

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 2001-11; Exemption Application No. D-10760, et al.]

Grant of Individual Exemptions; Salomon Smith Barney Inc. (SSB), Citigroup Inc. (Citigroup) and their Affiliates (collectively, the Applicants)

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, DC. 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, 5 U.S.C. App. 1 (1996), 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. (SSB), Citigroup Inc. (Citigroup) and their Affiliates (collectively, the Applicants) Located in New York, New York

[Prohibited Transaction Exemption 2001-11; Exemption Application Number D-10760]

*Exemption***Section I. Covered Transactions**

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: (1) the purchase or sale by employee benefit plans (the Plans), other than Plans sponsored and maintained by the Applicants, of publicly-traded debt securities (the Debt Securities) issued by the Applicants; and (2) the extension of credit by the Plans to the Applicants in connection with the holding of the Debt Securities.

This exemption is subject to the general conditions that are set forth below in Section II.

Section II. General Conditions

(a) The Debt Securities are made available by the Applicants in the ordinary course of their business to Plans as well as to customers which are not Plans.

(b) The decision to invest in the Debt Securities is made by a Plan fiduciary (the Independent Plan Fiduciary) or a participant in a Plan that provides for participant-directed investments (the Plan Participant), which is independent of the Applicants.

(c) The Applicants do not have any discretionary authority or control or provide any investment advice, within the meaning of 29 CFR 2510.3-21(c), with respect to the Plan assets involved in the transactions.

(d) The Plans pay no fees or commissions to the Applicants in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under Part II of Prohibited Transaction Class Exemption (PTCE) 75-1 (40 FR 50845, October 31, 1975).¹

¹ The Department is providing no opinion herein as to whether any principal transactions involving

(e) The issuer of the Debt Securities (the Issuer) agrees to notify Plan investors in the prospectus (the Prospectus) for the Debt Securities that, at the time of acquisition, no more than 15 percent of a Plan's assets should be invested in any of the Debt Securities.

(f) The Debt Securities do not have a duration which exceeds 9 years from the date of issuance.

(g) Prior to a Plan's acquisition of any of the Debt Securities, the Applicants fully disclose, in the Prospectus, to the Independent Plan Fiduciary or Plan Participant, all of the terms and conditions of such Debt Securities, including, but not limited to, the following:

(1) A statement to the effect that the return calculated for the Debt Securities will be denominated in U.S. dollars;

(2) The specified index (the Index) or Indexes on which the rate of return on the Debt Securities is based;

(3) A numerical example, designed to be understood by the average investor, which explains the calculation of the return on the Debt Securities at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;

(4) The date on which the Debt Securities are issued;

(5) The date on which the Debt Securities will mature and the conditions of such maturity;

(6) The initial date on which the value of the Index is calculated;

(7) Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;

(8) The ending date on which interest is determined, calculated and paid;

(9) Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the Debt Securities is entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);

(10) All details regarding the methodology for measuring performance;

(11) The terms under which the Debt Securities may be redeemed;

(12) The exchange or market where the Debt Securities are traded or maintained; and

debt securities would be covered by PTCE 75-1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75-1.

(13) Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

(h) The terms of a Plan's investment in the Debt Securities are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time of such acquisition.

(i) In the event the Debt Securities are delisted from any nationally-recognized securities exchange, the Issuer will apply to list the Debt Securities on another nationally recognized exchange or apply for trading through the National Association of Securities Dealers Automated Quotations System (NASDAQ), which requires that there be independent market-makers establishing a market for such securities in addition to the Issuer. If there are no independent market-makers, the exemption will no longer be considered effective.

(j) The Debt Securities are rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of their acquisition.

(k) The rate of return for the Debt Securities is objectively determined and, following issuance, the Applicants retain no authority to affect the determination of the return for such security, other than in connection with a "market disruption event" (the Market Disruption Event) that is described in the Prospectus for the Debt Securities.

