit luxury condominium in Spyglass Hills, and a townhouse complex is to be built within the next year.

3. The Property was appraised on October 31, 1994 by Ralph E. Gingerich, an independent and qualified real estate appraiser. Mr. Gingerich calculated that the fair market value of the Property to be $324,000 using the comparable sales approach. In his appraisal, he states that market conditions and growth potential are favorable, and new housing starts have increased sharply in the past two years causing values and sales of sites to increase rapidly.

4. The Plan is seeking a suitable replacement for an unrelated real estate holding it sold in August 1994 and therefore, proposes to purchase the Property. The Private Bank and Trust Company (the Bank) has been retained

to serve as independent fiduciary on behalf of the Plan. The Bank has reviewed the proposed transaction and represented that the Property is an appropriate investment for the Plan for the following reasons. First, even though the Property is not income producing, the economic attraction of the Property to the Plan is not diminished. All three Plan participants are relatively young, and not facing retirement in the near future. Thus, any possible illiquid characteristic of the investment would not prejudice the Plan. Secondly, following the Purchase, only 25% of the Plan's assets will be invested in real estate. Lastly, the Property consists of multiple lots that will be marketed individually providing a continuing cash flow as each lot is sold.

Central Bank and Trust Company (Central Bank) has also been retained to serve as independent fiduciary on behalf of the Plan. Central Bank represents that the appraisal is a fair representation of the current market. Further, Central Bank states that the new housing market in Hutchinson continues to be strong, and Spyglass Hills should benefit from this trend. Central Banks believes that the Property is an appropriate investment for the Plan. Lastly, Central Bank represents that at the time of the purchase of the Property, it will review the transaction and confirm that the Plan is paying no more than fair market value for the Property.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The terms of the purchase are as favorable as the Plan could obtain in an arm's length transaction with an unrelated party; (2) the fair market value of the Property has been established by an independent and qualified appraiser and represents no more than 25% of the value of the Plan's assets; (3) the Plan has retained an independent fiduciary who has reviewed the terms of the Purchase and has determined that the Purchase is in the Plan's interest; and (4) the Plan has retained a second independent fiduciary who will represent the interests of the Plan at the time of the Purchase to ensure that the Plan is not paying more than fair market value for the Property.

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

The Chase Manhattan Bank (National Association) Pooled Investment Trust for Employee Benefit Plans (the Trust) Located in New York, New York

[Exemption Application No. D–09983]

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 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past cash sale of certain commercial paper notes (the Notes) for $25,129,748 by two collective investment funds in the Trust known as VAN 1 and VAN 18 (the VANs) to The Chase Manhattan Bank, N.A. (the Bank), a party in interest with respect to the employee benefit plans invested in the VANs at the time of the transaction; provided the following conditions were met:

(a) The sale of each of the Notes was a one-time cash transaction;

(b) The terms and conditions of the sale were at least as favorable to the VANs as those obtainable in an arm's-length transaction with an unrelated party;

(c) The VANs received an amount for the Notes that was equal to the greater of: (i) In the case of a Note that had a scheduled maturity after the date of the transaction, the original purchase price paid by the particular VAN for the Note plus interest at the imputed yield to maturity up to the date of sale, as calculated by the Bank; (ii) in the case of a Note that had a scheduled maturity on or before the date of the transaction, the value at maturity plus additional interest to the date of sale at the daily rates earned by the related VAN (exclusive of its holdings of the Notes) from the maturity date to the date of sale; or (iii) the fair market value of each Note as of the time of sale as determined by an independent, qualified appraiser;

(d) The VANs did not pay any commissions, costs or other expenses in connection with the sale of the Notes;

(e) If the exercise of any of the Bank's rights, claims or causes of action in connection with its ownership of the Notes results in the Bank recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the purchase price paid to the VANs by the Bank for the Notes (i.e. $25,129,748), the Bank will pay such excess amounts to the respective VANs within thirty (30) days of the receipt of such recovery amounts; and

(f) Each employee benefit plan with interests in the VANs received its proportionate share of the proceeds of the sale of the Notes to the Bank and receives its proportionate share of any recovery amounts obtained on the Notes in excess of the purchase price received by the VANs, as described in condition (e) above.

