

employee benefit plans (and their employers) with respect to which ZLIC is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by ZLIC. For purposes of this condition (d):

(1) the term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by ZLIC. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by ZLIC.

(2) all premium and annuity considerations written by ZLIC for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 6, 1996 at 61 FR 57477.

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

General Information

The attention of interested persons is directed to the following:

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

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or

administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, D.C., this 24th day of December, 1996.

Ivan Strasfeld,

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

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BILLING CODE 4510-29-P

[Application No. D-10253, et al.]

Proposed Exemptions; The Retirement Plan for Salaried and Certain Hourly Employees of Keebler Company (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) 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, 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.

The Retirement Plan for Salaried and Certain Hourly Employees of Keebler Company (the Plan), Located in Elmhurst, Illinois

[Application No. D-10253]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the leasing by the Plan of certain improved real property (the Property) to Keebler Company (the Employer), a party in interest with respect to the Plan, (2) the potential future purchase of the Property by the Employer pursuant to the Employer's right of first refusal, as stipulated in the lease, and (3) the "make whole agreement," and any payments thereunder, whereby the Employer will make the Plan whole, in the event that the Plan sells the Property to an unrelated party at a net loss.

This proposed exemption is subject to the following conditions:

(1) The Plan is represented for all purposes with respect to the lease by a qualified, independent fiduciary;

(2) The terms and conditions of the lease are and continue to be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party;

(3) The rent paid to the Plan under the lease is and continues to be no less than the fair market rental value of the Property, as established by a qualified, independent appraiser;

(4) The rent is adjusted, at a minimum, every three years (upwards only), based upon an updated independent appraisal;

(5) The lease is a net lease, under which the Employer as the tenant is obligated for all operating expenses, including maintenance, taxes, insurance, and utilities;

(6) The independent fiduciary for the Plan represents that it has reviewed the terms and conditions of the lease on behalf of the Plan and believes the lease is in the best interests of and appropriate for the Plan;

(7) The independent fiduciary monitors and enforces compliance with the terms and conditions of the lease

and of the exemption for the duration of the lease;

(8) The independent fiduciary expressly approves any improvements by the Employer over \$100,000 to the Property and any renewal of the lease beyond the initial term;

(9) In the event that the Employer exercises its right of first refusal under the lease, the Employer purchases the Property from the Plan for an amount which is the greater of: (a) the original acquisition cost of the Property, plus the cost of any improvements, paid by the Plan, or (b) the fair market value of the Property as of the date of the sale, as established by a qualified, independent appraiser selected by the independent fiduciary;

(10) In the event that the Plan sells the Property to an unrelated party at a net loss (taking into account the cost of any improvements and all selling expenses paid by the Plan), the Employer makes the Plan whole, within 15 days after the date of such sale, by paying the Plan cash in an amount equal to the difference between: (a) the original acquisition cost of the Property, plus the cost of any improvements and all selling expenses, paid by the Plan, and (b) the amount of the sale proceeds received by the Plan; and

(11) At all times, the fair market value of the Property represents no more than 25 percent of the total assets of the Plan. **EFFECTIVE DATE:** This exemption, if granted, will be effective as of April 15, 1996.

Summary of Facts and Representations

1. The Plan is a defined benefit plan sponsored by the Employer. The Employer, a Delaware corporation, is engaged in the business of making cookies, crackers, ice cream cones, and snacks and is located in Elmhurst, Illinois. The Plan had total assets of \$200,697,537, as of December 31, 1994. The Plan had 7,496 participants and beneficiaries, as of April 1, 1996. The trustee of the Plan is the Northern Trust Company (Northern Trust). The Chicago Trust Company (Chicago Trust), the successor to the Chicago Title & Trust company, is the Subtrustee with respect to the Plan's investment in employer real property by virtue of a Subtrust Agreement with Northern Trust, entered into as of January 5, 1981 and amended as of April 10, 1985.

2. Among the assets of the Plan is the Property, which is currently being leased to the Employer. The Property consists of a land area of 7.36 acres and a one-story multi-purpose warehouse and manufacturing facility of 100,676 sq. ft. The Property is located at 2201 Cabot Boulevard West, Langhorne,

Pennsylvania. It is represented that the Property is not near any other real property owned or used by the Employer. It is further represented that the Property is not subject to any debt.

3. The Property was appraised by Messrs. Christopher J. Hall and L. Edward Klein, M.A.I., of Binswanger Real Estate Appraisal, both independent general real estate appraisers certified in the State of Pennsylvania. Messrs. Hall and Klein employed all three basic valuation methodologies (cost, sales comparison, and income) utilized in the appraisal field and concluded that the fair market value of the fee simple interest of the Property was \$2,550,000, as of December 1, 1995. Messrs. Hall and Klein also examined four other comparable leases and concluded, as of that same date, that the Property had a fair market rental value of \$3.25 per sq. ft. (\$327,200 per annum, rounded), if leased on a net basis. Finally, Messrs. Hall and Klein concluded that the fair market value of the leased fee interest of the Property, which is being leased to the Employer pursuant to a 15-year lease at above market rent, was \$4,100,000, as of December 1, 1995.

The appraisal states that the zoning of the Property is M-1, Light Manufacturing, which restricts its use to various industrial and office uses. The highest and best use of the Property, if vacant, is as an industrial building. The highest and best use of the Property, as improved, is its continued use as a warehouse/distribution facility.

4. As previously noted, the Property is being leased to the Employer pursuant to a 15-year lease, whose term commenced on September 13, 1991. Until recently, the Plan was also leasing to the Employer a second parcel of real property located in Valencia, California (the California Property) for an 11-year term expiring on March 31, 1996. It is represented that together such leases, because they involved "qualifying employer real property," were statutorily exempt under section 408(e) of the Act.¹ However, on April 15, 1996, the California Property was sold by the Plan to the Employer for \$2,350,000, again, pursuant to a statutory exemption under section 408(e) of the Act.² Prior

¹ Section 408(e) of the Act provides an exemption from sections 406 and 407 of the Act for certain transactions involving "qualifying employer real property," as that term is defined in section 407(d)(4) of the Act. However, the Department expresses no opinion herein as to whether the leasing of either the Property or the California Property to the Employer complied with the requirements of section 408(e) of the Act.

² The Department expresses no opinion herein as to whether the sale of the California Property complied with the requirements of section 408(e) of the Act. Further, the Department expresses no

to that date, the applicant submitted a request for an administrative exemption from the Department for the continued leasing to the Employer of the sole remaining parcel of real property in the Plan, retroactive to the date of the sale of the California Property.

5. The interests of the Plan with respect to the lease are represented by the Subtrustee Chicago Trust, acting as an independent fiduciary for the Plan. Chicago Trust, whose fees are paid by the Plan, represents that it is unrelated to and independent of the Employer. Chicago Trust represents that it has extensive experience as a fiduciary under the Act, that it is knowledgeable as to the subject transactions, and that it acknowledges and accepts its duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plan.

