

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitted electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* National Judicial Reporting Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NJRP-1. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* State Court authorities. The National Judicial Reporting Program (NJRP) is the only collection effort that provides an ability to maintain important statistics on felons convicted and sentenced in state courts. The NJRP enables the Bureau, Federal, State, and local correctional administrators; legislators; researchers; and planners to track change in the numbers and types of offenses and sentences felons convicted in state courts receive; as well as track changes in the demographics, conviction type, number of charges, sentence length, and time between arrest and conviction and sentencing of felons convicted in state courts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 344 respondents will take 8.1 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual burden hours are 2,786.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530, or via facsimile at (202) 514-1534.

Dated: January 21, 1999.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99-04; Exemption Application No. D-10288, et al.]

### Grant of Individual Exemptions; Salomon Smith Barney Inc, et al

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

**ACTION:** Grant of Individual Exemptions.

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

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

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

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

(a) The exemptions are administratively feasible;

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

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

Salomon Smith Barney, Inc. Located in New York, New York.

[Prohibited Transaction Exemption 99-04; Exemption Application No. D-10288]

### Exemption

#### Section I—Transactions

A. The restrictions of section 406(a)(1)(A) through (D) 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 any purchase or sale of securities between certain affiliates of Salomon Smith Barney, Inc. (SSB) which are foreign broker-dealers or banks (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, SSB, or a Foreign Affiliate, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

(2) The terms of any transaction 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; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets, and the Foreign Affiliate is a

party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to a Plan solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to the Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder, if the 1934 Act, rules, or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) 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 the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery, by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank

letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either: (a) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of applicable tax withholdings)<sup>1</sup> had it remained the record owner of such securities;

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the

borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary: (a) The most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within: (a) The customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively, such period as permitted by Prohibited Transaction Class Exemption (PTCE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded;<sup>2</sup>

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the time described in paragraph 9, the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement,

<sup>1</sup> The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not loaned the securities.

<sup>2</sup> PTCE 81-6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

and does pay, to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate.

Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1. However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of Section 404(b) of the Act, the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code.

If the Foreign Affiliate fails to comply with any condition of the exemption in the course of engaging in a securities lending transaction, the Plan fiduciary who caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

#### Section II—General Conditions

A. The Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III.B, and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a-6 (17 CFR 240.15a-6) of the 1934 Act, and Securities and Exchange Commission (S.E.C.) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

C. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding

brought in respect of the subject transactions;

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E to determine whether the conditions of the exemption have been met, except that—

(1) a party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph E; and

(2) a prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the Foreign Affiliate's control, such records are lost or destroyed prior to the end of the six year period;

E. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to in paragraph (D) unconditionally available during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) The Department, the Internal Revenue Service, or the S.E.C.; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in (2) through (5) of this subsection are authorized to examine the trade secrets of the Foreign Affiliate or commercial or financial information which is privileged or confidential.

#### Section III—Definitions

A. The term *affiliate* of another person shall include: (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, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (3) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

B. The term *Foreign Affiliate* shall mean an affiliate of Salomon Smith Barney Inc. (or its successor in name within Citigroup) that is subject to

regulation as a broker-dealer or bank by (1) the Ontario Securities Commission and the Investment Dealers Association in Canada; (2) the Securities and Futures Authority in the United Kingdom; (3) the Deutsche Bundesbank and the Federal Banking Supervisory Authority, i.e., der Bundesaufsichtsamt fuer das Kreditwesen (the BAK) in Germany; or

(4) the Ministry of Finance and the Tokyo Stock Exchange in Japan;

C. The term *security* shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term "security" does not include swap agreements or other notional principal contracts.

**EFFECTIVE DATE:** This exemption is effective as of June 7, 1996.

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 6, 1998 at 63 FR 53703.

#### Written Comments

The Department received written comments with respect to the notice of proposed exemption (the Notice), which were submitted by the applicant. The comments request certain modifications and additions to the operative language of the final exemption and to the Summary of Facts and Representations (the Summary) contained in the Notice (see 63 FR 53705). These modifications and additions are discussed below.

