

NAFTA-03325T Levi Strauss & Company  
Corporate Headquarters, San Francisco,  
California 94111  
NAFTA-03325U Weston Customer  
Fulfillment Regional Office, Weston,  
Florida 33331  
NAFTA-03325V Florence Customer Service  
Center, Florence, Kentucky 41042  
NAFTA-03325W Hebron Customer Service  
Center, Hebron, Kentucky 41048  
NAFTA-03325X Canton Customer Service  
Center, Canton, Mississippi 39046  
NAFTA-03325Y Sky Harbor CSC,  
Henderson, Nevada 89012  
NAFTA-03325Z Amarillo Finishing Facility,  
Amarillo, Texas 79107.

Signed in Washington, DC this 1st day of  
February 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade  
Adjustment Assistance.*

[FR Doc. 00-7117 Filed 3-21-00; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-02447]

#### **Nocona Boot Company, Justin Boot Company/Justin Management Company, Nocona, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance**

In accordance with Section 250(A),  
Subchapter D, Chapter 2, Title II, of the  
Trade Act of 1974 (19 U.S.C. 2273), the  
Department of Labor issued a  
Certification for NAFTA Transitional  
Adjustment Assistance on June 26,  
1998, applicable to workers of Nocona  
Boot Company, Nocona, Texas. The  
notice was published in the **Federal  
Register** on July 31, 1998 (63 FR 40936).

At the request of the State agency, the  
Department reviewed the certification  
for workers of the subject firm. The  
workers are engaged in the production  
of western boots. Findings show that  
some workers separated from  
employment Nocona Boot Company had  
their wages reported under a separate  
unemployment insurance (UI) tax  
account for Justin Boot Company/Justin  
Management Company.

The intent of the Department's  
certification is to include all workers of  
Nocona Boot Company who were  
adversely affected by increased imports  
from Mexico.

Accordingly, the Department is  
amending the certification to properly  
reflect this matter.

The amended notice applicable to  
NAFTA-02447 is hereby issued as  
follows:

All workers of Nocona Boot Company,  
Justin Boot Company/Justin Management  
Company, Nocona, Texas who became totally  
or partially separated from employment on or  
after April 25, 1997 through June 26, 2000 are  
eligible to apply for NAFTA-TAA under  
Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day  
of March, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade  
Adjustment Assistance.*

[FR Doc. 00-7119 Filed 3-21-00; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-3624]

#### **Ritvik Holdings, Inc., Lakeville, MA; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade  
Act of 1974, an investigation was  
initiated on December 16, 1999, in  
response to a worker petition which was  
filed on behalf of workers at Ritvik  
Holdings, Inc., Lakeville, Massachusetts.

The Corporation for Business, Work,  
and Learning (CBWL Trade Unit) of  
Boston, Massachusetts has determined  
that the subject firm is a Canadian  
corporation, located in Canada and  
doing business in Canada, and therefore  
its workers are not eligible for NAFTA  
Transitional Adjustment Assistance  
under the Trade Act of 1974.

Consequently further investigation in  
this case would serve no purpose, and  
the investigation has been terminated.

Signed in Washington, D.C. this 14th day  
of March, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade  
Adjustment Assistance.*

[FR Doc. 00-7122 Filed 3-21-00; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-02821]

#### **Tony Lama Boot Company, Justin Boot Company, Justin Management Company, El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance**

In accordance with Section 250(A),  
Subchapter D, Chapter 2, title II, of the  
Trade Act of 1974 (19 U.S.C. 2273), the  
Department of Labor issued a

Certification for NAFTA Transitional  
Adjustment Assistance on March 11,  
1999, applicable to all workers of Tony  
Lama Boot Company located in El Paso,  
Texas. The notice was published in the  
**Federal Register** on April 27, 1999 (64  
FR 22649).

At the request of the State agency, the  
Department reviewed the certification  
for workers of the subject firm. The  
workers are engaged in the production  
of boots. New information shows that  
some workers separated from  
employment at Tony Lama Boot  
Company had their wages reported  
under a separate unemployment  
insurance (UI) tax account for Justin  
Boot Company, Justin Management  
Company.

Based on these findings, the  
Department is amending the  
certification to properly reflect this  
matter.

The intent of the Department's  
certification is to include all workers of  
Tony Lama Boot Company who were  
adversely affected by imports from  
Mexico.

The amended notice applicable to  
NAFTA-02821 is hereby issued as  
follows:

All workers of Tony Lama Boot Company,  
Justin Boot Company, Justin Management  
Company, El Paso, Texas who became totally  
or partially separated from employment on or  
after December 28, 1997 through March 11,  
2001 are eligible to apply for NAFTA-TAA  
under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. This 14th day  
of March, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade  
Adjustment Assistance.*

[FR Doc. 00-7118 Filed 3-21-00; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10720, et al.]

#### **Proposed Exemptions: Standard & Poor's (S&P), Standard and Poor's Investment Advisory Service, LLC (SPIAS)**

**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*

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and 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, 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 the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 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, 5 U.S.C. App. 1 (1996), 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.

**Standard & Poor's (S&P), Standard and Poor's Investment Advisory Services, LLC (SPIAS), Located in New York, New York**  
[Exemption Application No.: D-10720]

*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) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the provision of asset allocation services (the Service) by SPIAS to plan participants and the receipt of fees by SPIAS from Service Providers in connection with the provision of such asset allocation services, provided that the following conditions are met.

**I. General Conditions**

A. The retention of SPIAS to provide the Service will be expressly authorized in writing by an independent fiduciary of each Plan.

B. SPIAS shall provide the independent fiduciary of each Plan with the following, in writing:

(1) Prior to authorization, a complete description of the Service and disclosures of all fees and expenses associated with the Service.

(2) Any other reasonably available information regarding the Service that the independent fiduciary requests.

(3) A contract for the provision of the Service which defines the relationship between SPIAS, the Service Providers and the Plan sponsor, and the obligations thereunder. Such contract shall be accompanied by a termination form with instructions on the use of the form. The termination form must expressly state that a Plan may terminate its participation in the Service without penalty at any time. However, a Plan which terminates its participation in the Service before the

expiration of the contract will pay its pro-rata share of the fees that it would otherwise owe for the Service under the contract and, if applicable, any direct costs actually incurred by SPIAS which would have been recovered from the Plan by SPIAS but for the termination of the contract, including any direct setup expenses not previously recovered. Thereafter, the termination form shall be provided no less than annually.

(4) At least 45 days prior to the implementation of any material change to the Service or increase in fees or expenses charged for the Service, notification of the change and an explanation of the nature and the amount of the change in the Service or increase in fees or expenses.

(5) A copy of the proposed and final exemption, if granted, as published in the **Federal Register**.

(6) An annual report of Plan activity which summarizes the performance of the Service and asset allocation recommendations and provides a breakdown of all fees and expenses paid by the Plan or participants for the year. Such reports shall be provided no more than 45 days after the period to which it relates. Upon the independent fiduciary's or Plan sponsor's request, such report may be provided more frequently.