6. The lease provides for a primary term of 15 years, which may be extended at the option of the lessee for three successive terms of five years each, upon the express approval of the independent fiduciary. It is represented that the Employer currently pays to the Plan rent in the amount of \$5.12 per sq. ft. (\$515,497 per annum), which significantly exceeds the fair market rental value of \$327,200 per annum established for the Property. The lease provides for annual rent increases based upon a return of income as a percentage of the Plan's original disbursement of \$4.3 million for the Property (with such percentage ranging from 10.0% in 1992 to 14.01% in 2006, the final lease year). The fair market rental value of the Property is to be redetermined every three years, based upon an updated independent appraisal. If the appraised fair market rental value exceeds the rent being paid by the Employer, the rent will be increased to a level that is not less than the appraised fair market rental value. If the appraised value is less than the rent being paid by the Employer, the then current rent will remain in effect.

The lease is a net lease, under which the rent is an absolutely net return to the Plan as landlord and is not subject to deductions for any expenses relating to the Property. The Employer as tenant is obligated for all operating expenses, including maintenance, taxes, insurance, and utilities. The lease permits the Employer to remodel and make structural changes and additions to the Property at the Employer's expense, so long as such improvements comply with all applicable

governmental regulations. Any expense over \$100,000 must be expressly approved by the independent fiduciary. Any improvements or renovations of the property will belong to the Plan upon termination of the lease. The Employer will indemnify and hold the Plan harmless for all claims and demands arising from or in any way relating to the Property.

7. In the event that the independent fiduciary determines it is in the best interests of the Plan to sell the Property, the lease grants the Employer the right of first refusal. If the Employer exercises its right of first refusal, the Employer will purchase the Property from the Plan for an amount which is the greater of: (a) the original acquisition cost of the Property, plus the cost of any improvements, paid by the Plan, or (b) the fair market value of the Property as of the date of the sale, as established by a qualified, independent appraiser selected by the independent fiduciary. Any such sale would be a one-time transaction for cash, and the Plan would incur no expenses relating to the sale.

If the Plan sells the Property to an unrelated party during the term of the lease, the Employer will continue to be bound as tenant under the lease for the duration of the lease. Further, if the Plan sells the Property to an unrelated party at a net loss (taking into account the cost of any improvements and all selling expenses paid by the Plan), the Employer will make the Plan whole, within 15 days after the date of such sale, by paying the Plan cash in an amount equal to the difference between: (a) the original acquisition cost of the Property, plus the cost of any improvements and all selling expenses, paid by the Plan, and (b) the amount of the sale proceeds received by the Plan.

8. Chicago Trust, acting as an independent fiduciary for the Plan, represents that it has reviewed the terms and conditions of the lease on behalf of the Plan and determined that such terms and conditions are at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. Chicago Trust further represents it believes that the lease is in the best interests of and appropriate for the Plan and that it will monitor and enforce compliance with the terms and conditions of the lease and of the exemption for the duration of the lease.

The initial decision to invest a portion of the Plan's assets in real estate was made by the Employer. In its role as Subtrustee, Chicago Trust has the exclusive authority to hold and manage the Plan's employer real property. Accordingly, Chicago Trust made the

decisions to sell the California Property and to retain the Property for the Plan. With respect to the latter, Chicago Trust took into account the fact that a forced sale of the Property to an unrelated party would have caused the Plan to incur a substantial loss, as well as depriving the Plan of rental income at an above market rate (yielding a net investment return not less than 10.0% in the first year and not less than 14.01% in the final lease year). Chicago Trust has also examined the financial viability of the Employer, determined that the Employer's past performance under the lease has been in accordance with its contractual obligations, and concluded that the Employer will continue to be a good tenant.

9. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) the Plan is represented for all purposes with respect to the lease by a qualified, independent fiduciary; (2) the terms and conditions of the lease are and will continue to be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party; (3) the rent charged by the Plan under the lease is and will continue to be no less than the fair market rental value of the Property, as established by a qualified, independent appraiser; (4) the rent will be adjusted, at a minimum, every three years (upwards only), based upon an updated independent appraisal; (5) the lease is a net lease, under which the Employer as the tenant is obligated for all operating expenses, including maintenance, taxes, insurance, and utilities; (6) the independent fiduciary for the Plan represents that it has reviewed the terms and conditions of the lease on behalf of the Plan and believes the lease is in the best interests of and appropriate for the Plan; (7) the independent fiduciary will monitor and enforce compliance with the terms and conditions of the lease and of the exemption for the duration of the lease; (8) the independent fiduciary will expressly approve any improvements by the Employer over \$100,000 to the Property and any renewal of the lease beyond the initial term; (9) in the event that the Employer exercises its right of first refusal under the lease, the Employer will purchase the Property from the Plan for an amount which is the greater of: (a) the original acquisition cost of the Property, plus the cost of any improvements, paid by the Plan, or (b) the fair market value of the Property as of the date of the sale, as established by

opinion herein as to whether the acquisition and holding of either the Property or the California Property by the Plan violated any of the provisions of Part 4 of Title I in the Act.

a qualified, independent appraiser selected by the independent fiduciary; (10) in the event that the Plan sells the Property to an unrelated party at a net loss (taking into account the cost of any improvements and all selling expenses paid by the Plan), the Employer will make the Plan whole, within 15 days after the date of such sale, by paying the Plan cash in an amount equal to the difference between: (a) the original acquisition cost of the Property, plus the cost of any improvements and all selling expenses, paid by the Plan, and (b) the amount of the sale proceeds received by the Plan; and (11) at all times, the fair market value of the Property will represent no more than 25 percent of the total assets of the Plan.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by first-class mail or by posting the required information at the Employer's offices within 30 days of the date of publication of the notice of pendency in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 60 days of the date of publication of this notice in the Federal Register.