1. First, in order to perfect the record upon which the Notice was based, the comments provide new information regarding certain corporate mergers and restructurings that have occurred. In November, 1997, a subsidiary of the then Travelers Group Inc. (now, Citigroup Inc., as discussed below) acquired all of the shares of Salomon Inc., the ultimate parent of Salomon Brothers Inc. (Salomon Bros.). Initially, Salomon Bros. and Smith Barney Inc. (Smith Barney), an affiliate of Travelers Group Inc., were operated as separately registered broker-dealers. However, on September 1, 1998, Salomon Bros. was merged into Smith Barney, and Smith Barney became the surviving corporation and changed its name to Salomon Smith Barney Inc. On October 15, 1998, Salomon Smith Barney Inc. was merged into Pendex Real Estate Corporation, a New York corporation. The New York entity survived the merger and changed its name to Salomon Smith Barney Inc., a New York

corporation. In addition, in April of 1998, Travelers Group Inc. and Citicorp announced a proposed merger. On October 8, 1998, the merger closed, and Citicorp was merged into a subsidiary of Travelers Group Inc. Travelers Group Inc. became a bank holding company and changed its name to Citigroup Inc.

Accordingly, the applicant requests, and the Department concurs with, the following revisions to the Notice, which are reflected in this exemption.

a. All references to Salomon Brothers Inc. should be changed to Salomon Smith Barney Inc. and all references to Salomon Bros. to SSB.

b. In Paragraph 1 of the Summary, the first two full subparagraphs and the first sentence of the third subparagraph (see 63 FR 53705, column 3) should be replaced with the following:

Salomon Smith Barney Inc., a New York corporation, is an indirect subsidiary of Salomon Smith Barney Holdings Inc., a Delaware corporation, which in turn is a subsidiary of the Citigroup Inc. (formerly the Travelers Group Inc.). Salomon Smith Barney Inc. is one of the largest full-line investment service firms in the United States. It is registered with and regulated by the S.E.C. as a broker-dealer, is registered with and regulated by the Commodities Futures Trading Commission as a futures commission merchant, is a member of the New York Stock Exchange and other principal securities exchanges in the United States, and is also a member of the National Association of Securities Dealers, Inc. As of December 31, 1997, the then Travelers Group Inc. had approximately \$387 billion in assets and approximately \$21 billion in stockholders' equity.

SSB has several affiliates which are broker-dealers or banks. Those covered by the proposed exemption \* \* \* etc.

c. The references to Salomon Bros. Canada Inc., Salomon Bros. U.K. Limited, Salomon Bros. U.K. Equity Limited, Salomon Bros. International Limited, Salomon Bros. AG, and Salomon Bros. Asia should be changed to Salomon Smith Barney Canada Inc., Salomon Brothers U.K. Limited, Salomon Brothers U.K. Equity Limited, Salomon Brothers International Limited, Salomon Brothers AG, and Salomon Smith Barney (Japan) Limited, respectively.

2. Second, in consideration of the corporate mergers and restructurings that have occurred or may occur in the future involving SSB, the comments request that the Department confirm that this exemption will continue to be effective for any successor entity to SSB, provided that Citigroup remains the indirect parent corporation of such successor entity. In this regard, the Department notes that this exemption would be effective if SSB reorganized or changed its name, provided that such actions did not occur in connection

with the sale of the underlying assets of SSB to an unrelated third party. Thus, in response to this comment, the Department has modified the definition of the term "Foreign Affiliate" in Section III.B. of the exemption to clarify that such term applies to an affiliate of SSB or its successor in name within Citigroup.

3. Third, the comments request certain modifications in order to clarify that the provisions of this exemption are consistent with other recent similar exemptions granted by the Department.<sup>3</sup>

a. The comments state that Section I.A. of the Notice (see 63 FR 53703-4) should be revised to read as follows (note deleted and italicized language):

A. The restrictions of section 406(a)(1)(A) through (D) 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 any purchase or sale of securities [delete "including options on securities"] between certain affiliates of Salomon Smith Barney Inc. (SSB) which are foreign broker-dealers or banks (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, *including options written by a Plan, SSB, or a Foreign Affiliate.* \* \* \*

The revised language regarding options, above, is more specific in order to clarify that such options may be written by a Plan. In this regard, the Department cautions Plan fiduciaries to understand the risks and benefits associated with particular options strategies and to monitor such strategies effectively, in order to act prudently, as required under section 404(a) of the Act, when making investment decisions on behalf of a Plan.

b. The comments state that the following sentence should be added to the end of Section I.A., Paragraph 3 of the Notice (see 63 FR 53704, column 1):

For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to a Plan solely by reason of providing securities custodial services for a Plan.