C. SPIAS will provide each Plan participant with the following:

(1) Written notice that the Service is available and provided by SPIAS, an entity independent of the Service Provider and the Plan sponsor.

(2) Prior to using the Service, full written disclosures that will include information about SPIAS and a description of the Service.

(3) Access to SPIAS's website or paper-based communications which will clearly indicate that the Plan participant is receiving the Service from SPIAS, and that SPIAS is independent of the Service Provider.

(4) A risk tolerance questionnaire which must be completed prior to utilization of the Service.

D. Any investment advice given to a Plan participant by SPIAS under the Service will be based solely on the responses provided by the Plan participants through the Service's interactive computer program or through a paper or telephone interview and will be based on the application of an objective methodology developed by S&P Financial Information Service (S&P FIS) and the S&P Investment Committee.

E. Any investment advice given to a Plan participant will be implemented

only at the express direction of the Plan participant.

F. The total fees paid to SPIAS and a Service Provider, in connection with the provision of the Service, by each Plan does not exceed "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

G. The only fees which are payable to SPIAS in connection with the provision of the Service include, subject to negotiation, one or more of the following:

(1) An annual flat fee based on a fixed dollar amount per Plan participant for the Service. This fee may be paid by the Plan, Plan sponsor, Plan participant or the Service Provider.

(2) A technology licensing fee payable by the Service Provider in the first year that the Service is provided to a Plan. The fee will be a fixed dollar amount based on the number of Plan participants and beneficiaries contained on the Service Provider's record-keeping system. Each time the number of Plan participants and beneficiaries on the Service Provider's record-keeping system increases by 10%, an additional fixed dollar amount based on the increase in Plan participants and beneficiaries will be assessed and charged to the Service Provider for the new participants and beneficiaries (the Revised Technology Fee).

(3) For subsequent years, SPIAS will charge the Service Provider an annual technology maintenance fee equal to 20% of the technology licensing fee charged to the Service Provider in the first year plus 20% of the Revised Technology Fee.

(4) SPIAS will charge the Plan or Plan sponsor an Internet customization fee where a Plan sponsor contracts directly with SPIAS for the provision of the Service. This flat fee will be based on the time spent by SPIAS personnel on its customization of the Service for the particular Plan.

(5) For those Plan sponsors electing to receive a Plan analysis report, an annual flat fee based on a fixed dollar amount per Plan investment analysis report. This fee will be paid by the Plan sponsor or Service Provider.

H. No portion of any fee or other consideration payable by the Plans or the Plan sponsor to S&P or SPIAS in connection with the Service will be received or shared with a Service Provider.

I. Neither the fees charged nor the compensation received by SPIAS will be affected by the investment elections or the decisions made by the Plan participants and beneficiaries regarding investment of the assets in their accounts.

J. All dealings between the Service Provider and the Plans participating in the Service are on a basis no less favorable to the Plans than dealings with other investors of the Service Provider.

K. All asset allocations are reviewed and approved by the S&P Investment Policy Committee (IPC) before they are made available to the Plan.

L. No Service Provider will at any time own any interest, by vote or value in SPIAS, and neither SPIAS nor any affiliate will own any interest, by vote or value in a Service Provider.

M. The annual revenues derived by SPIAS from any one Service Provider shall not constitute more than 5% of the annual revenues of S&P FIS.

N. S&P will guarantee the payment of any liabilities of SPIAS that may arise by reason of a breach of a fiduciary duty described in section 404 of the Act or a violation of the prohibited transaction provisions in section 406 of the Act and 4975 of the Code.

O. SPIAS will maintain for a period of six years, the records necessary to enable the persons described in paragraph (P) of this section to determine whether the conditions of the exemption are met, including records of the recommendations made to Plan participants and beneficiaries and their investment choices, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SPIAS, the records are lost or destroyed prior to the end of the six year period.

(2) No party in interest, other than SPIAS shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code if records are not maintained or not available for examination as required by this paragraph and paragraph P(1) below.

P. (1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of Section 504 of the Act, the records referred to paragraph (O) of this section are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission;

(b) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(c) Any contributing employer to any participating Plan, any duly authorized representative of such employer or an

employee organization whose members are participants and beneficiaries of a participating Plan; or

(d) Any Plan participant or beneficiary of any participating Plan or any duly authorized representative of such Plan participant or beneficiary.

(2) None of the persons described in paragraph (1)(b)–(d) of this paragraph (P) shall be authorized to examine trade secrets of SPIAS, or commercial or financial information which is privileged or confidential.

## II. Definitions

A. The term "Service" means the asset allocation service provided by SPIAS to Plans which is accessed through computer software and other written communications in order to provide personalized recommendations to Plan participants regarding the allocation of their investments among the options offered under their Plan.

B. The term "Service Provider" means an entity that has been in the financial services business for at least three years, and during such period, has not been found liable or guilty by a court of law, or has not been a party to a settlement agreement with the IRS or the Department related to any matter concerning an employee benefit plan, and which is described in one of the following categories:

(1) A bank, savings and loan association, insurance company or registered investment adviser which meets the definition of a "qualified professional asset manager" (QPAM) set forth in section V(a) of Prohibited Transaction Exemption 84–14 (49 Fed. Reg. 9494 (Mar. 13, 1984), as corrected at 50 Fed. Reg. 41430 (Oct. 10, 1985) and in addition, has, as of the last day of its most recent fiscal year, total client assets under management and control in an amount not less than \$250 million; or

(2) A broker dealer registered under the Securities Exchange Act of 1934, which has, as of the last day of its most recent fiscal year, \$1 million in shareholders' or partners' equity, and total client assets under management and control in an amount not less than \$250 million.

C. The term "independent fiduciary" means a Plan fiduciary which is independent of SPIAS and its affiliates and independent of the Service Provider and its affiliates.

D. The term "affiliate" includes:

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

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

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

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

#### *Summary of Facts and Representations*

1. McGraw-Hill Companies (McGraw-Hill) is a New York Stock Exchange registered company with a market capitalization of approximately \$11 billion. Standard & Poors (S&P), a division of the McGraw-Hill Companies has provided the public with investment information and guidance for more than 130 years. Investors rely on Standard & Poor's Markscope, Stock Reports, Stock Guide, Industry Surveys and other services for independent and accurate information. S&P is comprised of S&P Financial Information Services (S&P FIS) and S&P's Ratings Services. In 1998, S&P Ratings Services and S&P FIS had, in the aggregate, revenues of approximately \$1.1 billion.

2. S&P Ratings Services provides timely, objective credit analysis and information, and has been rating conventional-term debt and general obligation corporate and municipal bonds since 1916. S&P Ratings Services serves more than 60 countries through a global office network staffed by local analysts from the world's major capital markets.

3. S&P FIS provides financial data, information and analysis on various domestic and foreign financial markets to individual investors, brokerage firms, investment advisors, money managers and other investment professionals. S&P FIS is also responsible for maintaining market indices such as the S&P 500 and provides various other products and services to the investment community.