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

Travelers Group Inc. 401(k) Savings Plan (the Plan), Located in New York, New York

[Exemption Application No. D-10269]

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)(1) (A) through (E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1) 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 Code³ shall not apply, as of the effective date of this

³ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

exemption: (1) to the in-kind contribution by Travelers Group Inc. (TGI) of certain options (the Stock Option or Stock Options) into the accounts in the Plan of eligible employees of TGI and its subsidiaries and affiliates (the Employees or Employee); (2) to the holding of the Stock Options by such accounts; and (3) to the exercise of such Stock Options by Employees in order to purchase shares of common stock of TGI (the Stock), provided that: (a) all Employees will be treated in the same manner for the purpose of the allocation of Stock Options to the accounts of such Employees, except that certain highly-paid officers of TGI who are subject to the reporting requirements of section 16(a) of the Securities and Exchange Act of 1934 will not be eligible to receive such contributions of Stock Options; (b) the allocation of the Stock Options to the Plan and the acquisition of such options by the accounts of Employees will occur automatically each year on a uniform basis without any action required by such Employees, and the determination of the number of Stock Options granted to the accounts of each such Employee will be based solely on the compensation earned by such Employee; (c) contributions of Stock Options by TGI to Employees' accounts in the Plan will not be contingent upon contributions by Employees to such Plan; (d) Employees acquire TGI Stock without using cash balances from the Plan or selling assets of the Plan, other than selling a portion of the TGI Stock acquired from the exercise of such Stock Options; (e) no party, other than the individual Employee with respect to his or her own account, or upon the death of such Employee, his or her beneficiary(ies), or in the event of an assignment under a qualified domestic relations order the alternative payee, will have any discretion over the decision to exercise the Stock Options held in such account; (f) the price at which the Stock Options can be exercised will be established by the market value of the TGI Stock as listed on the New York Stock Exchange (NYSE) at the close of the business day prior to the date each Stock Option is granted; (g) the terms and conditions of each of the Stock Options contributed by TGI into Employees' accounts in the Plan will be no less favorable to the Plan than terms obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties; (h) an independent trustee (the Trustee) will facilitate the sale of the Stock in connection with the exercise of the Stock Options under "sell to cover"

transactions, as described herein; (i) the Plan incurs no fees, commissions, or other charges or expenses as a result of its acquisition, holding, or exercise of the Stock Options, other than brokerage fees payable to an unrelated third party broker; and (j) the terms and conditions described herein are at all times satisfied.

EFFECTIVE DATE: This proposed exemption will be effective, as of the beginning of the 1997 plan year.⁴

Summary of Facts and Representations

1. The applicant is TGI, a Delaware corporation. TGI is a diversified financial services holding company engaged, through its subsidiaries, principally in four business segments: (a) investment services; (b) consumer finance services; (c) life insurance services; (d) property and casualty insurance services. TGI is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act. The principal subsidiaries of TGI may also be parties in interest with respect to the Plan. These subsidiaries include but are not limited to, Smith Barney Inc. (Smith Barney), Commercial Credit Company, Primerica Financial Services, Travelers Insurance Company, and Travelers/Aetna Property Casualty Corporation (TAP).

2. The Plan is sponsored and maintained by TGI for its Employees and those of its participating affiliates and subsidiaries. The Plan is an employee benefit plan qualified under section 401(a) of the Code and 401(k) of the Code and is a trust exempt from taxation under section 501(a) of the Code. The administrator of the Plan is a committee (the Plan Administration Committee) appointed by the Board of Directors of TGI.

It is represented that the proposed transactions will only affect those individuals who are actively employed by TGI and its subsidiaries and affiliates. As of April 30, 1996, it is represented that there were 60,000 active Employees of which approximately 70 percent (70%) contributed to the Plan. Further, it is represented that there are 13,265 beneficiaries and participants in the Plan who are not actively employed by TGI and its subsidiaries and affiliates.

It is represented that the Plan is invested in common stock and preferred shares issued by TGI or its subsidiaries and affiliates, fixed income contracts and certain mutual funds and collective trust funds. Several of the fixed income contracts and mutual funds are issued

⁴ It is represented that the plan year is the calendar year.

and distributed by certain subsidiaries of TGI. As of January 31, 1996, the date of the most recent Plan valuation, the approximate aggregate fair market value of the assets of the Plan was \$2,256,356,498. Of this \$2.3 billion in assets of the Plan, approximately \$600 million is invested in TGI Stock, \$45 million is invested in common stock of TAP, and \$168 million is invested in preferred shares of TGI.

3. TGI requests an exemption from the prohibitions of the Act in order to permit the contribution to the Plan of the Stock Options, the holding by the Plan of such contributed Stock Options, and the subsequent exercise of such Stock Options by eligible Employees under certain conditions which are discussed below. The Stock Options contributed to the Plan may not be sold, exchanged, assigned, or otherwise transferred. In this regard, all or a portion of the Stock Options contributed to the Plan either: (a) will be exercised by the Employees; or (b) if unexercised, will expire at the end of the option term, as discussed more fully below.

4. It is represented that Stock Options will be contributed annually into the Plan beginning in the 1997 plan year. It is represented that, in order to facilitate the proposed in-kind contribution of the Stock Options to the Plan, the Plan Administration Committee will create an account in the Plan for each Employee who is eligible to participate in the Plan and is active on the date of each grant of such Stock Options. An eligible Employee is one who had at least one (1) year of service on December 31, of the plan year prior to the year in which the Stock Options are granted, regardless of whether such Employee is otherwise participating in the Plan. However, it is represented that certain highly-paid officers who are subject to the reporting requirements of section 16(a) of the Securities and Exchange Act of 1934 will not be eligible to receive in-kind contributions of Stock Options.

5. The Stock Options will permit each Employee to purchase TGI Stock at the closing price of such Stock (the Exercise Price) on the NYSE on the business day immediately preceding the date of the grant of such Stock Option. The term of each Stock Option will be ten (10) years. In this regard, each Stock Option will expire, if it has not previously been exercised, on the tenth (10th) anniversary of the date upon which such Stock Option was granted.

6. It is anticipated that the number of shares of TGI Stock permitted to be purchased with each Stock Option contributed to an Employee's account will be based on the compensation

earned by such Employee in the plan year prior to the year in which the Stock Option is granted, regardless of whether such Employee is otherwise actively participating in the Plan. In this regard, it is anticipated that the number of shares of TGI Stock in a Stock Option contributed to an Employee's account will equal ten percent (10%) of such Employee's eligible pay, divided by the option price. For purposes of this exemption, "eligible pay" is defined as an Employee's base pay and/or commissions for the prior year, plus any bonus accrued by such Employee for the prior year, which is paid in the plan year in which the Stock Option is granted, not to include compensation in excess of \$40,000.

For example, assume an Employee is employed on December 31, 1996, and is otherwise eligible to participate in the Plan. Further, assume the price of TGI Stock on the NYSE on March 28, 1997, at the close of business is \$60. If such Employee's compensation was \$30,000, then 10 percent (10%) of such compensation would equal \$3,000. Accordingly, TGI would contribute to the Employee's account a Stock Option which would entitle that Employee upon exercise of such Stock Option to purchase fifty (50) shares of TGI Stock ($\$3,000 \div \60 per share).