c. The comments state that the word "any" in Section I.B., Paragraph 1 of the Notice (see 63 FR 53704, column 1) should be replaced with the word "such" so that the phrase reads "in connection with *such* extension of credit."

d. The comments state that, in order to avoid any ambiguity, Footnote 4 of the Summary (see 63 FR 53707, center column) should be modified by adding the following italicized language:

<sup>3</sup> See, e.g., Prohibited Transaction Exemption (PTE) 97-08 (62 FR 4811, January 31, 1997) regarding Morgan Stanley & Co., PTE 97-57 (62 FR 56203) regarding NatWest Securities Corp., and PTE 98-62 (63 FR 71307) regarding Barclays Bank PLC.

SSB represents that currently all such requirements *under* Rule 15a-6 relating to record-keeping of principal transactions would be applicable [delete "to"] *in respect of any Foreign Affiliate in a principal transaction that would be covered by this proposed exemption.*

The Department concurs with the applicant's requests and, where necessary, has so modified the language of this exemption.

4. Fourth, the comments request, as a matter of clarification, that the following sentence be added to the end of the first subparagraph of Paragraph 11 in Section I.C. of the Notice (see 63 FR 53705, column 1):

However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of Section 404(b) of the Act, the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code.

The Department acknowledges the above-described clarification to the Notice and has so modified the language of this exemption.

5. Fifth, the comments request certain clarifications and additions to the information contained in Paragraph 6 of the Summary (see 63 FR 53706-07), in order to conform the language of the Summary to the relevant language of S.E.C. Rule 15a-6 and to reflect certain S.E.C. interpretations or modifications to that rule, pursuant to a No-Action letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997.

a. The comments state that references to "U.S. major institutional investor" and "major institutional investor" should be changed to "major U.S. institutional investor" in order to be consistent with Rule 15a-6.

b. The comments state that a footnote should be inserted after the definition of "major U.S. institutional investor" in the third full subparagraph of Paragraph 6 of the Summary (see 63 FR 53707, column 1) which reads as follows:

Note that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by an S.E.C. No-Action letter. See No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

c. The comments state that another footnote should be inserted after the text of subparagraph (c)(5) of Paragraph 6 of the Summary (see 63 FR 53707, center column) which reads as follows:

Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g.,

clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a Foreign Affiliate. Please note that in such situations (as in the other situations covered by Rule 15a-6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a-6.

d. The comments state that the following sentence should be inserted at the end of subparagraph (c)(6) of Paragraph 6 of the Summary (see 63 FR 53707, center column):

Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

The Department acknowledges the above-described clarifications to the information included in the Summary.

6. Finally, with respect to the lending of securities by a Plan to a Foreign Affiliate, the applicant states that it wishes to avoid the necessity of amending this individual exemption each time PTCE 81-6 is further amended or superseded. Therefore, the comments request that the following phrase be added to the language at the end of Section I.C., Paragraph 9 of the Notice (see 63 FR 53704, column 3), relating to the required time for delivery of borrowed securities back to the plan:

"or, alternatively, such period as permitted by Prohibited Transaction Class Exemption (PTCE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded."

In addition, the comment states that the above phrase should be inserted after the sentence ending ". . . whichever is least" in Paragraph 18 of the Summary (see 63 FR 53708, column 3), also relating to the required time for delivery of borrowed securities back to the plan.

The Department has modified the language of this exemption to reflect the applicant's clarifications to the record, as discussed above, and also acknowledges such clarifications as they relate to the information contained in the Notice, as published in the **Federal Register** on October 6, 1998.

No other comments were received by the Department.

Accordingly, based on the information contained in the entire record, the Department has determined to grant the proposed exemption as modified herein.

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

Individual Retirement Accounts (the IRAs) for Sharilyn Brune, Richard C. Glowacki, Carl

B. Mockensturm, Arthur T. Parrish, W. Alan Robertson, David A. Snively and Duane Stranahan, Jr. (collectively, the IRA Participants) Located in Holland, OH. (Prohibited Transaction Exemption 99-05; Application Nos. D-10636—D-10642, respectively)

#### 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, effective December 1, 1998 to (1) the cash sale by the IRAs<sup>4</sup> to TTC Holdings, Inc. (TTC), the parent of The Trust Company of Toledo, N.A., the trustee of the IRAs and a disqualified person, of certain preferred stock (the Preferred Stock) issued by TTC; and (2) the arrangement for the subsequent purchase by the IRA Participants in their individual capacities, from TTC, pursuant to an agreement with TTC, of an equal number of shares of common stock (the Common Stock) issued by TTC, provided the following conditions are met:

(a) The terms and conditions of the sale and purchase transactions were at least as favorable to each IRA as the terms obtainable in an arm's length transaction with an unrelated party.