4. McGraw-Hill established Standard & Poors Investment Advisory Services, LLC (SPIAS), a wholly-owned subsidiary in 1995. SPIAS was created as part of S&P FIS's expansion into the provision of personalized investment advice and related investment advisory activities, and is a registered investment adviser under the Investment Advisers Act of 1940. SPIAS furnishes a variety of services which can be broadly characterized as: (1) Internet-based personal advisory services; (2) advisory services aimed at enabling market professionals to provide services to retail clients; (3) asset allocation advisory services; (4) advisory

consulting services; and (5) management of investment companies. The services that SPIAS operates include: S&P's Personal Wealth and S&P's Bank Investment Center. SPIAS has also been retained by the independent distributor of the product known as "WEBS" to provide investment and economic research describing prevailing international economic and currency related trends and their impact on investments in several countries.

SPIAS's income is included with S&P FIS for financial reporting purposes. In 1998, S&P FIS contributed approximately \$600 million to McGraw-Hill's total \$3.7 billion in revenues. Most employees of SPIAS are also employed by S&P FIS business units. To the extent that SPIAS's employees derive a portion of their compensation based on the financial performance of a business unit, the compensation is based on the overall performance of S&P FIS and or the relevant S&P FIS business unit.

5. The Applicant represents that the Service will be beneficial to Plan participants because the Service will integrate retirement planning recommendations and fund allocation recommendations, including current Plan savings, other retirement savings, personal retirement income goals, tolerance for risk, time horizon to retirement, and the fund choices specifically available in a participant's Plan.

The Applicant represents that the Service entails the provision of personalized asset allocation advice to Plan participants (see paragraph 7). Before a Plan's independent fiduciary may authorize the Plan's participation in the Service, SPIAS must provide the fiduciary with a complete description of the Service, written disclosures of all fees and expenses associated with the Service, and a written contract for the provision of the Service which defines the relationship between SPIAS, the Service Provider and the Plan sponsor and the obligations thereunder.<sup>1</sup> Such

<sup>1</sup> In this regard, the Department notes that the fiduciary responsibility provisions of the Act apply to the decision of a Plan's independent fiduciary to authorize the Plan's participation in the Service. Section 404 of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. Accordingly, the Plan's independent fiduciary must act prudently when deciding to participate in the Service, and in considering the fees associated with the Service. The Department expects the Plan's independent fiduciary, prior to authorizing the Plan's participation in the Service, to understand fully the operation of the Service, and the compensation paid thereunder, following disclosure by SPIAS of all relevant information pertaining to the Service.

contract will be renewable annually and will include: (a) A provision under which the Plan shall have 45 days notice prior to implementation of any material change to the Service or any fee or expense increases in connection with the provision of the Service by SPIAS; and (b) a provision which states that a Plan may terminate its participation in the Service at any time without penalty. However, a Plan which terminates the Service before the expiration of the contract will be responsible for paying its pro-rata share of the fees otherwise owed under the contract as of the date of termination, and, if applicable, any direct costs actually incurred by SPIAS which would have been recovered from the Plan by SPIAS but for the termination of the contract, including any direct setup expenses not previously recovered. In addition, SPIAS shall provide such fiduciary with a copy of the proposed and the final exemption, if granted, as published in the **Federal Register**.

6. SPIAS will provide the Service either directly to Plan participants through an agreement with the Plan sponsor or through an agreement with the Service Providers sponsoring the investment vehicles offered to Plan participants.<sup>2</sup> Where the Service is contracted for directly with the Plan sponsor, SPIAS anticipates that these Plan sponsors will be predominately Fortune 500 companies, and SPIAS will customize the Service for each Plan. In many instances, SPIAS will need to coordinate with the Plan's record-keeper or another service provider in offering the Service to a Plan's participants.

<sup>2</sup> The provision of investment advisory services to plans would be exempt from the prohibitions of section 406(a) of ERISA if the conditions of section 408(b)(2) are met. Section 2550.408b-2(a) of the Department's regulations provides that section 408(b)(2) of the Act exempts from the prohibitions of section 406(a), payment by a Plan to a party in interest, including a fiduciary for \* \* \* any service (or combination of services) if (1) such \* \* \* service is necessary for the establishment or operation of the Plan; (2) such \* \* \* service is furnished under a contract or arrangement which is reasonable; and (3) no more than reasonable compensation is paid for such \* \* \* service. The regulation also provides that section 408(b)(2) does not contain an exemption from acts described in section 406(b) even if such act occurs in connection with a provision of services that is exempt under section 408(b)(2). Section 2550.408b-2(e)(1) further provides that a fiduciary does not engage in an act described in section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control or responsibility which makes such person a fiduciary to cause the Plan to pay additional fees for a service furnished by such fiduciary or to pay a fee for a service furnished by a person in which the fiduciary has an interest which may affect the exercise of such fiduciary's best judgement as a fiduciary. In general, whether a violation of section 406(b) occurs during the operation of an investment advisory program is an inherently factual matter. See Advisory Opinion 84-04 (January 4, 1984).

Such entities will be independent of SPIAS. All fees for the Service will be paid by the Plan sponsor or the Plan to SPIAS.

In the second situation, SPIAS will provide the Service to Plan participants pursuant to a contract that the Plan sponsor enters into with a Service Provider. In these instances, the fees for the Service will be based on a flat dollar amount per participant which will be paid to SPIAS by the Service Provider, the Plan, Plan sponsor or Plan participants. In addition, SPIAS will enter into a written agreement with the Plan sponsor defining the relationship of the Plan sponsor, SPIAS and the Service Provider.

7. The Applicant states that, once a Plan fiduciary has authorized its Plan's participation in the Service, Plan participants will receive notice that the Service is available and provided by SPIAS, an entity which is independent of the Service Provider. This notice will also state that when using the Service, a Plan participant is receiving services separate and apart from those provided by the Service Provider. Prior to utilizing the Service, Plan participants will receive full disclosures about SPIAS and the Service.

Plan participants will access the Service through the Internet, by written materials or by telephone interview. Each Plan participant will receive a risk tolerance questionnaire which must be completed prior to utilization of the Service. A Plan participant will answer a questionnaire which consists of ten to fifteen questions with three or four multiple choice answers per question. These questions enable a Plan participant to quantify his or her time horizon and risk tolerance. This questionnaire has been developed by S&P over the last five years based on actual use in 401(k) plans and similar investment programs. For those Plan participants who elect to receive their advice in paper form, the questionnaire will be provided via the human resources department of the plan sponsor. If the plan sponsor elects to use a telephone voice response unit, Plan participants will receive their questionnaire over the phone. The paper-based and telephone versions of the questionnaire will be scored by the Plan participant by categorizing his/her answers (as discussed below).