7. It is represented that Stock Options will vest immediately upon issuance to the Plan, but will not be immediately exercisable. In this regard, it is represented that an Employee may exercise the Stock Options only in accordance with certain conditions. Generally, once a Stock Option has been contributed to the account of an Employee in the Plan, such Stock Option may only be exercised while such Employee is actively employed by TGI or by any of its subsidiaries or affiliates. While actively employed, an Employee can exercise a Stock Option at a rate of 20 percent (20%) a year, beginning as of the first anniversary of the grant date of such Stock Option. It is represented that an Employee can exercise eligible Stock Options at any time thereafter until the end of the ten (10) year option term, as long as he or she is employed by TGI or employed by any of TGI's subsidiaries or affiliates. In the event of an Employee's separation from service for reasons other than by disability, death, or retirement, all Stock Options which are unexercised and unexpired shall remain in the Employee's account until the *later of*: (a) the normal retirement age of 65 of the Employee; (b) the tenth (10th) anniversary of such Employee's participation in the Plan; or (c) the separation from service of the Employee

with an employer participating in the Plan; at which time the Stock Option shall be distributed upon the request of such Employee, in accordance with section 401(a)(14) of the Code.

After terminating employment with TGI or its subsidiaries or affiliates, Employees may not exercise Stock Options, except in the circumstances, as described below. In the event an Employee terminates service by reason of his or her disability, any Stock Options that have not expired and are exercisable immediately before disability shall continue to be exercisable during the period of disability, until such Stock Option expire. In the event of an involuntary termination of employment of an employee, for a period of thirty days following their involuntary termination, participants may exercise options that were exercisable immediately before they were involuntarily terminated. Upon the death of an Employee, prior to his or her termination of employment, all Stock Options that have not expired and were exercisable before such Employee's death continue to be exercisable by the beneficiary(ies) of such Employee until such Stock Options expire. However, the Stock Options will not continue to accrue exercisability after death. In the event an Employee retires at the age of 55 with 5 years of service, all Stock Options that have not expired shall remain exercisable in accordance with the exercisability percentage achieved at the termination of service for a period of three (3) years, or until such Stock Options expire, whichever is shorter. In the event an Employee terminates service on or after attaining normal retirement age of 65 or terminates service after attaining age 59½ with ten (10) of service, all Stock Options that have not expired will continue to accrue exercisability and can be exercised by such Employee for a period of four (4) years or until such Stock Options expire, whichever is shorter.

8. TGI believes that Employees will have the opportunity to exercise eligible Stock Options on a daily basis, where all exercise elections are received before a set time each day. However, should the requirements imposed by the recordkeeper of the Plan prevent the daily exercise of the Stock Options, then it is represented that the frequency of the Employee's ability to exercise Stock Options will be limited to a period of not more often than weekly and not less often than monthly.

9. It is represented that the Employee's decision to exercise a Stock Option will be carried out in the following manner. TGI will designate an

agent to receive the exercise instructions from Employees. In this regard, TGI anticipates that the recordkeeper for the Stock Options will serve as its agent for this purpose. In order to exercise a Stock Option, the Employee will contact the recordkeeper for the Stock Options. Upon receipt of election requests from Employees, it is represented that the recordkeeper intends to aggregate all exercise requests.

It is represented that if an Employee contacts the recordkeeper by the recordkeeper's deadline for aggregation, the entire transaction from exercise request to settlement and receipt of the Stock by the Plan, will require three (3) business days from such deadline. However, if an Employee with an election request contacts the recordkeeper after the recordkeeper's deadline for aggregation, it is represented that the entire process will require, respectively, one (1), five (5), or twenty (20) additional business day(s) for completion, depending on whether the recordkeeper for the Plan establishes a daily, weekly, or monthly deadline for aggregation.

10. After aggregating the Employees' requests to exercise Stock Options, the recordkeeper will contact the Trustee to arrange for the exercise of such Stock Options. Typically, when an option holder exercises his or her right under an option to purchase shares of stock, he or she must pay in cash the exercise price, as set forth in such option. However, if this exemption is granted, Employees will only be allowed to exercise contributed Stock Options through a cashless form of exercise known as a "sell to cover" transaction and may not use any other funds to exercise the Stock Options. Therefore, no other assets that are in the accounts of Employees prior to the "sell to cover" transactions will be used to exercise the Stock Options. In this regard, a "sell to cover" transaction would permit any Employee who decides to exercise one of the Stock Options contributed by TGI to his or her account to authorize the Trustee of the Plan to sell the appropriate number of shares received upon the exercise of such Stock Option in order to obtain cash to pay the Exercise Price to TGI. In this regard, the shares of Stock necessary to be sold to pay for the exercise of Stock Options would be sold on the open market. TGI would receive payment equal to the Exercise Price for the shares of such Stock, and the Plan would receive from TGI the incremental shares of Stock representing the gain realized from the exercise of the Stock Option. In this regard, it is represented that TGI is the source of the Stock transferred to the

Plan as a result of the exercise of a Stock Option, and that such Stock will be either treasury stock or previously unissued stock of TGI.

For example, suppose an Employee has a Stock Option to purchase 100 shares of Stock from TGI at \$60 per share, and the current market price for such Stock is \$75 per share. A "sell to cover" transaction would involve the Employee's exercise of such Stock Option for an Exercise Price of \$6,000 (100 shares times \$60 per share). To cover this Exercise Price, the Employee would authorize the Trustee to sell on the market eighty (80) of the 100 shares of Stock which were acquired by the Employee from TGI through the exercise of the Stock Option at the current market price of \$75 per share (\$6,000 ÷ \$75). TGI would receive cash in the amount of \$6,000 (80 shares times \$75 per share), and the Employee's account in the Plan would retain twenty (20) of the 100 shares of Stock acquired from TGI through the exercise of such Stock Option (100 shares minus 80 shares).

11. It is represented that all sales of Stock in connection with "sell to cover" transactions will be executed through a broker either on the NYSE or other nationally recognized exchange on which shares of TGI Stock are traded. In this regard, it is represented that the exclusive purpose of the broker in the "sell to cover" transactions will be to effect sales of the appropriate number of shares of the Stock in order to obtain the Exercise Price in connection with the exercise of Stock Options by the Plan.

It is represented that Smith Barney, a related broker, may be selected by TGI to provide brokerage services to the Plan in connection with the exercise of Stock Options and the sale of Stock to cover the Exercise Price. If brokerage services are provided to the Plan by Smith Barney or other related brokers, it is represented that such brokerage services will be provided without the receipt of commissions, fees, or other compensation by Smith Barney or such related brokers.⁵

In the event that Smith Barney is not chosen by TGI to effect sales of TGI Stock in connection with the exercise of

⁵ TGI maintains that the statutory exemption, pursuant to section 408(b)(2) of the Act, is available to provide exemptive relief for the provision of brokerage services to the Plan by Smith Barney or other related brokers, where Smith Barney or such related brokers do not receive commissions, fees, or other compensation for such services. The Department is offering no view, herein, as to whether the provision of brokerage services to the Plan by Smith Barney or other related brokers, as described, is covered by the statutory exemption provided in section 408(b)(2), nor is the Department providing any relief herein with respect to such brokerage services.