(b) The sale by the IRAs of the Preferred Stock and the purchase by the IRA Participants of the Common Stock, in their individual capacities, were one-time transactions for cash which occurred on the same business day;

(c) Each IRA received from TTC, as the sales price for the Preferred Stock, cash consideration reflecting the fair market value of such stock as determined by a qualified, independent appraiser;

(d) Each IRA Participant purchased, in his or her individual capacity, shares of the Common Stock which were equal in number to the shares of Preferred Stock sold by TTC;

(e) No IRA was required to pay any commissions, fees or other expenses in connection with each sale transaction; and

(f) An independent fiduciary determined that the transactions described herein were in the best interest and protective of the IRAs at the time of the transactions; supervised and monitored such transactions on their behalf; assured that the conditions of the proposed exemption were met; and took whatever actions were necessary and proper to protect the interests of the

<sup>4</sup>Pursuant to 29 CFR 2510.3-2(d), the IRAs are not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

IRAs, including reviewing amounts paid by TTC for the Preferred Stock.

**EFFECTIVE DATE:** This exemption is effective as of December 1, 1998.

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 16, 1998 at 63 FR 69319.

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

Individual Retirement Accounts (the IRAs) for Robert C. Hummel, Garth L. Gibson, Hugh B. Force, Ellen K. Davidson and Michael Davidson (Collectively; the Participants) Located respectively in Greeley, Colorado; Montrose, Colorado; Fort Collins, Colorado; Green River, Wyoming; and Green River, Wyoming.

(Prohibited Transaction Exemption 99-06; Exemption Application Nos. D-10683, D-10684, D-10685, D-10697 and D-10698)

#### 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, effective December 15, 1998, to the cash sales (the Sales) of certain shares of closely-held common stock of First Mountain Company (the Stock) by the IRAs<sup>5</sup> to the Participants, disqualified persons with respect to the IRAs, provided that the following conditions have been met:

1. The terms and conditions of the Sales were at least as favorable to each IRA as those obtainable in an arm's-length transaction with an unrelated party;

2. The Sale of the Stock by each IRA was a one-time transaction for cash;

3. Each IRA received the fair market of the Stock, as was established by a qualified, independent appraiser, at the time of the Sale; and

4. The IRAs did not pay any commissions, costs or other expenses in connection with the Sales.

**EFFECTIVE DATE:** The exemption is effective as of December 15, 1998.

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 16, 1998 at 63 FR 69323 (the Notice).

<sup>5</sup>Because each IRA has only one Participant, there is no jurisdiction under 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

### Written Comments

The Department received one written comment from the applicant (the Comment) with respect to the Notice and no requests for a public hearing. The Comment states that Robb and Lynne Morgan Ruyle did not consummate the transaction as outlined in the Notice. Instead, Robb and Lynne Morgan Ruyle each decided to terminate their respective IRAs, distribute the IRAs' assets to themselves, file the appropriate tax returns, and pay the penalties and taxes associated with such distributions. As such, the Applicant states that this exemption need not apply to the Robb and Lynne Morgan Ruyle IRAs.

The Department concurs and has eliminated all references to the Robb and Lynne Morgan Ruyle IRAs in this exemption.<sup>6</sup>

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

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department at (202) 219-8883. (This is not a toll-free number.)

### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do 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

<sup>6</sup>The files containing exemption requests for Robb and Lynn Morgan Ruyle were assigned numbers D-10687 and D-10686, respectively. Because the applicant requested that this exemption not apply to the Robb and Lynn Morgan Ruyle IRAs, the Department has closed these files administratively.

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, DC, this 21st day of January, 1999.

**Ivan Straszfeld,**

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

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### DEPARTMENT OF LABOR

#### Pension and Welfare Benefits Administration

[Application No. D-10468, et al.]

#### Proposed Exemptions; Wells Fargo Bank, N.A. (Wells Fargo)

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

**ACTION:** Notice of proposed exemptions.

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

#### Written Comments and Hearing Requests

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 requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request,

and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

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

#### Notice to Interested Persons

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

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

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