If a Plan participant elects to receive his/her advice through the Internet, the Plan participant will first access a website provided by the Service Provider or the Plan sponsor. There will be an electronic link from the Plan sponsor's or Service Provider's website to SPIAS's website where the

questionnaire and investment advice is housed. In certain situations, this data may be housed on servers owned and operated by the Service Provider. The Applicant represents that SPIAS will always retain sole control over the content of the Service and the advice contained therein. SPIAS will regularly monitor the contents of the Service and the advice contained therein to ensure that it remains the product of the objective methodology developed by S&P FIS and the S&P Investment Committee (discussed below). It will be apparent to the Plan participant that SPIAS is the sole-provider of such advice.

For those Plan participants using the Internet, the completed questionnaire is scored by computer. For those Plan participants using the paper based or telephone based questionnaires, the scoring is done by the Plan participants using materials and instructions provided by SPIAS. Based on the score, the Plan participant is categorized into one of six investment recommendations. Each recommendation contains a description of the investor profile associated with such recommendation which a Plan participant can review to see if he or she feels that he or she has been correctly classified.

The advice provided to a Plan participant through the Service may only be implemented if it is expressly authorized in writing by the Plan participant. Plan participants are advised that the investment advice is valid for one year and that they need to repeat the questionnaire process in future years in order to receive updated recommendations. In this regard, Plan participants are informed that if they experience major life changes, they may need to repeat the questionnaire process more often than once a year. In connection with the Plan sponsor's annual renewal of the Service, Plan participants are strongly encouraged by SPIAS to complete a new questionnaire. SPIAS has built in an annual reminder that will be sent to all Plan participants concerning the need for them to update their Plan investment allocations. Plan participants are also notified if SPIAS' recommendations change during the year, and notified of the possible need to update their Plan investment allocations.

The Applicant states that the advice provided to Plan participants will be based on the application of an objective methodology, developed by S&P FIS and the S&P Investment Committee, in accordance with generally accepted investment theories. SPIAS will apply this methodology to the investment options offered by a plan and to the

participant's investor profile classification which is based on his responses to the questionnaire.

8. The Applicant represents that its role in performing the Service on behalf of a Plan, includes gathering information about the investment options offered in a particular Plan, and developing a recommended portfolio for each investor type. The Applicant states that the analysis is based on modern portfolio theory and related work in economics and finance. S&P and SPIAS use the concept of efficient portfolios in developing asset allocation recommendations. This concept is based on the premise that the only way to achieve higher returns is to accept more risk and the only way to reduce risk is to accept lower potential returns. SPIAS states that in any set of investments, there is always a group of efficient portfolios, and an investor who holds an inefficient portfolio can improve his or her situation by moving to an efficient one.

SPIAS states that some analysts use market indexes rather than specific investment options because there is historical data available for most widely used market indexes. While a long historic record is always welcome, SPIAS believes that it is usually more important to know how a specific investment performed over the last 3, 5 or 10 years rather than how the market index performed. Accordingly, SPIAS develops its recommendations using the specific investment options wherever possible because Plan participants will be investing in these funds, not in an index or other measure.

9. In order to evaluate a specific investment option, SPIAS requires that a minimum of three years of monthly total return data be available. If this data is not available, SPIAS will work with the Plan sponsor to identify alternative data to assist SPIAS in its analysis. However, if there is no reasonable applicable data, SPIAS will not include the investment option in its recommendations. SPIAS may, however, include discussions and analysis of the investment option and its characteristics in separate supplemental materials provided to Plan participants and the Plan sponsor as part of the Service.

S&P and SPIAS will use the following standards to evaluate the investment options offered by the Plans which might use the Service:

(A) Evaluation at the Plan Level:

(1) *Sufficient Number of Funds:* If a Plan has more than five investment options that meet the requirements for investment options described below, the Plan satisfies this requirement. If there

are three, four or five investment options, S&P FIS and SPIAS will advise the Plan sponsor that consideration should be given to adding more investment options. If there are fewer than three acceptable investment options, S&P and SPIAS will decline to provide the Service to the Plan. If a Plan offers employer stock as an investment option, S&P and SPIAS will not consider this option in applying this test, nor in applying the other Plan level tests described in 2 and 3 below.

(2) *Diversity of Funds:* SPIAS's minimum building block for asset class coverage will be cash/bonds/stocks. This means that the minimal mix should include a money market fund, an investment grade bond fund and a diversified equity fund. A stable value fund or a GIC fund may be substituted for one of the fixed income funds. If these are present, S&P will permit a range of allocations where the lowest volatility allocation is equivalent to investing 90% of the funds in the money market fund and where the highest volatility allocation is equivalent to investing 90% of the funds in equities. If this range cannot be achieved, S&P and SPIAS will advise the Plan sponsor that adjustments should be made to widen the range of available allocations.

(3) *Limits on Timing and Investment Transfers:* The only limits on a Plan participant's ability to transfer funds among investment options should be those necessary to protect all Plan participants from excessive Plan expenses. In particular, Plan participants must be able to move funds from one investment option to another at least four times a year on no more than ten business days notice. If this is not possible, S&P and SPIAS will decline to provide the Service to the Plan. Second, there should be no restrictions on transferring funds from an investment option in one asset class to an investment option in another asset class. If this is not permitted, S&P and SPIAS will advise the Plan sponsor that these rules should be reviewed, and will decline to provide the Service under such circumstances.

(B) *Evaluation At the Fund Level:* S&P and SPIAS will review each fund in terms of the investment's return history, prospectus and size as described below.

(1) SPIAS will require three years of monthly total return history. If the investment option is a private fund with quarterly data, then five years of history will be required. All fund performances will be calculated according to industry standard procedures prescribed by the National Association of Securities Dealers and the Securities and Exchange

Commission. Private fund performance will be calculated according to these procedures or according to Association for Investment Management and Research guidelines. Private funds with less than this amount of historical data will not be considered by S&P and SPIAS. If the investment option is an "index fund," SPIAS may accept less performance data provided that sufficient information on fees is available to use the return data on the index to develop pro forma data on the fund. If the index is less than three years old, the index data cannot be used.

(2) A prospectus or written investment policy statement must be available to S&P and SPIAS.

(3) An investment fund's total net assets must be greater than \$25 million for all share classes of the fund combined. If the investment option is a private fund offered by a money management firm, the firm must have at least \$25 million in assets under management. Further, the firm must be at least three years old.

(4) If a Plan includes synthetic funds, such as a so-called "funds of funds," that do not have the requisite performance history, S&P and SPIAS would apply its standard criteria as described above with respect to each fund component. Each fund component would have to satisfy the criteria in order for S&P and SPIAS to provide advice with respect to such synthetic fund.

(5) If the Plan includes employer stock, the stock may be included in the recommended allocations, subject to the policy on investing in employer stock approved by the IPC.