(l) The Debt Securities are based on an Index that is—

(1) Created and maintained² by an entity that is unrelated to the Applicants and is a standardized and generally-accepted Index of securities; or

(2) Created by the Applicants, but maintained by an entity that is unrelated to the Applicants,

(i) Consists either of standardized and generally-accepted indexes or an Index comprised of publicly-traded securities that are not issued by the Applicants, are designated in advance and listed in the Prospectus for the Debt Securities (Under either circumstance, the Applicants may not unilaterally modify the composition of the Index, including the methodology comprising the rate of return.),

(ii) Meets the requirements for an Index in Rule 19b-4 (Rule 19b-4) under the Securities Exchange Act of 1934 (the 1934 Securities Act), and

(iii) The index value (the Index Value) for the Index is publicly-disseminated through an independent pricing service,

such as Reuters Group, PLC (Reuters) or Bloomberg L.P. (Bloomberg), or through a national securities exchange.

(m) The Applicants do not trade in any way intended to affect the value of the Debt Securities through holding or trading in the securities which comprise an Index.

(n) The Applicants maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this section to determine whether the conditions of this exemption have been met, except that—

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

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

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) are unconditionally available at their customary location during normal business hours by:

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

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

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(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 above in subparagraphs (B)–(D) of paragraph (o)(1) are authorized to examine the trade secrets of the Applicants or commercial or financial information which is privileged or confidential.

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 (the Notice) published on February 15, 2001 at 66 FR 10521.

Written Comments

The Department received one comment letter with respect to the Notice. The comment letter was submitted by the Applicants, who requested certain minor changes to the proposed exemption.

First, the Applicants requested that the reference to "Citigroup" in Section II, paragraph (e), of the Notice should be changed to "the Issuer." In this regard, the Applicants note that the obligation to produce a prospectus for any Debt Securities issued by the Applicants will reside with the Issuer of the Debt Securities, and not with its parent. Similarly, the Applicants requested that the two references to "Citigroup" in Section II, paragraph (i), of the Notice should be changed to "the Issuer" since listing requirements will be handled by the Issuer rather than its parent. The Applicants noted that these changes would make Section II(i) consistent with Item 12 of the "Summary of Facts and Representations" (SFR) contained in the Notice.

In addition, the Applicants requested that the language in Section II, paragraph (i), should be modified to clarify that, upon a delisting of the Debt Securities from a nationally recognized exchange, the Issuer may choose to list the Debt Securities on another nationally recognized exchange as an alternative to applying for trading through NASDAQ.

The Department agrees with the Applicants' comments and suggested changes, and has modified the language of the final exemption accordingly.

With respect to the information contained in the SFR, the Applicants requested three changes.

First, the last sentence of the first paragraph of Item 5 states that the Debt Securities will be issued in denominations of \$10 per unit. The Applicants note that although currently only \$10 denominations have been issued, SSB would like to be able to use other denominations should the need arise. Accordingly, the Applicants request that the word "generally" be inserted between "would" and "be" in that sentence to allow for variation in the denominations of any future issuance.

Second, the first paragraph of Item 12 in the SFR discusses the availability of price quotations. Since the Debt Securities may not always meet the necessary requirements for being listed in the daily financial press, which may exclude certain securities due to space constraints, SSB requests that the word "and" in the first paragraph of Item 12 in the SFR be changed to "or" since

² For purposes of this exemption, the term "maintain" means that all calculations relating to the securities in the Index, as well as the rate of return of the Index, are made by an entity that is unrelated to the Applicants.

quotes will be available through market reporting services even when not included in the press listings.

Third, the Applicants noted that the second sentence in Item 12 of the SFR should be modified to conform to the change requested to Section II, paragraph (i), above, that, upon any delisting of the Debt Securities from a nationally recognized exchange, the Issuer may choose to list the Debt Securities on another nationally recognized exchange as an alternative to applying for trading through NASDAQ.