Stock Options by the Plan and the sale of Stock to cover the Exercise Price, it is represented that TGI will authorize the Trustee of the Plan to select a broker, either related or unrelated, to execute such sales of Stock. Once such authorization is given to the Trustee by TGI with respect to a particular "sell to cover" transaction, such authorization will be irrevocable. In this regard, it is represented that under no circumstances will TGI or its subsidiaries and affiliates have the ability to direct the Trustee's selection of which broker will receive the brokerage business of the Plan.

If brokerage services are provided to the Plan by an independent, unrelated broker, it is represented that the Plan will incur expenses for the commission due to such broker. It is further represented that brokerage commissions associated with such execution will be deducted from the gross proceeds of the trade. In this regard, the amount of commission expense incurred will depend on the number of shares of Stock involved in a "sell to cover" transaction, as negotiated between such independent, unrelated broker and the Trustee.

12. It is represented that the shares of TGI Stock realized by an Employee through the exercise of the Stock Options in his or her individual account in the Plan will be tradable at the direction of such Employee and will not be subject to any restriction on the length of time such shares of TGI Stock must be held before such shares are sold and the proceeds invested in an alternative investment choice within the Plan. In this regard, it is represented that at least monthly Employees will have an opportunity to sell Stock acquired through the exercise of the Stock Options in accordance with the terms of the Plan.

13. TGI believes that the transactions which are the subject of this proposed exemption may be prohibited, pursuant to sections 406(a)(1) (A) through (E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1) of the Act and section 4975(c)(1) (A) through (E) of the Code, and, accordingly, requests exemptive relief. In this regard, TGI believes that its contribution of Stock Options to the Plan and the holding of the Stock Options by the Plan may constitute violations of section 407(a)(1), section 406(a)(1)(E), and section 406(a)(2) of the Act, because the definition of a "qualifying employer security," as set forth in section 407(a) of the Act, includes stock, but does not include stock options or other stock rights. In addition, because TGI may be a fiduciary with respect to the Plan, TGI

believes that the exercise of the Stock Options contributed to the Plan and the concurrent transfer of cash to TGI to pay for the exercise of such Stock Options may violate section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code, for which relief is requested. With respect to section 406(b)(2) of the Act, TGI does not believe that there is a potential for conflicts of interest to occur with respect to the proposed transactions, as the exercise of the Stock Options will be transacted only at the direction of Employees and the necessary sales of TGI Stock to cover the Exercise Price will occur on the open market. Nevertheless, TGI requests relief from the prohibitions imposed by section 406(b)(2) of the Act, in the event it is determined that a transaction may occur with a party whose interests are adverse to the interests of the Plan and of its participants and beneficiaries.

14. TGI maintains that the proposed transactions are in the interest of the Plan and its participants and beneficiaries in that the contribution of the Stock Options will enhance the value of the assets of the Plan. Further, it is represented that the exercise of the Stock Options by the accounts of Employees in the Plan offers an opportunity for economic gain in that the Employees could exercise the Stock Options and purchase Stock from TGI at favorable prices. In this regard, it is represented that during the past nine (9) years TGI Stock has appreciated at a compounded annual rate of nearly 23 percent (23%), excluding dividends.

TGI believes that ownership of TGI Stock by Employees is desirable. In this regard, it is represented that the proposed transactions facilitate the acquisition of TGI Stock into the accounts of lower paid Employees who otherwise would not have the resources to buy such Stock. In addition, Employees acquire TGI Stock without using cash balances in the Plan or the sale of assets of the Plan, other than the sale of the Stock acquired from the exercise of the Stock Options. Further, in the opinion of TGI the "leveraging" effect of the Stock Options, is such that increases in the price of the Stock would create larger increases in the values of the accounts of Employees' than the current match formulas used by TGI in other programs that provide opportunities for Employees to own shares of TGI Stock. In addition, the proposed transactions would encourage long term retirement savings and would permit an Employee to defer paying taxes on the appreciation of the value of the Stock, thus, increasing his or her retirement savings.

15. It is represented that the exemption is protective of the rights of participants and beneficiaries. In this regard, the timing of the decision to exercise the Stock Options is at the discretion of the Employee into whose account such Stock Options have been contributed or is at the discretion of such Employee's beneficiary(ies) or alternative payee, and is only subject to the restrictions on exercisability imposed by TGI, the issuer.

It is further represented that the price at which the Stock Options are exercised will be based on an objective third party source. In this regard, the Exercise Price for the Stock Options will be established by using the closing price for TGI Stock from the NYSE on the business day prior to the grant of such Stock Option. All transactions with respect to the exercise of the Stock Options and the subsequent sale of the TGI Stock realized from such exercise will be executed through the NYSE or other nationally recognized stock exchange.

TGI maintains that additional protection for the Plan and its participants is provided by the appointment of an independent qualified party to be responsible for certain aspects of the proposed transactions. In this regard, as of December 31, 1994, TGI retained Citibank, N.A., an independent party, to serve as the Trustee for the Plan. It is represented that the Trustee's role with respect to the proposed transactions will be to facilitate the sale of shares of Stock in "sell to cover" transactions in connection with the exercise of the Stock Options. In this regard, it is represented that the Trustee will be responsible for selecting and retaining a broker to execute such transactions, unless Smith Barney, a related broker, is selected by TGI to provide brokerage services for the "sell to cover" transactions.

16. TGI maintains that the proposed transactions are administratively feasible in that the level of monitoring required of the Department with respect to this exemption will be minimal. In addition, TGI will bear all of the costs of the exemption application, and TGI will be responsible for the costs associated with notifying interested persons.

17. In summary, TGI represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) All Employees will be treated in the same manner for the purpose of the allocation of Stock Options to the accounts of such Employees, except that certain highly-paid officers will not be eligible to

receive such contribution of Stock Options; (b) lower paid Employees of TGI and its subsidiaries and affiliates will be able to take advantage of the opportunity to acquire TGI Stock; (c) contribution of Stock Options by TGI to the accounts of Employees in the Plan will not be contingent on contributions by Employees to such Plan; (d) the allocation of the Stock Options to the Plan and the acquisition of such options by the accounts of Employees will occur automatically each year on a uniform basis without any action required by such Employees, and the determination of the number of Stock Options granted to the accounts of each Employee will be based solely on the compensation earned by such Employee; (e) Employees will acquire TGI Stock without using cash balances from the Plan or the proceeds from the sale of assets of the Plan, other than the TGI Stock acquired from the exercise of the Stock Options; (f) the contribution of the Stock Options will enhance the value of the assets in the accounts of Employees in the Plan; (g) no party, other than the individual Employee with respect to his or her own account, or upon the death of such Employee his or her beneficiary or in the event of an assignment under a qualified domestic relations order the alternative payee, will have any discretion over the decision to exercise the Stock Options held in such account; (h) the price at which the Stock Options can be exercised will be established by the market value of the TGI Stock as listed on NYSE at the close of business on the day prior to the date each Stock Option is granted; (i) the terms and conditions of each of the Stock Options contributed by TGI into Employees' accounts in the Plan will be no less favorable to the Plan than terms obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties; (j) the Trustee will facilitate the purchase and sale of the Stock in connection with the exercise of the Stock Options under "sell to cover" transaction, as described herein; (k) the Plan will incur no fees, commissions, or other charges or expenses as a result of its acquisition, holding, or exercise of the Stock Options, other than brokerage fees payable to the unrelated third party broker; (l) shares of TGI Stock realized by an Employee through the exercise of the Stock Options in his or her individual account in the Plan will be tradable at the direction of such Employee at least monthly and will not be subject to any restriction on the length of time such shares can be held before being sold and the proceeds

invested in alternative investment choices in the Plan; and (m) the terms and conditions described herein will at all times be satisfied.