All data is entered into a computer program developed by SPIAS that estimates the efficient frontier and calculates various statistics that describe alternative asset allocations. Based on the results of this computer-based analysis, SPIAS will develop a series of at least six recommendations covering a range of risks.<sup>3</sup> In developing these allocations, the general guidelines that SPIAS uses include the following: Higher risk funds, such as equity sector funds, international funds or small cap stock funds are usually limited to the two or three riskiest portfolios. Employer stock may only be included in the riskiest or two riskiest portfolios, and may not have an allocation greater than 20% in any portfolio. SPIAS will not include employer stock if S&P's separately published recommendation

<sup>3</sup> Each Plan participant who completes the risk-tolerance questionnaire will be categorized, based on his/her score, into one of these six recommendations as discussed in paragraph 7.

on the stock has consistently been "avoid or sell."

If an investment option's performance declines or fails to meet expectations since the date of SPIAS's prior review, this will be recognized and considered by SPIAS in its updated annual review. As part of its annual review, SPIAS will initiate discussions with the Plan sponsor about replacing or adding an investment option if the circumstances warrant. If a Plan sponsor chooses not to drop an investment option or add options, SPIAS will not include the poorly performing investment option in its asset allocation advice or may decline to continue providing the Service to the Plan.

10. The Applicant represents that S&P's experience and expertise will be an integral part of the Service, and S&P will stand behind the investment advice provided by SPIAS through the Service, and will guarantee the payment of any liability of SPIAS that may arise by reason of a breach by SPIAS of a fiduciary duty described in section 404 of the Act or a violation of the prohibited transaction provisions of section 406 of the Act or section 4975 of the Code. The content of the advice contained in the Service is produced by S&P FIS's equity analytical department, and as described below, reviewed by the S&P Investment Policy Committee (IPC), (see representation number 11). The equity analytical department and the IPC operate independently of SPIAS and produce investment recommendations independent of any business relationships between S&P and its clients.

11. All asset allocation recommendations are reviewed by the IPC. The IPC is a senior committee responsible for oversight on all investment recommendations provided through all of S&P's products and services. Membership on the IPC includes the Senior Vice President for the S&P Investment Advisory Services unit (who is also the President of SPIAS), the Director of Equity Research, the Chief Economist, the Senior Sector Strategist, the Chief Technical Analyst, the Editor of S&P's *The Outlook* and senior analysts from the Portfolio Services and Quantitative Services departments of S&P. The IPC meets weekly to discuss current financial market conditions and the economy. Asset allocation plans are reviewed at the regular weekly meeting. Only after the analysis is completed and the recommendations have been reviewed by the IPC, or a subcommittee thereof, will the recommendations be considered as final and delivered to the Plan.

Once the IPC completes its analysis and review, the recommendations are delivered to the Plan, and the Plan-specific asset allocation analysis is considered valid for one year. After a year, SPIAS will review and re-do the analysis and provide the Plan sponsor with revised recommendations. If the Plan sponsor does not continue its relationship with SPIAS, the recommendations will be withdrawn and will be unavailable to Plan participants. In those instances where Plan sponsors want the analysis reviewed more frequently than once per year, SPIAS and the Plan sponsor will negotiate a review schedule.

12. The Applicant represents that potential Service Providers will include banks and trust companies, mutual fund companies, brokerage firms and insurance companies. They will be required to meet minimum standards prior to participating in the provision of the Service. To qualify as a Service Provider, the entity must either be: (a) A commercial bank or trust company, savings and loan association, insurance company, or registered investment adviser which meets the definition of a "qualified professional asset manager" (QPAM) as set forth in Part V(a) of Prohibited Transaction Exemption 84-14 and has, as of the last day of its most recent fiscal year, total client assets under management and control in an amount of not less than \$250 million; or (b) a broker-dealer regulated under the Securities Exchange Act of 1934 which had, as of the last day of its most recent fiscal year, \$1 million in shareholders' or partners' equity, and total client assets under management and control in an amount of not less than \$250 million.

In addition, the Applicant will evaluate each candidate and consider: (1) The availability of multiple investment options across a number of asset classes; (2) whether there are adequate service capabilities and service performance standards; with an ongoing adherence to those standards; (3) whether providing a bundled product<sup>4</sup> for defined contribution Plans is not the only financial service business in which the entity is involved; and (4) whether the entity, in SPIAS's view, has a high level of professionalism and accountability.

Further, the entity must have been in the financial services business for three years, and during such period, must not have been found liable or guilty by a court of law in any litigation,

concerning an employee benefit plan, brought by the IRS or the Department, or a party to a settlement agreement with the IRS or the Department on any matter concerning an employee benefit plan.

13. The fees which are payable to SPIAS in connection with providing the Service, subject to negotiation, are limited to one or more of the following fees. A technology licensing fee will be charged to the Service Provider. This fee is a one-time fee charged in the first year the Service is provided to a Plan based on the number of Plan participants contained on a Service Provider's record-keeping system. Each time the number of Plan participants and beneficiaries on the Service Provider's record-keeping system increases by 10%, an additional amount based on a flat dollar per Plan participant will be assessed and charged to the Service Provider for the new participants (the Revised Technology Fee). For subsequent years, SPIAS will charge a Service Provider a technology maintenance fee equaling 20% of the first year's technology licensing fee plus 20% of the Revised Technology Fee.

Where a Plan sponsor contracts directly with SPIAS to customize the Service to its particular Plan, SPIAS will charge an Internet customization fee to the Plan or the Service Provider. This flat fee is based on the time spent by SPIAS personnel on its customization of the Service to a particular Plan. In addition, SPIAS will charge an annual flat fee based on a fixed dollar amount per Plan participant which may be paid by the Plan, Plan sponsor, the Plan participants or the Service Provider.

Finally, SPIAS will also offer a Plan investment analysis report to Plan sponsors. This report is separate from the investment analysis advice provided to Plan participants and is optional. SPIAS will analyze the Plan and its investment options comparing the rates of return earned by the Plan's investment options relative to other available funds. For those Plan sponsors who elect to receive a Plan investment analysis by SPIAS, SPIAS will charge a Plan investment analysis fee based on a flat dollar amount per year. This fee may be paid by the Plan, Plan sponsor or the Service Provider.

14. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Participation in the Service will be expressly authorized in writing by an independent fiduciary.

(b) SPIAS will provide the independent fiduciary of each Plan with, written disclosures describing the

Service and all fees and expenses associated with the Service, a written contract for the provision of the Service, a copy of the proposed and final exemption, if granted, and a summary of annual Plan activity and expense reports.

(c) SPIAS will furnish the Plan participants with the following: notice that the Service is provided by SPIAS, an entity that is independent from the Service Provider and the Plan sponsor; and full disclosure about the Service and SPIAS; and a risk tolerance questionnaire.

(d) Any investment advice given to Plan participants will be based on the Plan participants' responses to the questionnaire and any investment advice will only be implemented at the express direction of the Plan participant.

(e) The total fees paid to SPIAS and a Service Provider by each Plan participant participating in the Service does not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act.

(f) No portion of any fee or other consideration paid to SPIAS or S&P in connection with the Service will be shared or received by a Service Provider.