Effective Date: If granted, this proposed exemption will be effective as of December 19, 1994.

Summary of Facts and Representations

1. The Trust is a collective investment vehicle comprised of several separate collective funds maintained by the Bank for investment by employee benefit plans subject to the Act (the Plans) and governmental employee benefit plans. The Bank is a national banking association that serves as trustee to the Trust. The Trust includes VAN 1 and VAN 18 (i.e. the VANs), which are two separate collective investment funds that hold assets of various Plans. The VANs are short-term investment funds that are designed to be highly liquid. As of December 31, 1994, VAN 1 and VAN 18 had total assets in the amounts of $606,241,334 and $558,048,711, respectively.

2. The Bank, acting on behalf of the VANs as trustee of the Trust, purchased the Notes from the VANs on December 19, 1994. The Notes were short-term investments with maturities of five months or less that were issued by Confederation Life Insurance Co. (Confederation) with a total face amount of $25 million. The Bank states that the Notes, like most short-term commercial paper, were purchased at a discount with the face amount to be paid at maturity. No other interest payments were contemplated during the term of the Notes.

The Notes held by the respective VANs, including the original purchase price and date, value at maturity, and stated maturity date are as follows:

VAN	Original purchase price	Purchase date	Value at maturity	Maturity date
VAN 1	$4,943,750.00	6/09/94	$5,000,000	9/07/94

VAN	Original purchase price	Purchase date	Value at maturity	Maturity date
VAN 1	4,959,441.67	7/29/94	5,000,000	9/29/94
VAN 1	4,871,163.20	8/02/94	5,000,000	1/30/95
VAN 18	4,959,441.67	7/29/94	5,000,000	9/29/94
VAN 18	4,871,163.20	8/02/94	5,000,000	1/30/95

3. On August 11, 1994, the Canadian insurance regulatory authorities placed Confederation into a liquidation and winding-up process, and on August 12, 1994, the insurance authorities of the State of Michigan commenced legal action to place the U.S. operations of Confederation into rehabilitation proceedings. The Bank states that, as a result of these actions, the payments on the Notes were suspended.[1] The Bank states further that it appeared highly unlikely that the assets of Confederation would be sufficient to pay the Noteholders, including the VANs, to any significant extent.

4. The Bank represents that once it received notice of the seizure of Confederation, it segregated the Notes in separate liquidating accounts within the Trust. There were two liquidating accounts, one with respect to each of the VANs (the Liquidating Accounts). The proportional interest of each Plan in a Liquidating Account following the segregation equalled its proportional interest in the affected VAN immediately before the segregation. The estimated number of Plans participating in each of the Liquidating Accounts established with respect to VAN 1 and VAN 18 were 100 and 19, respectively. Among the Plans invested in one or both of the VANs were the Retirement and Family Benefit Plan of The Chase Manhattan Bank, N.A., and The Chase Manhattan Bank, N.A. Thrift Investment Plan.

5. The Bank represents that because it desired to make the Plans ''whole'' for the losses that would have occurred in connection with the Plans' investment in the Notes, the Bank purchased the Notes from the Liquidating Accounts on December 19, 1994 for the value the Notes would have had in the particular VAN at the time of the transactions but for the placement of Confederation in liquidation. The Bank entered into the transactions prior to the end of 1994 in response to the demands of Plan fiduciaries that the Plans be made ''whole'' on these investments and completely liquid for purposes of year-end valuations of the assets held by the VANs. Accordingly, the Bank requests a retroactive administrative exemption from the Department to permit the past sale of the Notes under the terms and conditions described herein.

