

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 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 9th day of January, 1997.

Ivan Strasfeld,

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

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**[Prohibited Transaction Exemption 97-01;  
Exemption Application No. D-10143, et al.]**

**Grant of Individual Exemptions; Univar Corporation UniSaver Tax**

**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.

Univar Corporation UniSaver Tax Savings Investment Plan (the Plan) Located In Kirkland, Washington

[Prohibited Transaction Exemption 97-01; Exemption Application No. D-10143]

**Exemption**

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 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the

extension of credit in the form of guarantees and loans of funds (the Loans), not to exceed \$1,466,785.38, to the Plan by Univar Corporation (the Employer), the sponsor of the Plan, or its successors, with respect to Guaranteed Investment Contract No. 62127 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the repayment of the Loans by the Plan to the Employer, or its successors, provided the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those the Plan could receive in arm's length transactions with unrelated parties; (b) No interest payments or other expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Loans will be made from proceeds realized from the GIC (the GIC Proceeds) as paid to the Plan by Confederation, its successors, or any other third party, and made only if the repayments do not interfere with the liquidity needs of the Plan for payment of benefits, transfers of investments, hardship withdrawals, or loans as determined by BZW Barclays Global Investors, N.A., the Plan trustee; (d) Repayment of the Loans will be waived by the Employer and its successors to the extent the Loans exceed the GIC Proceeds; and (e) All unpaid principal and interest that was due under the GIC on August 12, 1994, minus any Loans from the Employer and its successors, and/or payments received under the GIC after August 12, 1994, will be completely paid by January 1, 2000, by a Loan to the Plan from the Employer or its successors.

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 57467.

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

Wayne Obstetrical Group, P.A. Money Purchase Retirement Plan (the Wayne Plan); Pediatric Professional Associates, P.A. Profit Sharing Plan (the Pediatric Plan); Physicians for Women, P.A. Profit-Sharing Plan and Trust (the Physicians Plan; collectively, the Plans) Located in Wayne, New Jersey

[Prohibited Transaction Exemption 97-02; Exemption Application Nos. D-10262, D-10263, and D-10264]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the

sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loans totalling \$530,000 by the Plans to S & D Associates (S & D), provided that the following conditions are satisfied:

(a) The terms and conditions of the loans are at least as favorable to the Plans as those the Plans could obtain in comparable arm's length transactions with unrelated parties;

(b) At all times, the loans are secured by a first mortgage on certain real property (the Property), which is duly recorded under New Jersey State law;

(c) At all times, the fair market value of the Property, as established by a qualified, independent appraiser, equals at least 150% of the total outstanding balances of the loans;

(d) At all times, no more than 25% of the assets of each lending Plan are invested in the loans;

(e) A qualified, independent fiduciary has determined that the loans are in the best interests of the Plans; and

(f) At all times, the independent fiduciary enforces compliance with the terms and conditions of the loans and of the exemption, including foreclosure on the Property in the event of default.

**EFFECTIVE DATE:** The exemption is effective as of January 1, 1997.

In response to a comment from the applicants, the Department has agreed to modify the Summary of Facts and Representations (the Summary) in the notice of proposed exemption to reflect a modification to the terms of the loans. Accordingly, on page 55323 of such notice, the first subparagraph in Paragraph 4 of the Summary should be corrected to read as follows:

The loans, as evidenced by promissory notes, will each provide for a term of 15 years and a fixed interest rate of 11 percent per annum for the first 10 years. Thereafter, the interest rate will become adjustable annually, based upon the greater of: (a) 11 percent, or (b) three percent above the five-year Treasury note yield as published in The Wall Street Journal, determined as of the 10th anniversary of the loans and each subsequent anniversary thereof. The promissory notes will require S & D Associates to make monthly payments of principal and interest on the loans, to be fully amortized over the 15-year term. The Plans will pay no fees nor other expenses relating to the loans.

A "Supplemental Statement" describing the modified loan terms was provided to interested persons, along with a copy of the notice of proposed exemption as published in the Federal Register. Due to a delay in providing notice to interested persons, the comment period was extended until December 26, 1996.