(g) Neither the fees charged nor the compensation received by SPIAS will be affected by the investment elections of Plan participants.

(h) Participation in the Service will not cause the Plan to pay any additional fees or commissions with respect to acquisition or disposition of investments offered under the Plan.

(i) All asset allocations are reviewed and approved by the IPC before they are delivered to the Plan.

(j) No Service Provider will own any interest in SPIAS, and neither SPIAS nor any affiliate will own any interest in a Service Provider.

(k) The annual revenues derived by SPIAS from any one Service Provider shall not be more than 5% of the annual revenues of S&P FIS.

(l) S&P will guarantee the payment of any liability of SPIAS that may arise by reason of a breach of a fiduciary duty described in section 404 of the Act or a violation of the prohibited transaction provisions in section 406 of the Act or section 4975 of the Code.

#### *Notice to Interested Persons*

The Applicant represents that because potentially interested Plan participants and beneficiaries cannot be identified at this time, the only practical means of notifying such Plan participants and beneficiaries of this proposed exemption is by publication in the

<sup>4</sup> Bundled products provide employers with record-keeping, legal, administrative, trust, educational, investment, etc., service with respect to establishing and maintaining a plan.



**Federal Register.** Therefore, comments and requests for a hearing must be received by the Department not later than April 21, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Allison Padams Lavigne, U.S. Department of Labor, (202) 219-8971. (This is not a toll free number.)

**Texas Iron Workers and Employers Apprenticeship Training and Journeyman Upgrading Fund (the Plan), Located in San Antonio, Texas**

[Application No. D-10777]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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 shall not apply to the purchase of a classroom/office building (the Classroom Building) and a shop building (the Shop Building; together, the Buildings) and an adjacent lot (the Adjacent Lot) by the Plan from Local Union No. 66 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the Union), for \$63,000, provided that: (a) The purchase is a one-time transaction for cash, and no commissions are paid by the Plan with respect to the transaction; (b) the Plan pays a price for the Buildings and the Adjacent Lot (collectively, the Properties) that is no more than the fair market value of the Properties at the time of the transaction, as determined by a qualified, independent appraiser; (c) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries; and (d) the Plan's independent fiduciary monitors the purchase of the Properties by the Plan and takes whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries.

*Summary of Facts and Representations*

1. The Plan is a multi-employer apprenticeship plan with approximately 300 participants and beneficiaries. It is a state-wide training program for training apprentice iron workers and upgrading the skills of experienced iron workers. The Plan has three Union trustees and three management trustees. As of March 31, 1999, the Plan had total assets with an estimated fair market value of \$1,197,307.

2. The Properties consist of a land parcel of approximately 21,750 square feet, located at 4318 Clark Avenue, San Antonio, Texas, containing the Buildings—the Classroom Building and the Shop Building. The Shop Building is a one-story, steel-frame structure on a concrete slab containing 2,420 square feet. The Shop Building was built in 1971. The Classroom Building is also a one-story, steel-frame structure on a concrete slab containing 4,004 square feet. It contains four classrooms, two offices, a storage room, a reception area and bathrooms, and was completed in 1972-1973. The Plan incurred

approximately \$45,000 of costs relating to the construction of the Classroom Building. The Union has maintained ownership of the Properties and has paid all property taxes associated therewith. The Plan has been responsible for maintaining the Classroom Building, including the landscaping, plumbing and security.

3. The Properties are part of a larger parcel (the Property), which has been owned by the Union since 1966. In addition to the Classroom and the Shop Buildings, the Property contains the Union headquarters building at the front of the Property and five empty lots at the rear.

4. The Union has decided to relocate its headquarters to a larger building with more office space and sell the subject Properties. However, the Plan's Trustees do not wish to relocate the San Antonio training operations provided for under the terms of the Plan. Therefore, the Plan would like to purchase the Buildings for training purposes and the Adjacent Lot for additional parking. This transaction will allow the Plan to continue its apprenticeship and training programs at their current location. The applicants have requested an exemption to permit only the sale of the Adjacent Lot and the Shop Building by the Union to the Plan.<sup>5</sup> In this regard, the transaction will also formally recognize that the Plan is and has been the formal owner of the Classroom Building since it was constructed in 1973. The applicants represent that the Plan is the equitable owner of the Classroom Building because it incurred the costs of constructing and maintaining the Classroom Building as described in Representation 2, above.

5. The Plan retained Courtland Partners, Ltd. (Courtland) of Cleveland, Ohio to review the subject transaction. With respect to Courtland's qualifications to review the subject transaction, Courtland represents that it is a registered investment adviser under the Investment Advisers Act of 1940 and currently manages over \$100 million of real estate investments on behalf of its pension fund clients. Additionally, Courtland has retainer relationships with pension fund clients with real estate investments exceeding well over \$1 billion. Mr. Michael J. Humphrey (Mr. Humphrey) is the principal officer at Courtland responsible for the review of the subject transaction. Mr. Humphrey represents that he has personally evaluated well over \$400 million of acquisitions and dispositions as an adviser/fiduciary on behalf of pension fund clients. Mr. Humphrey further represents that Courtland had no prior relationship or arrangement with either the Union or the Plan before being retained to perform its review function for the Plan with respect to the subject transaction.

<sup>5</sup> The applicants previously sought relief for the transaction which is the subject of this proposed exemption, but that request was denied by the Department because, among other reasons, the Plan had not been represented by an independent fiduciary at the time the sale transaction took place. The applicants represent that they have paid the civil sanction for such transaction under section 502(i) of the Act as agreed upon with the Department, reversed the transaction, and have now re-applied for the relief proposed herein.

6. Mr. Adolph A. Ramirez (Mr. Ramirez), an independent real estate appraiser in San Antonio, Texas, has appraised the Adjacent Lot and the Shop Building as having a fair market value of \$63,000, as of October 20, 1998. Mr. Ramirez's appraisal relied primarily on the market approach to value the Adjacent Lot and the Shop Building, with an analysis of recent sales of similar properties.

Mr. Humphrey represents that Courtland has reviewed all of the terms and conditions of the proposed purchase of the Shop Building and the Adjacent Lot by the Plan, has considered the history of the arrangements made between the Union and the Plan, and the appraisal of the Properties completed by Mr. Ramirez. Mr. Humphrey states that Mr. Ramirez's appraisal has considered all of the factors necessary to accurately determine the fair market value of the Shop Building and the Adjacent Lot. Mr. Humphrey has determined, as of May 7, 1999, that the purchase price of \$63,000 for the Adjacent Lot and the Shop Building is reasonable. Furthermore, Courtland believes that the Classroom Building's value should not be included in the sales price for determining the appropriate consideration to be paid by the Plan since the understanding of the parties was that the Classroom Building was already effectively owned by the Plan (see Representation 2, above).