6. The Bank paid to the Liquidating Accounts a total of $25,129,748 for the Notes. The Bank states that the sale price received by the VANs for the Notes was equal to: (i) In the case of a Note that had a scheduled maturity after the date of the transaction, the original purchase price paid by the particular VAN for the Note plus interest at the imputed yield to maturity up to the date of sale, as calculated by the Bank;[2] and (ii) in the case of a Note that had a scheduled maturity on or before the date of the transaction, the value at maturity plus additional interest to the date of sale at the daily rates earned by the related VAN (exclusive of its holdings of the Notes) from the maturity date to the date of sale. The Bank represents that the guiding principal in determining the price of the Notes for the transactions was to place the VANs in exactly the position they would have occupied on the date of the transactions if Confederation had not defaulted.

These calculations by the Bank resulted in VAN 1 receiving the following sale prices for the Notes on December 19, 1994, the date of sale: $5,073,286 for the Note which matured on 9/7/94; $5,058,484 for the Note which matured on 9/29/94; and $4,970,109 for the Note which was due to mature on 1/30/95. In addition, on such date, VAN 18 received $5,057,760 for the Note which matured on 9/29/94 and $4,970,109 for the Note which was due to mature on 1/30/95.

The VANs received such amounts in cash on the date of sale in exchange for the transfer to the Bank of all right, title and interest in the Notes, together with all causes of action, suits or other claims that the VANs may have against any person with respect to the Notes. The Bank states that each Plan with an interest in the respective VANs received its proportionate share of the proceeds of the sale of the Notes to the Bank.

7. The Bank engaged Deloitte & Touche (D&T), an independent, qualified appraiser in New York City, to determine the fair market value of the Notes. With respect to the independence of D&T, the Bank represents that D&T at times performs services for the Bank and its affiliates. However, the Bank states that payments made by the Bank and its affiliates for such services constitute less than one (1) percent of D&T's annual gross revenues.

On the basis of discussions with three independent brokers, D&T estimated the fair market value of the Notes at approximately ten cents for each one dollar of principal amount due on the Notes.[3] Thus, since each Note had a face value of $5 million, D&T concluded that each Note would be worth approximately $500,000 at the time of the transaction.

Based on the pricing information obtained from D&T, the Bank represents that the fair market value of the Notes was significantly below the purchase price paid by the respective VANs for the Notes (as noted below).

[1] The Department notes that the decisions made by the Bank on behalf of the VANs to acquire and hold the Notes were subject to the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this proposed exemption, the Department is not providing an opinion as to whether any violations of Part 4 of Title I may have arisen as a result of the acquisition and holding of the Notes by the VANs.

[2] The Bank represents that the imputed yield to maturity for the Notes held by the VANs, as listed above in Paragraph 2, was 4.5%, 4.71%, 5.125%, 4.71% and 5.125%, respectively, when calculated on an annualized basis. However, as noted above, the Notes bore no coupon or other current yield. The imputed yield consisted of the difference between the face amount due at maturity and the original discounted purchase price. The Bank states that the method used for calculating earnings on the non-matured Notes at the time of the transaction was consistent with the cost basis accounting rules permitted for short-term investment funds by the Office of the Comptroller of the Currency (see OCC Rule 9.18).

In addition, the Bank states that by selling the non-matured Notes to the Bank prior to their maturity dates (i.e. 1/30/95), the VANs were able to reinvest the proceeds of the sales as of the date of the transactions rather than as of the later maturity dates, a period of almost six weeks later. The VANs' earnings rate during that six-week period was higher than the imputed yield to maturity of the Notes that had not already matured. Thus, the Bank maintains that the sale of the non-matured Notes on December 19, 1994 was more financially advantageous to the VANs than if the sale had not occurred until January 30, 1995, the last maturity date of the Notes held by the VANs.

[3] D&T represents that its inquiry to establish the value of the Notes was intended to be consistent with the procedure for determining current market price under SEC Rule 17a–7(b) of the Investment Company Act of 1940.