In addition, the applicants wished to note that the last sentence in the first

subparagraph of Paragraph of 1 of the Summary should be corrected to read as follows:

The trustees of the Wayne Plan are the four owners, above [i.e., revised to include Steven Domnitz].

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 October 25, 1996 at 61 FR 55322.

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

National Baptist Publishing Board Pension Plan (the Plan) Located in Nashville, TN

[Prohibited Transaction Exemption 97-03; Exemption Application No. D-10283]

#### *Exemption*

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 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale (the Sale) of common stock of Citizens Savings Bank and Trust Company (the Stock) located in Nashville, Tennessee, by the Plan to AmeriStar Investments and Trust, a division of First American National Bank, Trustee of the Plan and party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale the greater of the following amounts: (a) the fair market value of the Stock as of the date of the Sale plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan; or (b) the total cost of the investment, \$100,000, plus interest at 6% for the period March 31, 1993 through the date the Stock is sold by the Plan.

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 October 25, 1996 at 61 FR 55324.

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

Summit Sheet Metal, Inc. Defined Benefit Pension Plan (the Plan) Located In Anaheim, California

[Prohibited Transaction Exemption 97-04; Exemption Application No. D-10330]

#### *Exemption*

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 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of certain real property (the Property) to Messrs. Milton J. Chasin, Donald E. Hanson, and Gale N. Searing, parties in interest with respect to the Plan; provided that the following conditions are satisfied: (a) The Sale is a one-time transaction for a lump sum cash payment; (b) the purchase price is the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser; and (c) the Plan will incur no commissions or any other expenses from the Sale.

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 25, 1996, at 61 FR 59914.

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

SouthTrust Securities, Inc. (ST) Located in Birmingham, Alabama

[Prohibited Transaction Exemption 97-05; Exemption Application No. D-10376]

#### *Exemption*

##### I. Transactions

A. Effective October 25, 1996, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.<sup>1</sup>

B. Effective October 25, 1996, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;  
 (ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.<sup>2</sup> For purposes of this

paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a servicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective October 25, 1996, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.<sup>3</sup>

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective October 25, 1996, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F),

(G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

## II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch Investors Service, L.P. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders

<sup>1</sup> Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

<sup>2</sup> For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as

calculated on the most recent preceding valuation date of the fund.

<sup>3</sup> In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

### III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which ST or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either—

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);<sup>4</sup>

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased

<sup>4</sup>It is the Department's view that the definition of "trust" contained in III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) ST;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with ST; or

(3) any member of an underwriting syndicate or selling group of which ST or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;  
 (3) the sponsor;  
 (4) the trustee;  
 (5) each servicer;  
 (6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

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

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) the trust holds a security interest in the lease;

(2) the trust holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "ST" means SouthTrust Securities, Inc. and its affiliates.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95-60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at 35932.

For a more complete statement of the facts and representations supporting the

Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 3, 1996 at 61 FR 64164.

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

Skana Enterprises, Inc. Defined Benefit Pension Plan (the Plan) Located in Kodiak, Alaska

[Prohibited Transaction Exemption 97-06; Exemption Application No. D-10342]

#### *Exemption*

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 loan (the Loan) of \$157,500 by the Plan to Skana Enterprises, Inc. (Skana), the Plan's sponsor and a disqualified person with respect to the Plan, and (2) the personal guarantee of the Loan by Mr. Ralph Bolton (Mr. Bolton), a disqualified person with respect to the Plan, provided the following conditions are satisfied: (a) the terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan does not exceed 25% of the assets of the Plan; (c) the Loan is secured by a first deed of trust on real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of the Loan; (d) the fair market value of the Property remains at least equal to 150% of the outstanding balance of the Loan throughout the duration of the Loan; (e) the Plan's independent fiduciary has determined that the Loan is appropriate for, in the best interest of, and protective of the Plan; and (f) the Plan's independent fiduciary will monitor compliance with the terms of the Loan and conditions of the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Property in the event of default.<sup>5</sup>

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 25, 1996 at 61 FR 59915.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department,

<sup>5</sup> Since Mr. Bolton is the sole owner of Skana and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