Notice to Interested Persons

It is represented that the proposed transactions would affect only participants in the Plan who are actively employed by TGI and its subsidiaries and affiliates. Accordingly, all employees of TGI and its subsidiaries and affiliates may be considered interested persons. TGI represents that all interested persons will be provided with a copy of the Notice of Proposed Exemption (the Notice), plus a copy of the supplemental statement (Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2) within fifteen (15) calendar days of publication of the Notice in the Federal Register. Notification will be provided to all interested persons by posting at all worksites a copy of the Notice, plus a copy of the Supplemental Statement at those locations within the principal places of employment of employees of TGI which are customarily used for notices regarding labor-management matters for review.

It is further represented that if the exemption is granted, TGI, will, upon request, make available to all interested persons a copy of the final exemption.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

Consolidated Lumber Corp., Pension Plan (the Plan), Located in Clifton, New Jersey

[Application No. D-10344]

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) and 406(b) (1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 (c)(1) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale for cash (the Sale) by the Plan to Consolidated Lumber Corp. (the Employer), the sponsor of the Plan, of certain whole life insurance policies (the Policies) issued by Confederation Life Insurance Company of Canada (Confederation); provided the following conditions are satisfied: (A) All terms and conditions of the Sale are at least as

favorable to the Plan as those which the Plan could obtain in arm's-length transactions with unrelated parties; (B) The Plan receives cash consideration from each Sale that is no less than the greater of (1) the fair market value of each of the Policies as of the date of the Sale, or (2) each of the Policies' net cash surrender value as of the date of the Sale; and (C) the Plan does not incur any expenses or suffer any losses with respect to the proposed transactions.

Summary of Facts and Representations

1. The Employer, a New Jersey corporation, is in the business of wholesale distribution of lumber and millwork products in the greater metropolitan area of New York, New York. Messrs. Jess Shirvan, Mark Shirvan, and Neil Shirvan each own 22.61 percent of the Employer and the remaining 32.17 percent of the Employer is owned by Mr. Stanley Shirvan.

The Plan was established by the Employer as of January 1, 1968. As of December 31, 1990, Consolidated Pine, Inc., an Oregon corporation, also became a sponsor of the Plan; and as of April 16, 1993, Consolidated Distribution, Inc., a New Jersey corporation became a sponsor of the Plan.⁶

The Plan is a defined benefit pension plan with 32 participants and total assets of approximately \$218,551.44, as of December 16, 1996. The trustee of the Plan is the First Fidelity Bank, N.A., New Jersey located at Newark, New Jersey. The Boards of Directors of the three sponsoring employers of the Plan have investment discretion over the assets of the Plan and the trustee of the Plan expedites the instructions of the Directors of the sponsoring employers.⁷

2. The Plan, which provided for the investment of Plan assets in whole life insurance policies (the Policies), holds 32 Policies issued by Confederation. The purchasing of Policies by the Plan was discontinued as of December 31, 1990, and all existing Policies remain in the Plan. Each Policy provides for death benefits and an investment feature in the form of its cash surrender value.

On August 11, 1994, the Canadian insurance regulatory authorities placed Confederation in receivership. On August 12, 1994, the assets of

⁶ Consolidated Pine, Inc. is wholly owned by Mr. Stanley Shirvan. Five percent of Consolidated Distribution, Inc. is owned by Mr. Stanley Shirvan and Messrs. Neil Shirvan, Jess Shirvan, and Mark Shirvan, each own 31.667 percent.

⁷ Mr. Stanley Shirvan is the sole director of the sponsoring employers of the Plan. He is also a shareholder and president of the sponsoring employers.

Confederation in the United States were placed under the regulatory supervision of the insurance authorities of the State of Michigan. Rehabilitation proceedings (Proceedings) were instituted by Michigan in order to protect the interest of all policy owners in the United States, resulting in all Confederation Policies being subject to restrictions which prohibit access to the cash surrender value of the Policies. As a result of the restrictions imposed on Confederation, the Plan is unable to surrender the Policies to Confederation for their cash surrender value and make final distributions to Plan participants.

On August 10, 1995, the Plan notified its participants that the Plan was to terminate as of October 15, 1995. Filings were made on February 8, 1996, for approval of termination of the Plan with the Pension Benefit Guaranty Corporation (PBGC) and the Internal Revenue Service (IRS). The PBGC has a mandatory 60 day review period which expired April 9, 1996, and thereafter the Plan is required to make final distribution of its assets within 180 days unless an extension is obtained from the PBGC. The applicant represents that an extension of an additional six months until April 7, 1997, for final distribution of assets was obtained by the Plan from PBGC. The IRS issued an approval of termination of the Plan as of April 9, 1996.

3. Premium payments on Policies were discontinued by the Plan, causing the decline in cash surrender values of the Policies as charges are debited against the cash surrender values. As of November 7, 1996, the 32 Policies involved in the proposed Sale had a cash surrender value of \$103,485.10 less the debits of \$23,017.66 leaving a net cash value of \$80,467.44.

The Employer proposes to purchase the 32 Policies for not less than the greater of their fair market value on the date of the Sale, or for their net cash surrender value on the date of the Sale.

The Employer proposes this Sale because the Plan is unable to determine when or to what extent it will be able to have access to the net cash surrender values of the Policies under the Michigan Proceedings. As stated above, the Employer and the affiliated corporations that sponsor the Plan are in the process of terminating the Plan and distributing the participants accrued benefits. In order to accomplish this termination and distribution the Plan needs to liquidate the Policies. Therefore the Employer is requesting the proposed exemption in order to liquidate the Policies as soon as possible. The Employer represents that the proposed transactions are necessary

in order for the participants to avoid any risk associated with the Plan continuing to hold the Policies. The applicant represents that the Employer will bear all expenses which may be incurred with respect to the Sale or the proposed exemption.

4. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Plan will not incur any expenses with respect to the proposed transaction; (b) the Plan will receive on the date of Sale the greater of either the net cash surrender value or the fair market value of the Policies, and (c) the proposed transaction will enable the Plan to avoid the possible losses associated with the continued holding of the Policies.

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

The Chase Manhattan Bank, N.A. (Chase), Located in New York, New York

[Application No. D-10348]

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 Chase, as the representative of lenders (the Lenders) participating in a credit facility, of security interests in limited partnership interests in LF Strategic Real Estate Investors, L.P. (the Partnership) owned by certain employee benefit plans (the Plans) with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by Chase in lieu of the Partnership's general partner; 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; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of Chase are made by a fiduciary which is not included among, and is independent of, the Lenders and Chase.

Summary of Facts and Representations

1. The Partnership is a limited partnership the general partner of which is LF Strategic Realty Investors L.L.C. (the General Partner). The General Partner is a New York limited liability company, and all outstanding membership interests in the General Partner are owned by Lazard Freres and Company, L.L.C. (Lazard) or its affiliates; the managers of the General Partner are individuals employed by the General Partner. The General Partner (or an affiliate) will contribute not less than \$20,000,000 to the Partnership. The Partnership has been created specifically to invest in a select portfolio of leading real estate companies (the Selected Companies) which are diversified as to property type and geographic location, and which have established track records, experienced management, and large portfolios of high quality real estate assets. The Partnership will have a maximum term of 10 years, but it is intended that each real estate investment (an Investment) will be liquidated within five to seven years.

2. The General Partner intends to raise a maximum of \$650,000,000 of subscriptions for limited partnership interests. The minimum capital commitment (or subscription amount) for each investor in the Partnership (an Investor) is \$25,000,000. Capital committed by an Investor pursuant to a subscription agreement (the Subscription Agreement) will be called (a Called Contribution) by the General Partner from time to time as needed to be invested in Investments. Investors will be obligated to fund their subscription amounts pursuant to calls during a three-year period; the General Partner may extend this period for an additional year, but at the end of the period, the subscription agreements will be terminated and no further capital calls may be made thereunder. There are currently 10 Investors having irrevocable, unconditional capital commitments of at least \$645,000,000.

3. It is contemplated that the General Partner will incur indebtedness to pay the Partnership's general costs and expenses incurred in connection with many of its investments. In addition, the Partnership may utilize borrowings from third parties (a) for the acquisition of particular investments and for working capital purposes (with the expectation that such acquisition indebtedness will be repaid from the Investors' capital commitments and/or from mortgage debt), and (b) financing and/or credit enhancement in connection with proposed Investments, including

providing financing to or on behalf of Selected Companies. This indebtedness will take the form of a credit facility (the Credit Facility) secured by a pledge and assignment of each Investor's capital commitments and by a security in the Investors' Partnership interests. This type of facility will allow the General Partner 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. In connection with this Credit Facility, each of the Investors is required to execute documents customarily required in secured financings, including an agreement to unconditionally honor capital calls.

4. Chase will become agent for a group of Lenders providing the Credit Facility to the Partnership. Chase will also be a participating Lender. Repayments will be made generally by the Partnership from Called Contributions, the Investors' capital commitments, proceeds from mortgage financings and proceeds from liquidation of the Partnership's Investments. The Credit Facility is intended to be a 32-month revolving credit with restricted availability levels. The Partnership 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. All such loans and letters of credit will be issued to the Partnership or an entity in which the Partnership owns an interest (a Qualified Borrower), and not to any individual Investor. All payments of principal and interest made by the Partnership 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 three times the maximum amount of the credit available under the Credit Facility.

5. The stated maturity date for the Credit Facility will be September 30, 1998. Until that time, interest only is payable on the Facility. At the maturity date, the entire unpaid principal balance of the Credit Facility will be due and payable, unless the Credit Facility is extended. The Credit Facility will be a limited recourse obligation of the Partnership, the repayment of which is secured primarily by the assignment by the Partnership of a security interest in both the Investors' capital commitments and the General Partner's right to make capital calls. The capital commitments are fully recourse to all the Investors and the General Partner.

The General Partner's right to make capital calls will be assigned by the Partnership and General Partner to Chase, as agent under the Credit Facility for the benefit of the Lenders. In the event of default under the Credit Facility, the agent has the right to unilaterally make capital calls on the Investors to pay their unfunded capital commitments, and will apply cash received from such capital calls to any outstanding debt.

6. Under the Credit Facility, it is contemplated that each Investor will execute a security agreement (the Security Agreement) pursuant to which it grants to Chase, for the benefit of each Lender, a security interest and a lien in its Partnership interest. In addition, each Investor will covenant with Chase for the benefit of the Lenders that such Investor will unconditionally honor any capital call made by Chase in accordance with the Subscription Agreement up to the unfunded capital commitment of such Investor.

7. The trusts which hold assets of the Plans (the Trusts) own limited partnership interests as Limited Partners in the Partnership. Some of the Lenders may be parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Plans with respect to Trust assets other than the Partnership interests. Chase is requesting an exemption to permit the Trusts to enter into the Security Agreements under the terms and conditions described herein. The Plans and the other Limited Partners with the largest interests in the Partnership and the extent of their respective capital commitments to the Partnership are described as follows:

(a) *Alcoa Master Trust*. The Alcoa Master Trust holds the assets of 13 defined benefit plans (the Alcoa Plans). The total number of participants is approximately 33,000, and the approximate fair market value of the total assets of the Alcoa Plans held in the Master Trust as of December 31, 1995 is \$3.6 billion. The fiduciary of the Alcoa Plans generally responsible for investment decisions is the Benefit Investment Committee, which is responsible for reviewing and authorizing the investment in the Partnership to which this proposed exemption relates. The Alcoa Master Trust has made a capital commitment of \$25 million to the Partnership.

(b) *Polaroid Pension Trust*. The Polaroid Pension Trust holds the assets of the Polaroid Pension Plan, a defined benefit plan with 13,775 participants and assets of approximately \$760 million. The fiduciary of the Polaroid

Pension Trust responsible for reviewing and authorizing the investment in the Partnership to which this proposed exemption relates is Polaroid Fund Manager. The Polaroid Pension Trust has undertaken a \$25 million capital commitment to the Partnership.

(c) *NYNEX Master Pension Trust*. The NYNEX Master Pension Trust holds the assets of the NYNEX Pension Plan and the NYNEX Management Pension Plan, both defined benefit plans. As of December 31, 1994, the NYNEX Pension Plan had 97,498 participants and approximately \$6.6 billion in total assets. The NYNEX Management Pension Plan had 49,880 participants and approximately \$7 billion in assets as of December 31, 1994. The fiduciary of the NYNEX Master Pension Trust generally responsible for investment decisions is Mr. Frederick V. Salerno, (Chief Financial Officer/Business Development of NYNEX Corporation). Mr. Salerno is the fiduciary responsible for reviewing and authorizing the investment in the Partnership to which this proposed exemption relates. The NYNEX Master Pension Trust has undertaken a \$25 million capital commitment to the Partnership.

(d) *General Motors*. General Motors Corporation has established the Third Plaza Trust (the TP Trust) of which Mellon Bank, N.A. is the trustee, and the Fourth Plaza Trust (the FP Trust), of which Mellon Bank, N.A. is also the trustee, to hold, manage and invest funds for various Plans (the GM Plans). The GM Plans are as follows:

(1) The General Motors Hourly Plan (the GM Hourly Plan), a defined benefit plan with 609,669 participants as of September 30, 1995, and assets with a total value of approximately 37.8 billion dollars on that date. Assets of the GM Hourly Plan are held in the TP Trust. Assets of the Saturn Individual Retirement Plan for Represented Team Members (a defined benefit plan with 7,138 participants as of September 30, 1995), the Saturn Personal Choices Retirement Plan for Non-Represented Team Members (a defined benefit plan with 1,977 participants as of September 30, 1995), the Employees' Retirement Plan for GMAC Mortgage Corporation (a defined benefit plan with 3,106 participants as of December 31, 1995), the National Car Rental System Inc. Hourly Paid Employees Pension Plan (a defined benefit plan with 3,106 participants as of December 31, 1994) and the National Car Rental System Inc. Salaried Employees Pension Plan (a defined benefit plan with 1,439 participants as of December 31, 1994) are also held in the TP Trust. The TP

Trust has undertaken a \$75 million commitment to the Partnership.

(2) The General Motors Retirement Program for Salaried Employees (the Salaried Plan), a defined benefit pension plan with 218,299 participants as of September 30, 1995, and assets with a total value of approximately 21.7 billion dollars as of that date. Assets of the GM Salaried Plan are held in the FP Trust. The FP Trust has undertaken a total capital commitment of \$75,000,000 to the Partnership.

The fiduciary responsible for authorizing and overseeing the GM Plans' investment in the Partnership and, subsequently, for monitoring such investment, is the General Motors Investment Management Corporation (GMIMC). GMIMC is a separately incorporated, wholly owned subsidiary of General Motors Corporation.

(e) The applicant represents that as of the date of the filing of its application for the exemption proposed herein, the only Plans which are Investors are described in paragraphs (a) through (d) above, or are eligible for relief under Prohibited Transaction Exemption 96-23 (PTE 96-23, 61 FR 15975, April 10, 1996), the class exemption for transactions determined by in-house asset managers.⁸ The applicant represents that it is possible that one or more other Plans may become Investors at some time in the future, and requests relief for any such Plan under the exemption proposed herein, provided the Plan meets the standards and conditions set forth herein.

8. Investors which are not ERISA-covered plans:

(a) California State Teachers Retirement System, which has undertaken a total capital commitment of \$150,000,000;

(b) Commonwealth of Pennsylvania Public School Employees' Retirement System, which has undertaken a total capital commitment of \$150,000,000;

(c) New York State Common Retirement Fund, which has undertaken a total capital commitment of \$50,000,000;

(d) Public Employees' Retirement Association of Colorado, which has undertaken a total capital commitment of \$50,000,000; and

(e) Lazard Freres Real Estate Investors, which has undertaken a total capital commitment of \$20,000,000.

9. Chase represents that the Partnership has obtained an opinion of counsel that the Partnership will constitute a "venture capital operating

⁸The Department expresses no opinion herein with respect to the applicability of PTE 96-23 to any such Plans.

company" under the Department's plan asset regulations [29 CFR 2510.3-101(c)] if the Partnership is operated in accordance with the Subscription Agreement and the private placement memorandum distributed in connection with the private placement of the limited partnership interests.⁹

10. Chase represents that the Security Agreement constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships, wherein the financing institutions do not obtain security interests in the real property assets of the partnership. Chase also represents that the obligatory execution of the Security Agreement by the Investors for the benefit of the Lenders was fully disclosed in the Offering as a requisite condition of investment in the Partnership during the private placement of the limited partnership interests. Chase represents that the only direct relationship between any of the Investors and any of the Lenders is the execution of the Security Agreements. All other aspects of the transaction, including the negotiation of all terms of the Facility, are exclusively between the Lenders and the Partnership. Chase represents that the proposed executions of the Security Agreements will not affect the abilities of the Trusts to withdraw from investment and participation in the Partnership. The only Plan assets to be affected by the proposed transaction are each Plan's limited partnership interests in the Partnership and the related Plan obligations as Investors to respond to drawdowns up to the total amount of each Plan's capital commitment to the Partnership.

11. Chase represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to any Trust's investment in the Partnership and that Chase is independent of and unrelated to those fiduciaries (the Trust Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the Partnership. Each Trust Fiduciary represents independently that its authorization of Trust investment in the Partnership was free of any influence, authority or control by the Lenders. The Trust Fiduciaries represent that the Trust's investments in and capital commitments to the Partnership were made with the knowledge that each Investor would be required subsequently to grant a security interest in the Partnership to the Lenders and to

honor drawdowns made on behalf of the Lenders without recourse to any defenses against the General Partner. Each Trust Fiduciary individually represents that it is independent of and unrelated to Chase and the Lenders and that the investment by the Trust for which that Trust Fiduciary is responsible continues to constitute a favorable investment for the Plans participating in that Trust and that the execution of the Security Agreement is in the best interests and protective of the participants and beneficiaries of such Plans.

12. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' investments in the Partnership were authorized and are overseen by the Trust Fiduciaries, which are independent of the Lenders; (2) None of the Lenders have any influence, authority or control with respect to the Plans' investments in the Partnership or the Plans' executions of the Security Agreements; and (3) The Trust Fiduciaries invested in the Partnership on behalf of the Plans with the knowledge that the Security Agreements are required of all Limited Partners investing in the Partnership.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for 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 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, DC, this 24th day of December, 1996.

Ivan Strasfeld,

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

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BILLING CODE 4510-29-P

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Notice of Public Meeting

AGENCY: Border Environment Cooperation Commission (BECC).

SUMMARY: This notice announces the 11th public meeting of the BECC Board of Directors on Tuesday, February 11, 1997, from 9:00 am-1:00 pm, at the Camino Real Hotel, located at 101 S. El Paso St., in downtown El Paso, Texas.

FOR FURTHER INFORMATION CONTACT: M.R. Ybarra, Secretary, United States Section, International Boundary and Water Commission, telephone: (915) 534-6698; or Tracy Williams, Public Outreach Coordinator, Border Environment Cooperation Commission, P.O. Box 221648, El Paso, Texas 79913, telephone: (011-52-16) 29-23-95; fax: (011-52-16) 29-23-97; e-mail: becc@cocef.interjuarez.com.

SUPPLEMENTARY INFORMATION: The U.S. Section, International Boundary and

⁹The Department expresses no opinion herein as to whether the Partnership will constitute a venture capital operating company under the regulations at 29 CFR 2510.3-101.