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

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

Reagent Chemical & Research, Inc. Employees Profit Sharing Plan and Trust (the Plan)

Located in Middlesex, New Jersey

[Prohibited Transaction Exemption 2001-12; Exemption Application No. D-10793]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a certain residential lot (the Property) by the Plan to Mr. Brian Skeuse and Mrs. Jan Skeuse, parties in interest with respect to the Plan; provided that the following conditions are satisfied:

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

(b) the Plan receives the greater of either: (i) \$105,000; or (ii) the current fair market value for the Property established at the time of the sale by an independent qualified appraiser; and

(c) the Plan pays no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 22, 2001 at 66 FR 6688.

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

The Amalgamated Cotton Garment & Allied Industries Fund-Retirement Fund

Located in New York, New York

[Prohibited Transaction Exemption 2001-13; Exemption Application No.: D-10947]

Exemption

The restrictions of sections 406(a)(1)(A), 406(a)(1)(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,³ shall not apply to the purchase by the Amalgamated Cotton Garment & Allied Industries Fund-Retirement Fund (the Cotton Pension Fund) from the Amalgamated Insurance Fund-Insurance Fund (the Clothing Welfare Fund), a party in interest with respect to the Cotton Pension Fund, of 100 percent (100%) of the outstanding shares of non-publicly traded common stock (the Common Stock) of ALICO Services Corporation (ASC), a service provider to the Cotton Pension Fund; provided that prior to the transaction: (a) An independent fiduciary (the I/F), acting on behalf of the Cotton Pension Fund determines that the transaction is feasible, in the interest of, and protective of the Cotton Pension Fund and its participants and beneficiaries; (b) the I/F determines, on behalf of the Cotton Pension Fund, that the ASC Common Stock should be purchased by the Cotton Pension Fund; (c) the I/F reviews, negotiates, and approves the terms of the purchase of the ASC Common Stock; (d) the I/F monitors the terms of the purchase of the ASC Common Stock and ensures that the Cotton Pension Fund and the Clothing Welfare Fund comply with the approved terms; (e) the I/F determines that the terms of the purchase of the ASC Common Stock are no less favorable to the Cotton Pension Fund than terms negotiated at arm's length with an unrelated third party under similar circumstances; (f) the I/F determines, as of the date the transaction is entered, that the purchase price for the ASC Common Stock paid by Cotton Pension Fund is the fair market value of such stock, not to exceed \$30 million; (g) an independent, qualified appraiser issues a fairness opinion as to the price of the ASC Common Stock and determines, as of the date the transaction is entered, that the Clothing Welfare Fund is receiving the fair market value for such stock, not

to exceed \$30 million; (h) the Cotton Pension Fund incurs no fees, commissions, or other charges or expenses as a result of its participation in the transaction other than the following: (1) the fees incurred in making this exemption request, (2) the fee payable to the I/F, and (3) the fees payable to the parties representing the Cotton Pension Fund in the transaction; (i) the transaction is a one-time occurrence for cash; and (j) a committee composed of members of the Board of Trustees of the Clothing Welfare Fund determines that such fund should engage in the transaction and, if so, such committee is authorized to set the terms and conditions under which the Clothing Welfare Fund will engage in such transaction.

EFFECTIVE DATE: This exemption is effective on March 26, 2001, or the date on which the subject transaction closes.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption. As set forth in the Notice, interested persons consist of the trustees of the Cotton Pension Fund and the trustees of the Clothing Welfare Fund, all of the participants and beneficiaries of such funds, UNITE, whose members are participants in the Funds, all contributing employers of such funds, ASC, and the ASC Subsidiaries. The deadline for submission of such comments was within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on January 25, 2001. All comments and requests for a hearing were due on March 12, 2001.

During the comment period, the Department received no requests for a hearing. However, the Department did receive comment letters from twenty (20) commentators. At the close of the comment period, the Department forwarded copies of these letters to the applicant for a written response. A description of the comments and the applicant's responses thereto are summarized below.