7. The Plan has retained Mr. Thomas W. Hatfield (Mr. Hatfield), a Certified Public Accountant (CPA) in North Richland Hills, Texas, to act as an independent fiduciary with respect to the proposed transaction. Mr. Hatfield has served as an auditor and adviser to the Plan since its inception. Mr. Hatfield represents that he does not perform any accounting or other work for the Union and is not related to, or affiliated with, any person who is a party in interest with respect to the Plan. Mr. Hatfield states that he has been a CPA since 1978 and has concentrated on audits of not-for-profit organizations during his career. Mr. Hatfield states that he will obtain, if necessary, expert advice from an experienced ERISA counsel as to what is required to properly execute the duties of an independent fiduciary for the Plan. Mr. Hatfield acknowledges and accepts his duties, responsibilities and liabilities as a fiduciary under the Act.

After consideration of the proposed transaction, Mr. Hatfield has determined that the proposed transaction would be appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries. As the Plan's independent fiduciary, Mr. Hatfield will monitor the parties' compliance with the terms and conditions of the proposed transaction. Mr. Hatfield represents that he will take whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries. In this regard, Mr. Hatfield will ensure that the sales price paid by the Plan for the Shop Building and the Adjacent Lot will in no way reflect any additional consideration for the Classroom Building. In addition, Mr. Hatfield will ensure that the current appraisal of the Shop Building and the Adjacent Lot is updated at the time of the transaction and that the Plan pays no more



than the fair market value of such Properties at that time.

8. Mr. Hatfield represents that the Plan's acquisition of the Shop Building and the Adjacent Lot for \$63,000 in cash will not adversely affect the Plan's ability to meet all of its current expenses after the proposed transaction. Thus, Mr. Hatfield states that the transaction will not adversely affect the Plan's liquidity needs.

Mr. Hatfield states further that the Properties are suitable facilities for the Plan to continue carrying out its apprenticeship and training programs. Accordingly, Mr. Hatfield concludes that the purchase of the Properties by the Plan would be a prudent transaction, and in the best interest of the Plan, since the Plan needs to continue to use this site as a training facility.

9. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The sale is a one-time transaction for cash, and no commissions will be paid by the Plan with respect to the sale; (b) the fair market value of the Properties being acquired by the Plan represent approximately 5% of the Plan's total assets; (c) the fair market value of the Adjacent Lot and the Shop Building have been determined by Mr. Ramirez, a qualified, independent appraiser, and such appraisal will be updated at the time of the transaction to ensure that the Plan pays no more than the fair market value for the Properties; (d) Courtland, an independent expert, has reviewed the terms of the proposed transaction and the most recent appraisal of the Properties, and has determined that such terms and appraisal are reasonable; (e) Mr. Hatfield, the Plan's independent fiduciary for purposes of the proposed transaction, has reviewed the terms and conditions of the proposed transaction and has determined that the transaction would be appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries; and (f) Mr. Hatfield will monitor the transaction, as the Plan's independent fiduciary, and will take whatever action is necessary to protect the interests of the Plan and its participants and beneficiaries.

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

**Taylor M. Cole IRA Rollover (the IRA)  
Located in Deerfield, VA**

[Application No. D-10859]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, 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 proposed sale of certain

unimproved property (the Property) by the IRA to Taylor M. Cole, the IRA participant and a disqualified person with respect to the IRA;<sup>6</sup> provided that the following conditions are met:

(a) the sale is a one-time cash transaction;

(b) the IRA receives the current fair market value for Property, as established at the time of the sale by an independent qualified appraiser; and (c) the IRA pays no commissions or other expenses associated with the sale.

*Summary of Facts and Representations*

1. The IRA is an individual retirement account, as described in section 408(a) of the Code, which was established by Taylor M. Cole (Mr. Cole) on June 27, 1998. As of January, 2000, the IRA had approximately \$261,165 in total assets. The Tredegar Trust Company, located in Richmond, Virginia, is the custodian of the IRA.

2. On July 27, 1998, the IRA purchased the Property from Richard and Ruth Mansfield, who were unrelated third parties, for \$200,000 in cash. The Property represents over 80% of the IRA's total assets. The Property is adjacent to Mr. Cole's personal residence. It is represented that Mr. Cole made the decision to purchase the Property as a investment for the IRA.<sup>7</sup>

3. The Property is an approximately 176 acre parcel of unimproved land, located at 1352 Marble Valley Road, Deerfield, Virginia. The applicant represents that since the acquisition of the Property by the IRA, the Property has not been leased to or used by anyone, including any disqualified persons, as defined under section 4975(e)(2) of the Code. In addition, the Property has not generated any income for the IRA since its acquisition.<sup>8</sup>

<sup>6</sup> Pursuant to CFR 2510.3-2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

<sup>7</sup> The Department notes that section 4975(c)(1) (D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the assets of a plan and prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Accordingly, to the extent there were violations of section 4975(c)(1) (D) and (E) of the Code with respect to the decision to purchase the Property for the IRA, the Department notes that this proposed exemption is providing no relief for such transaction.

<sup>8</sup> The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments in a qualified plan may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. See, e.g., Rev. Rul. 73-532, 1973-2 C.B. 128. The Department further notes that section 408(a) of the Code, which describes tax qualifications provisions for IRAs, mandates that an IRA trust be created for the exclusive benefit of an individual and his or her beneficiaries. However, the Department is expressing no opinion in this proposed exemption

4. The Property was appraised on March 25, 1999 (the Appraisal). The Appraisal was prepared by James H. Woods, RM (Mr. Woods), who is an independent Virginia state licensed real estate appraiser. Mr. Woods is with Blue Ridge Appraisal Company L.L.C., which has offices in Staunton, Virginia and Winchester, Virginia. Mr. Woods relied primarily on the market approach, with an analysis of recent sales of similar properties in the geographic area. Mr. Woods determined that the Property had a fair market value of approximately \$212,350, as of March 25, 1999.

Mr. Woods updated the Appraisal on February 22, 2000 (the Update). In the Update, Mr. Woods considered more recent sales of similar properties located near or adjacent to the Property as well as other circumstances relating to the proposed sale of the Property to Mr. Cole. Specifically, because the Property is adjacent to other property owned by Mr. Cole, Mr. Woods considered whether the adjacency factor merits a premium above fair market value in a sale of the Property to Mr. Cole. Mr. Woods states that the Property has no road frontage, no access easement or right of way, and can be accessed only by crossing over other property. Based on the Property's location, size and other factors, Mr. Woods concludes that combining the Property with property already owned by Mr. Cole will have no effect on the Property's fair market value. Therefore, Mr. Woods states that the fair market value of the Property remains at approximately \$212,350, as of February 22, 2000.

5. The applicant proposes that Mr. Cole purchase the Property from the IRA in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the IRA because the IRA will be able to dispose of the Property at its fair market value and will not pay any commissions or expenses associated with the sale. In this regard, Mr. Cole will pay the IRA an amount in cash equal to the current fair market value at the time of the transaction, based on a further update of the Appraisal. The sale of the Property will increase the liquidity of the IRA's portfolio, will enable the trustees to diversify the assets of the IRA, and will enable the IRA to sell an illiquid non-income producing asset.