Fund	Purchase date	Principal amount	Purchase price	Fair market value	Price red.'d
VAN 1	6/09/94	$5,000,000	$4,943,750	$500,000	$5,073,286
VAN 1	7/29/94	5,000,000	4,959,442	500,000	5,058,484
VAN 1	8/02/94	5,000,000	4,871,163	500,000	4,970,109
VAN 18	7/29/94	5,000,000	4,959,442	500,000	5,057,760
VAN 18	8/02/94	5,000,000	4,871,163	500,000	4,970,109

8. The VANs did not pay any commissions, costs or other expenses in connection with the sale. In addition, the Bank is willing to bear all costs and expenses associated with the transactions, including any expenses incurred in pursuing other claims with respect to the Notes. The Bank states that it will indemnify the VANs for any amounts recovered from Confederation, or any third party, in connection with the enforcement of the Bank's rights and remedies as owner of the Notes. In this regard, the Bank notes that it is unlikely that the proceeds from any such recoveries on the Notes will exceed the payments that the Bank made to the VANs. However, the Bank represents that if such recoveries ultimately exceed the purchase price paid by the Bank to the VANs for the Notes, the Bank will return any excess amounts to the respective VANs within thirty (30) days of the receipt of the recovery amounts. In addition, each employee benefit plan with interests in the VANs will receive its proportionate share of any recovery amounts obtained on the Notes in excess of the purchase price received by the VANs.

9. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because: (a) The terms and conditions of the transaction were at least as favorable to the VANs as those which the VANs could have obtained in an arm's-length transaction with an unrelated party; (b) the sale of the Notes was a one-time cash transaction; (c) the VANs were not required to pay any commissions, costs or other expenses in connection with the sale; (d) the VANs received an amount for the Notes that was equal to the greater of: (i) in the case of a Note that had a scheduled maturity after the date of the transaction, the original purchase price paid by the particular VAN for the Note plus interest at the imputed yield to maturity up to the date of sale, as calculated by the Bank; (ii) in the case of a Note that had a scheduled maturity on or before the date of the transaction, the value at maturity plus additional interest to the date of sale at the daily rates earned by the related VAN (exclusive of its holdings of the Notes) from the maturity date to the date of sale; or (iii) the fair market value of each Note as determined by an independent, qualified appraiser at the time of the transaction; (e) if the exercise of any of the Bank's rights, claims or causes of action in connection with its ownership of the Notes results in the Bank recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the purchase price paid to the VANs by the Bank for the Notes (i.e. $25,129,748), the Bank will pay such excess amounts to the respective VANs within thirty (30) days of the receipt of such recovery amounts; and (f) each Plan with an interest in the VANs received its proportionate share of the proceeds of the sale of the Notes to the Bank and will receive its proportionate share of any recovery amounts obtained on the Notes in excess of the purchase price received by the VANs.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate plan fiduciaries for each employee benefit plan that had an interest in the Liquidating Accounts at the time of the transaction. Notice to the plan fiduciaries shall be made within fifteen (15) days following the publication of the proposed exemption in the Federal Register. This notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the Federal Register.

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

WLI Industries, Inc. Employees' Stock Ownership Plan (the Plan) Located in Villa Park, IL

[Application No. D–09987]

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 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) shall not apply to the proposed cash sale by the Plan of its interest (the Interest) in a limited partnership (the Partnership) to James Van DeVelde and Robert Van DeVelde, the general partners of the Partnership and parties in interest with respect to the Plan, provided (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; (4) the Plan receives a price for the Interest which is not less than the greater of: (i) $2,500 or (ii) the fair market value of the Interest as determined by a qualified, independent appraiser and; (5) within 30 days of the publication, in the Federal Register, of the notice granting this proposed exemption, WLI files a Form 5330 with the Internal Revenue Service (the Service) and pays all applicable excise taxes by reason of such prior or continuing prohibited transactions.

Summary of Facts and Representations

1. The Plan is an employee stock ownership plan with 116 participants and net assets available for benefits of $1,210,898 as of February 28, 1994. The trustees of the Plan and the decisionmakers with respect to the Plan's investments are James Van DeVelde, Robert Van DeVelde and Joseph S. Ott, Jr. These individuals also participate in the Plan.

2. WLI Industries, Inc. (WLI), the Plan sponsor, is engaged in the sale and/or rental of warning lights, signage, barricades and other materials utilized in connection with the construction and resurfacing of roads and highways. WLI maintains its principal place of business at 880 North Addison Road, Villa Park, Illinois (the North Addison Road Property). James Van DeVelde is the President of WLI. Robert Van DeVelde is the Executive Vice President and Secretary of WLI. Joseph S. Ott, Jr. is an employee of WLI.

3. Among the assets of the Plan is a 33 percent limited partnership interest in the J&R Limited Partnership. The Partnership holds 100 percent of the beneficial interest in an Illinois Land Trust which, in turn, holds fee simple title to a 10.38 acre parcel of real property. The property is located at the North Addison Road address and serves as the headquarters of WLI. The general partners of the Partnership are James Van DeVelde and Robert Van DeVelde. The Van DeVeldes each hold a 33.5 percent interest in the Partnership. It is represented that the subject property is not located near any other property that is owned by WLI.

4. As the general partners of the Partnership, the Van DeVeldes wished to obtain financing from the Small Business Administration (the SBA) in order to construct a building. However, as a precondition to obtaining such financing, the SBA required that all shareholders of WLI hold a percentage of the Partnership. Because the Plan owned approximately 41 percent of the outstanding stock of WLI, it was obliged to purchase a 33 percent limited partnership interest in the Partnership from the Van DeVeldes. Thus, on October 23, 1992, the Plan paid $1.00 to the Van DeVeldes in order to acquire the Interest. In December 1992, the SBA executed the construction loan with the Partnership. With the exception of the Plan, the Van DeVeldes were required to guarantee the SBA indebtedness. Currently, the Plan owns an equity interest in the Partnership which it holds without any liability to either the SBA or other parties.

5. On December 1, 1993, the Partnership commenced leasing an 84,943 square foot office building that it had constructed on the North Addison Road Property to WLI under the terms of a triple net lease. The lease has an initial term of 10 years and it requires WLI to pay the Partnership a rental of $35,259.57 per month.[4] Also during the term of the lease, WLI is required to pay the Partnership all taxes, utility expenses and casualty and liability insurance premiums.

6. The Partnership is using WLI's rental payments under the lease to amortize a loan made by Harriet Van DeVelde, the mother of James and Robert Van DeVelde, to the Partnership. The loan, which is evidenced by a promissory note dated August 30, 1991, is in the original principal amount of $900,000. The note was executed between Mrs. Van DeVelde and the Partnership to enable the Partnership to purchase the North Addison Road Property. The note carries interest at the rate of prime plus one percent over a five year period. The note requires both principal and interest payments on a quarterly basis. At the end of the loan term, a balloon payment of $600,000 will become due and payable. Then, it is anticipated that the loan will be refinanced through unrelated lenders. As of September 19, 1995, the applicants represent that the note had an outstanding principal balance of $824,687. The applicants also represent that the Partnership has made payments under the note in a timely manner.

7. James and Robert Van DeVelde request an administrative exemption from the Department in order that they may purchase the Interest from the Plan. The Van DeVeldes are aware that the purchase of the Interest by the Plan, the loan by Mrs. Van DeVelde to the Partnership and the leasing of the property by the Partnership to WLI have resulted in prohibited transactions in violation of the Act. Therefore, within 30 days of the publication, in the Federal Register, of the notice granting this proposed exemption, WLI will file a Form 5330 with the Service and pay all applicable excise taxes by reason of such prohibited transactions.

8. The Van DeVeldes propose to purchase the Interest from the Plan for cash at price that is not less than the greater of $2,500 or the fair market value of the Interest. In an independent appraisal report of the Partnership that is dated February 28, 1995, Ira D. Berk, CPA of Premiere Financial Consultants, Inc. of Northbrook, Illinois, a qualified, independent appraiser, determined that the Interest held by the Plan had no value as of February 28, 1995. In valuing the Partnership, Mr. Berk reviewed and relied upon an appraisal of the property that was performed by Kristy A. DeCleene, Staff Appraiser and Douglas X. Adams, of Adams Valuation Corporation. (This was the same independent appraisal firm that had valued the property prior to the inception of the lease.) In that appraisal, the appraisers placed the fair market value of a leased fee interest in the Property at $4,212,000 as of February 21, 1995. In addition, Mr. Berk indicated that he had reduced the appraised value of the property by estimated real estate commissions of $126,360 and by the Partnership's liabilities which totaled $4,225,554 as of December 31, 1994.[5]

These calculations resulted in equity positions of $0 for the Partnership, the general partners and the Plan. Accordingly, the Plan will sell its Interest to the Van DeVelde's for $2,500.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) All terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any commissions, costs or other expenses in connection with the sale; (d) the Plan will receive a price for the Interest which is not less than the greater of: (i) $2,500 or (ii) the fair market value of the Interest as determined by a qualified, independent appraiser; and (e) within 30 days of the publication, in the Federal Register, of the notice granting this proposed exemption, WLI will file a Form 5330 with the Service and pay all applicable excise taxes by reason of such prior or continuing prohibited transactions.

Notice to Interested Persons

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

[4] According to the application file, the fair market rental value of the building was determined on March 15, 1993 by Michael R. Kay, Associate Appraiser, and Douglas X. Adams, MAI, qualified, independent appraisers who are affiliated with Adams Valuation Corporation of Elmhurst, Illinois. The appraisers determined that the fair market rental value of the building was $372,422 annually or $31,035 monthly.

[5] As of December 31, 1994, it is represented that the Partnership's liabilities consisted of the following: (a) the $854,686 outstanding principal balance of the loan from Mrs. Van DeVelde; (b) the $726,896 outstanding principal balance of the loan from the SBA; and (c) the $2,455,905 outstanding principal balance of a loan from Merchants Bank; and (d) $188,067 owed to WLI.

proposed exemption in the Federal Register.

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

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 12th day of October, 1995.

Ivan Strasfeld,

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

[FR Doc. 95–25717 Filed 10–16–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–96; Exemption Application No. D–09953, et al.]

Grant of Individual Exemptions; PaineWebber Incorporated

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.

PaineWebber Incorporated Located in New York, New York

[Prohibited Transaction Exemption 95–96; Exemption Application No. D–09953]

Exemption

PaineWebber Incorporated and each of its affiliates (collectively, PaineWebber), shall not be precluded from functioning as a ''qualified professional asset manager'' pursuant to Prohibited Transaction Class Exemption 84–14 (PTCE 84–14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy section I(g) of PTCE 84–14, as a result of General Electric Company's ownership interest in PaineWebber, including any current or future affiliate of PaineWebber which is, or in the future may become, eligible to serve as a QPAM under PTCE 84–14; provided the following conditions are satisfied:

(A) This exemption is not applicable to any affiliation by PaineWebber with any person or entity convicted of any of the felonies described in part I(g) of PTCE 84–14, other than G.E.; and

(B) This exemption is not applicable with respect to any convictions of G.E. for felonies described in part I(g) of PTCE 84–14 other than those involved in the G.E. Felonies, described in the Notice of Proposed Exemption.

Effective Date: This exemption is effective as of December 16, 1994.

Written Comments: The Department received one written comment, submitted by the applicant, PaineWebber, and no requests for a hearing. The comment addressed the fact that the Notice of Proposed Exemption did not include a proposed effective date for the exemption. The applicant requests that the exemption be effective as of December 16, 1994, the date on which General Electric Company became the owner of more than five percent of PaineWebber. In accordance with the applicant's request, the exemption includes an effective date of December 16, 1994.

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 33868.