Upon review of the comment letters, the applicant determined that the various concerns raised by the commentators fell into the following categories: (a) Ten (10) letters requesting confirmation that benefits will not be decreased or affected; (b) nine (9) letters asking for information about benefits and/or a claim for benefits; and (c) one (1) letter requesting that plan records concerning a participant's address be updated. In response to these

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

comments, the applicant forwarded the letters to the appropriate parties at the Cotton Pension Fund and the Clothing Welfare Fund, so that the concerns expressed by the commentators could be addressed.

As the comments do not pertain to the transaction which is the subject of the exemption, the Department has concluded that it is appropriate for the issues identified by the commentators to be addressed by individuals at the Cotton Pension Fund and the Clothing Welfare Fund.

In addition, to the letters from commentators, the Department received a comment letter from the applicant. In this regard, in a letter dated March 9, 2001, the applicant made four comments, three (3) of which concerned modifications to the language of the exemption, as proposed, and one which concerned an amendment to the language of the Summary of Facts and Representations (SFR) in the Notice. Subsequently, in a letter dated March 13, 2001, the applicant withdrew all but one comment. In that comment, the applicant suggested that the Department delete the following language that appeared in the SFR in the Notice: "The Clothing Welfare Fund has requested an individual exemption in order to sell to the Cotton Pension Fund all of the outstanding shares of ASC Common Stock." In place of that sentence, the applicant suggests the following language: "The Cotton Pension Fund has requested an individual exemption in order to purchase from the Clothing Welfare Fund all of the outstanding shares of ASC Common Stock." The applicant maintains that this change is necessary because the Cotton Pension Fund made the application for the prohibited transaction exemption, not the Clothing Welfare Fund.

The Department concurs. Accordingly, the first sentence of paragraph 6 of the SFR in the Notice, should have read as follows: "The Cotton Pension Fund has requested an individual exemption in order to purchase from the Clothing Welfare Fund all of the outstanding shares of ASC Common Stock."

In the Notice the Department stated that the proposed exemption, if granted, would be effective on the date that the subject transaction closes, or March 15, 2001, whichever is earlier. However, in a letter dated March 16, 2001, the applicant informed the Department that the Cotton Pension Fund and the Clothing Welfare Fund have scheduled March 26, 2001, as the closing date for the transaction contemplated by the exemption. Accordingly, the Department has changed the effective

date of the exemption to read: "This exemption is effective on March 26, 2001, or the date on which the subject transaction closes."

After giving full consideration to the entire record, including the written comments from the applicant and the commentators, the Department has decided to grant the exemption. In this regard, the comment letters submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on January 25, 2001, at 66 FR 7810.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, 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 to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

(3) The availability of these exemptions is subject to the express

condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 29th day of March, 2001.

Ivan Strasfeld,

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

[FR Doc. 01-8155 Filed 4-2-01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of April 2, 9, 16, 23, 30, May 7, 2001.

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

STATUS: Public and Closed.

Matters To Be Considered

Week of April 2, 2001

There are no meetings scheduled for the Week of April 2, 2001.

Week of April 9, 2001—Tentative

Monday, April 9, 2001

1:30 p.m.—Briefing on 10 CFR Part 71 Rulemaking (Public Meeting)
(Contacts: Naiem Tanius, 301-415-6103; David Pstrak, 301-415-8486)

Tuesday, April 10, 2001

10:25 a.m.—Affirmation Session (Public Meeting) (if needed)

10:30 a.m.—Meeting on Rulemaking and Guidance Development for Uranium Recovery Industry (Public Meeting)
(Contact: Michael Layton, 301-415-6676)

Week of April 16, 2001—Tentative

There are no meetings scheduled for the Week of April 16, 2001.

Week of April 23, 2001—Tentative

Tuesday, April 24, 2001

10:25 a.m.—Affirmation Session (Public Meeting) (if needed)

10:30 a.m.—Discussion of Intragovernmental Issues (Closed—Ex. 9)

Week of April 30, 2001—Tentative

There are no meetings scheduled for the Week of April 30, 2001.