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

Wayne Obstetrical Group, P.A. Money Purchase Retirement Plan (the Wayne Plan); Pediatric Professional Associates, P.A. Profit Sharing Plan (the Pediatric Plan); Physicians for Women, P.A. Profit-Sharing Plan and Trust (the Physicians Plan; collectively, the Plans) Located in Wayne, New Jersey

[Prohibited Transaction Exemption 97-07; Exemption Application Nos. D-10262, D-10263, and D-10264]

#### Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loans totalling \$530,000 by the Plans to S & D Associates (S & D), provided that the following conditions are satisfied:

(a) The terms and conditions of the loans are at least as favorable to the Plans as those the Plans could obtain in comparable arm's length transactions with unrelated parties;

(b) At all times, the loans are secured by a first mortgage on certain real property (the Property), which is duly recorded under New Jersey State law;

(c) At all times, the fair market value of the Property, as established by a qualified, independent appraiser, equals at least 150% of the total outstanding balances of the loans;

(d) At all times, no more than 25% of the assets of each lending Plan are invested in the loans;

(e) A qualified, independent fiduciary has determined that the loans are in the best interests of the Plans; and

(f) At all times, the independent fiduciary enforces compliance with the terms and conditions of the loans and of the exemption, including foreclosure on the Property in the event of default.

**EFFECTIVE DATE:** The exemption is effective as of January 1, 1997.

In response to a comment from the applicants, the Department has agreed to modify the Summary of Facts and Representations (the Summary) in the notice of proposed exemption to reflect a modification to the terms of the loans. Accordingly, on page 55323 of such notice, the first subparagraph in Paragraph 4 of the Summary should be corrected to read as follows:

The loans, as evidenced by promissory notes, will each provide for a term of 15 years and a fixed interest rate of 11 percent per annum for the first 10 years. Thereafter, the interest rate will become adjustable annually, based upon the greater of: (a) 11 percent, or (b) three percent above the five-year Treasury

note yield as published in The Wall Street Journal, determined as of the 10th anniversary of the loans and each subsequent anniversary thereof. The promissory notes will require S & D Associates to make monthly payments of principal and interest on the loans, to be fully amortized over the 15-year term. The Plans will pay no fees nor other expenses relating to the loans.

A "Supplemental Statement" describing the modified loan terms was provided to interested persons, along with a copy of the notice of proposed exemption as published in the Federal Register. Due to a delay in providing notice to interested persons, the comment period was extended until December 26, 1996.

In addition, the applicants wished to note that the last sentence in the first subparagraph of Paragraph 1 of the Summary should be corrected to read as follows:

The trustees of the Wayne Plan are the four owners, above [i.e., revised to include Steven Domnitz].

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 October 25, 1996 at 61 FR 55322.

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

#### General Information

The attention of interested persons is directed to the following:

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

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

transaction is in fact a prohibited transaction; and

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

Signed at Washington, D.C., this 9th day of January, 1997.

Ivan Strasfeld,

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

[FR Doc. 97-864 Filed 1-13-97; 8:45 am]

BILLING CODE 4510-29-P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of January 13, 20, 27 and February 3, 1997.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

#### MATTERS TO BE CONSIDERED:

Week of January 13

*Monday, January 13*

10:00 a.m.

Briefing on NRC Strategic Assessment (Public Meeting)

Contact: John Craig, 301-415-3812

11:30 a.m.

Affirmation Session (Public Meeting)

a. Direct Final Rulemaking: Privatization Act Conforming Changes and Revision to the NRC Enforcement Policy (NUREG-1600) (Tentative)

(Contact: Andrew Bates, 301-415-1963)

Week of January 20—Tentative

*Wednesday, January 22*

10:00 a.m.

Briefing on Codes and Standards (Public Meeting)

(Contact: Gil Millman, 301-415-5843)

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

Week of January 27—Tentative

*Monday, January 27*

2:30 p.m.

Briefing by DOE on Plutonium Disposition (Public Meeting)

(Contact: Vanice Perin, 301-415-8143)

*Wednesday, January 29*

10:00 a.m.

Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

(Contact: Victor McCree, 301-415-1711)

11:30 a.m.