6. In summary, the applicant represents that the proposed transaction

regarding whether any violations of the Code have taken place with respect to the acquisition and holding of the Property by the IRA.

satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) the sale will be a one-time cash transaction;

(b) the IRA will receive the current fair market value for the Property, as established at the time of the sale by an independent qualified appraiser;

(c) the IRA will pay no commissions or other expenses associated with the sale; and

(d) the sale will provide the IRA with more liquidity, will enable the IRA to diversify its assets, and will allow the IRA to reinvest the proceeds of the sale in other investments that potentially could yield greater returns.

#### *Notice to Interested Persons*

Because Mr. Cole is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days from the date of publication of this notice in the **Federal Register**.

#### **FOR FURTHER INFORMATION CONTACT:**

Ekaterina A. Uzlyan of the Department at (202) 219-8883. (This is not a toll-free number.)

#### **Foodcraft, Inc. Defined Benefit Plan (the Plan), Located in Los Angeles, California**

[Exemption Application No. D-10864]

#### *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 32826, 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 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) of certain improved real property (the Property) by the Plan to the trustees of the Plan, Ernest Lieblich and Caryl Lieblich (collectively, the Trustees), parties in interest and disqualified persons with respect to the Plan, provided that the following conditions are met:

(a) All terms and conditions of the Sale are no less favorable to the Plan than those which the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The Trustees will purchase the Property from the Plan for the greater of \$315,000 or the Property's fair market

value as of the date of the transaction as determined by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash; and

(d) The Plan will pay no fees or commissions in connection with the Sale.

#### *Summary of Facts and Representations*

1. Foodcraft, Inc. (Foodcraft), a California corporation, is the sponsor of the Plan which is a defined benefit plan located in Los Angeles, California. The Plan has forty seven (47) participants, and approximately \$3,582,286 in total assets as of January 1, 1998. The trustees of the Plan are Ernest Lieblich and Caryl Lieblich (collectively, the Trustees).

2. The Property, located at 1625 Riverside Drive, consists of lots 184 & 206 and those portions of lots 185, 186, 204 & 205 of tract 5963 in Los Angeles, California.

3. The Property was acquired by the Plan from the Trustees for \$165,000 on February 29, 1984. On November 3, 1982, an appraisal of the Property was performed by an independent appraiser, Gail A. Anderson, which determined that the fair market value of the Property, exclusive of improvements, was \$303,220. The acquisition of the Property was executed pursuant to an exemption granted by the Department, Prohibited Transaction Exemption (PTE) 83-159 (48 FR 44948, September 30, 1983).

4. The Property has generated rental income (the Rental Income) for the Plan as a result of leasing said Property to the Trustees, who in turn, subleased it to Foodcraft from November 8, 1983 until November 8, 2013.<sup>9</sup> In this regard, the Plan has received Rental Income totaling \$496,521. The applicants represent that the Plan has not incurred any expenses as a result of the Plan's ownership of the Property.

5. The applicants represent that the Plan was audited by the Internal Revenue Service (IRS) in 1992. The audit disclosed the Trustees' failure to obtain periodic appraisals of the Property and requisite rent adjustments as mandated by PTE 83-159.<sup>10</sup> The IRS noted that prohibited transactions occurred and that they have been

corrected. Accordingly, Form 5330 excise tax returns were filed by the Trustees and the excise tax was remitted to the IRS.

Furthermore, the Department conducted its own investigation of the prohibited transactions. In this regard, on November 24, 1992, Foodcraft reimbursed the Plan \$45,000 for five years of adjusted rent and \$4,500 in interest. By letter dated April 19, 1993, the Department concluded that the prohibited transactions have been corrected and the funds restored to the Plan. A subsequent audit by the IRS was conducted in 1997. In that audit, the IRS concluded that the Trustees complied with the exemption.<sup>11</sup>

6. The Property was appraised on April 5, 1999 by Ronald L. Macksoud (Mr. Macksoud) for Babcock Abelmann & Associates, an appraisal company independent of the Plan and the Trustees. Mr. Macksoud, a California certified real estate appraiser, used the direct sales comparison approach to evaluate the fair market value of the Property. Based on this approach, Mr. Macksoud represents that the fair market value of the Property, as of April 5, 1999, was \$315,000.

7. The Trustees propose to purchase the Property for a cash price of \$315,000. It is represented that the Sale is administratively feasible in that it will be a one-time transaction for cash in which the Plan will pay no fees or commissions. It is also represented that the Sale is in the best interest of the Plan since it allows the Plan to disgorge an illiquid asset to be replaced by conventional investments, e.g. money instruments and securities. This would improve the Plan's liquidity and ability to meet its obligation for payment of benefits. In addition, the Plan will no longer be involved in the enforcement of its leasehold interest under the lease, which sets forth the rights of the parties for the next fourteen years.

8. In summary, the Trustees represent that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) The Trustees will purchase the Property from the Plan for the greater of \$315,000 or the Property's fair market value as of the date of the transaction as

<sup>9</sup> PTE 83-159 also provided exemptive relief for the subsequent lease of the Property by the Plan to the Trustees.

<sup>10</sup> Specifically, in the Proposal to PTE 83-159, 48 FR 35740 (August 5, 1983), line item "3." of the "Summary of Facts and Representations," provides that, "[t]he rental rent will be adjusted periodically, but at a minimum of every three years, as determined by an independent appraiser, to the greater of 10% of the fair market value of the property, or the fair market rental value of the property." (48 FR at 35741).

<sup>11</sup> In this regard, the Department is not offering any opinion as to the continued availability of PTE 83-159 for the period beginning 1992, when the Trustees failed to obtain an appraisal of the Property to determine the fair market rental value, to the present.

determined by a qualified, independent appraiser;

(c) The proposed transaction is a one-time transaction for cash; and

(d) The Plan will pay no fees or commissions associated with the proposed Sale.

**FOR FURTHER INFORMATION CONTACT:** J. Martin Jara, U.S. Department of Labor, telephone (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 of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and (4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of March, 2000.

**Ivan Straszfeld,**

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

[FR Doc. 00-7113 Filed 3-21-00; 8:45 am]

**BILLING CODE 4510-29-P**

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[Notice (00-027)]**

### **NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

**DATES:** Wednesday, April 5, 2000, 12 p.m.-1 p.m. Eastern Standard Time.

**ADDRESSES:** NASA Headquarters, 300 E Street, SW, Room 7W31, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546-0001, 202/358-4461.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows: —Review the readiness of the Shuttle (STS-101) Mission (ISS assembly flight 2A.2A).

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: March 15, 2000.

**Mathew M. Crouch,**

*Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.*

[FR Doc. 00-7056 Filed 3-21-00; 8:45 am]

**BILLING CODE 7510-01-M**

## **NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

### **Records Schedules; Availability and Request for Comments**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before May 8, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-713-6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: (301)713-7110. E-mail: records.mgt@arch2.nara.gov.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape,