least the same measure of protection as the existing standard.

10. Peabody Energy, Rivers Edge Mining, Inc.

[Docket No. M–2001–060–C]

Peabody Energy, Rivers Edge Mining, Inc., 202 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324–1233 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Rivers Edge Mine (I.D. No. 46–08890) located in Boone County, West Virginia. The petitioner proposes to use high-voltage 2,400 volt trailing cables in the last open crosscut at the working continuous miner section(s). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

11. Cumberland River Coal Company

[Docket No. M–2001–061–C]

Cumberland River Coal Company, Pardee Complex, P.O. Drawer 109, Appalachia, Virginia 24216 has filed a petition to modify the application of 30 CFR 75.364(b)(2) & (4) (weekly examination) to its Band Mill Mine (I.D. No. 44–06816) located in Wise County, Virginia. Due to deteriorating roof conditions in certain areas of the return air course, traveling the affected area in its entirety to conduct weekly examinations would be unsafe. The petitioner proposes to establish two monitoring stations to evaluate the air entering and leaving the affected area of the return air course, and have a certified person examine the monitoring stations on a weekly basis and record the date, his/her initials, time of examination, and the quantity and quality of air in a book or on a date board that would be maintained on the surface of the mine and made accessible to all interested parties. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

12. Eastern Associated Coal Corp.

[Docket No. M–2001–062–C]

Eastern Associated Coal Corp., 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Harris No. 1 Mine (I.D. No. 46–01271) located in Boone County, West Virginia. The petitioner proposes to plan to clean out and prepare oil and gas wells for plugging and to plug all wells that are encountered during normal operations at the Harris No. 1 Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

13. Tilden Mining Company L.C.

[Docket No. M–2001–003–M]

Tilden Mining Company, L.C., One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 56.14131 (seat belts for haulage trucks) to its Tilden Mine (I.D. No. 20–00422) located in Marquette County, Michigan. The petitioner requests a modification of the existing standard to permit an alternate method of compliance for labeling seat belts. The petitioner proposes to equip its haul trucks with seatbelt/driver restraint systems which are manufactured, installed, and labeled in conformance with SAE J800C, SAE J386, subsequent amendments to those recommendations, or any other SAE recommendations applicable to seat belt/driver restraint systems. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 30, 2001. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 21st day of June 2001.

David L. Meyer,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 01–16274 Filed 6–27–01; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10942, et al.]

Prohibited Transaction Exemption 2001–21; Grant of Individual Exemptions; Bank of America (BofA) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

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

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, 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.

Bank of America (BofA) Located in Bethesda, Maryland

[Prohibited Transaction Exemption 2001–21; Exemption Application No. D–10942]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the granting to BofA by the Westbrook Real Estate Fund IV, L.P. (LP), a Delaware Limited Partnership, of a first, exclusive, and prior security interest in the capital commitments, reserve amounts and capital contributions (Capital Contributions), whether now owned or after-acquired, of certain employee benefit plans (Plans) investing in the LP; (2) the collateral assignment and pledge by the LP to BofA of its security interest in each Plan's limited partnership interest, whether now owned or after-acquired; (3) the granting by the LP of a first, exclusive, and prior security interest in a borrower collateral account to which all Capital Contributions will be deposited when paid; (4) the granting to BofA by Westbrook Real Estate Partners Management IV, L.L.C., a Delaware limited liability company and the general partner of the LP (the General Partner), of its right to make calls for cash contributions (Drawdowns) under the Amended and Restated Agreement of Limited Partnership of Westbrook Real Estate Fund IV, L.P., dated as of September 15, 2000, where BofA is the representative of certain lenders (the Lenders) that will fund a so-called ''credit facility'' (Credit Facility) providing credit to the LP, and the Lenders are parties in interest with respect to the Plans; and (5) the execution of a partner agreement and estoppel (Estoppel) under which the Plans agree to honor the Drawdowns; provided that (i) the proposed grants, assignments, and Estoppels are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (ii) the decisions on behalf of each Plan to invest in the LP and to execute such Estoppels in favor of BofA, for the benefit of each Lender, are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BofA; (iii) with respect to Plans that may invest in the LP in the future, such Plans will have assets of not less than $100 million[1] and not more than 5% of the assets of such Plan will be invested in the LP; (iv) the General Partner is unrelated to any Plan and any Lender; and (v) on or after December 31, 2000, this exemption is not applicable for any direct or indirect transaction between the AT&T Management Pension Plan and the AT&T Pension Plan and J.P. Morgan Chase & Co. (or any affiliate of J.P. Morgan Chase & Co. that is a party in interest with respect to the AT&T Plans).

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 March 21, 2001 at 66 FR 15897.

Effective Date: This exemption is effective September 15, 2000.

Written Comments

The Department received one comment letter with respect to the Notice. The comment letter was submitted by BofA (the Applicant) to report certain facts that had changed since the exemption application was filed.

The Applicant stated that the following six employee benefit plan trusts acquired limited partnership interests in the LP in addition to the trusts listed in the original application: (i) The White Plaza Group Trust; (ii) the UPS Retirement Plan Master Trust; (iii) Leeway & Co., as nominee for the Long-Term Investment Trust; (iv) the U.S. Steel and Carnegie Pension Fund, as Trustee for the Marathon Oil Group Trust; (v) the U.S. Steel and Carnegie Pension Fund, as Trustee for the U.S. Steel Union Trust; and (vi) the U.S. Steel and Carnegie Pension Fund, as Trustee for the U.S. Steel Non-Union Trust.

The following employee benefit plans which are invested in the LP hold assets in these Trusts:

White Plaza Group Trust

1. General Motors Retirement Program for Salaried Employees
2. Delphi Automotive Systems Retirement Program for Salaried Employees
3. General Motors Hourly-Rate Pension Plan
4. Delphi Automotive Systems Hourly-Rate Employees Pension Plan
5. Employees Retirement Plan for GMAC Mortgage Corporation
6. Saturn Individual Savings Plan for Represented Members
7. Saturn Personal Choices Retirement Plan for Non-Represented Team Members

UPS Retirement Plan Master Trust

1. UPS Retirement Plan

Leeway & Co., as Nominee for the Long-Term Investment Trust

1. AT&T Management Pension Plan
2. AT&T Pension Plan

U.S. Steel and Carnegie Pension Fund, as Trustee for the Marathon Oil Group Trust

1. Retirement Plan of Marathon Oil Company
2. Marathon Ashland Petroleum LLC Retirement Plan

U.S. Steel and Carnegie Pension Fund, as Trustee for U.S. Steel Union Trust

1. United States Steel Corporation Plan for Employee Pension Benefits (Revision of 1950)

U.S. Steel and Carnegie Pension Fund, as Trustee for U.S. Steel Non-Union Trust

1. United States Steel Corporation Plan for Non-Union Employee Pension Benefits (Revision of 1998)

The Applicant represented that by April 20, 2001, representatives of the fiduciaries of each of the above Plans were given notice of the proposed exemption, provided with a copy of the Notice, and informed that they had the opportunity to submit comments for a period of 35 days. Accordingly, the Applicant represented that the comment period was extended until May 25, 2001.

The Applicant also wished to clarify that Morgan Guaranty Trust Company (MGT) was the fiduciary who exercised the discretionary authority to cause the AT&T Management Pension Plan and the AT&T Pension Plan (together, the AT&T Plans) to invest in the LP and to execute the Estoppel through Leeway & Company (Leeway), as Nominee for the Long Term Investment Trust (the Long Term Trust). At the time of the investment, MGT was a wholly-owned subsidiary of J.P. Morgan & Co. (J.P. Morgan). J.P. Morgan was independent of all the Lenders. However, J.P. Morgan subsequently merged (the Merger) with The Chase Manhattan Corporation on December 31, 2000. As a result of the Merger, MGT is now a wholly-owned subsidiary of the surviving entity: J.P. Morgan Chase & Co. (Morgan Chase).

The Chase Manhattan Bank (Chase) is the co-syndication agent and a Lender participating in the Credit Facility. At

[1] In the case of multiple plans maintained by a single employer or a single group of employers treated as a single employer under Sections 414(b), 414(c), 414(m), and 414(o) of the Code, the assets of which are invested on a commingled basis (e.g., through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans.

the time of the investment by the Long Term Trust in the LP, Chase was a wholly-owned subsidiary of the Chase Manhattan Corporation. As a result of the Merger, MGT is now a wholly-owned subsidiary of Morgan Chase. Accordingly, MGT and Chase are included in a brother-sister group of trades or businesses as described in section 1.414(c) of the federal income tax regulations.

The Notice requires as a condition of the proposed exemption that the decisions on behalf of each Plan (as defined in the Notice and including the AT&T Plans) to invest in the Partnership and to execute the Estoppel in favor of BofA, for the benefit of each Lender participating in the Credit Facility, be made by a fiduciary which is not included among, and which is independent of and unaffiliated with, the Lenders and BofA. To avoid the need to consider whether the Merger raises any issues in respect of this condition, the affected parties to the Credit Facility have determined that BofA, as administrative agent, will continue the allocation of collateral set forth in Section 5.1(c) of the Credit Facility in a manner that the AT&T collateral will not be used as collateral for, or the payment of, Chase's interest, fees, or the portion of the Credit Facility attributable to Chase's lending commitment under the Credit Facility.

The effect of such allocation of collateral will be that the interests and rights granted by the AT&T Plans pursuant to Section 5.1(b) of the Credit Facility (the Partner Collateral) will be allocated by BofA in such a manner that Chase will not hold any security interest or lien in the Partner Collateral attributable to the AT&T Plans, and will not receive any payment of its portion of the Credit Facility or any interest or fees from capital contributions attributable to the AT&T Plans. Moreover, any claim for the payment of the Credit Facility, interest or fees brought against the AT&T Plans will be brought by BofA, as administrative agent for the benefit of the Lenders. Thus, Chase will not receive any benefit from the Estoppel executed at the direction of MGT by Leeway & Co., as nominee for the Long Term Trust, on behalf of the AT&T Plans.

In connection with the Credit Facility, Chase could earn interest, an unused commitment fee, and administrative fees. Interest and the unused commitment fee are paid to all Lenders in the Credit Facility on a pro rata basis. The unused commitment fee is similar to interest. It reflects in part the opportunity costs incurred by the Lenders in committing funds to the Credit Facility, just as interest reflects in part the Lenders' opportunity costs in actually funding the Credit Facility. The amount of the unused commitment fee is based on the difference between the money actually borrowed and the amount which the Lenders have committed under the Credit Facility. Chase had already been paid its co-syndication fees prior to the date of the Merger. In the event there was to be a material amendment to the Credit Facility, Chase, as well as other Lenders, could be paid additional interest and/or administrative fees, including a co-syndication fee. However, as a result of the allocation of collateral as described above and the factors described below, the Applicant represents that no prohibited transactions would be created by the payment of such interest or fees.

As suggested in Representation 11 of the Summary of Facts and Representations contained in the Notice (the Summary), the exemption application assumes that the LP is an ''operating company'' under the Department's Plan Asset Regulations.[2] Based on such assumption and the allocation of collateral described above, no amounts which will be received or accrued by Chase in its role as co-syndication agent and Lender were or will be paid from Plan assets; all interest and fees paid to Chase in any capacity in connection with the Credit Facility are usually paid by the LP. In the unlikely event any amount is paid by the limited partners, including the AT&T Plans, then BofA, as administrative agent for the benefit of the Lenders, will allocate the AT&T Plans' capital commitments in a manner to ensure that none of Chase's interest or fees will be paid by assets of the AT&T Plans.

In addition, from and after the date of the Merger, the AT&T Plans' investment (or any decision by MGT to retain the AT&T Plans' investment) in the LP will have no effect on Chase's receipt of any interest or fees. The collateral that secures the Credit Facility sufficiently exceeds the amount customarily required by lenders in similar transactions with similar lending terms. As a result of such over-collateralization and the allocation of collateral, neither the investment by the AT&T Plans in the LP nor their withdrawal from the LP increase or decrease the interest or fees received by Chase in connection with the Credit Facility. Accordingly, Chase will earn any interest or fees arising in connection with the Credit Facility without regard to whether the AT&T Plans remain as a limited partner of the LP.

The Applicant also made an additional clarification regarding the information contained in the Summary. The fourth sentence of Representation 10 of the Summary should be deleted and replaced with the following:

> In this regard, such Plan must be represented by an independent fiduciary, and the General Partner or BofA must receive from the Plan one of the following:
>
> (1) a representation letter from the applicable fiduciary with respect to such Plan substantially identical to the representation letter submitted by the fiduciaries of the other Plans, in which case this proposed exemption, if granted, will apply to the investments made by such Plan if the conditions required herein are met; or
>
> (2) evidence that such Plan is eligible for a class exemption or has obtained an individual exemption from the Department covering the potential prohibited transactions which are the subject of this proposed exemption.

The Applicant requested that the sentence be deleted and replaced with the above in order to provide that the documentation described in items (1) and (2) may be received by either the General Partner or the Applicant. Thus, as a result of this clarification, BofA may also receive the representation letter from the independent fiduciaries of the Plans.

The Applicant requested that the exemption be made retroactive to September 15, 2000, to cover any executions of Estoppels that may have occurred prior to the granting of the exemption.

Finally, the Applicant represented that it is not requesting relief for any direct or indirect transaction between the AT&T Plans and Morgan Chase (or any affiliate of Morgan Chase that is a party in interest with respect to the AT&T Plans). However, the exemption will cover any transaction between the AT&T Plans and the other Lenders.

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

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[2] See 29 CFR 2510.3–101(c); Definition of ''plan assets''—plan investments.

Phoenix Home Life Mutual Insurance Company (Phoenix) Located in Hartford, CT.

[Prohibited Transaction Exemption 2001–22; Exemption Application No. D–10943]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply effective as of June 8, 2001, to (1) the receipt of common stock (Stock) of The Phoenix Companies, Inc. (the Holding Company), the parent of Phoenix, or (2) the receipt of cash (Cash) or Policy Credits, by or on behalf of any Eligible Policyholder of Phoenix which is an employee benefit plan (a Plan), including any Eligible Policyholder that is a Plan maintained by Phoenix or its affiliates (Phoenix Plan), in exchange for such Eligible Policyholder's membership interest in Phoenix, in accordance with the terms of a plan of reorganization (the Plan of Reorganization) adopted by Phoenix and implemented pursuant to Section 7312 of the New York Insurance Law.

In addition, effective as of June 8, 2001, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding of the Stock, by a Phoenix Plan, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

The exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Reorganization is subject to approval, review and supervision by the Superintendent of Insurance of the State of New York (the Superintendent) and is implemented in accordance with procedural and substantive safeguards that are imposed under New York law.

(b) The Superintendent reviews the terms and options that are provided to Eligible Policyholders of Phoenix as part of such Superintendent's review of the Plan of Reorganization and the Superintendent only approves the Plan of Reorganization following a determination that the Plan of Reorganization is fair and equitable to Eligible Policyholders and is not detrimental to the general public.

(c) Each Eligible Policyholder has an opportunity to vote to approve the Plan of Reorganization after full written disclosure is given to the Eligible Policyholder by Phoenix.

(d) Any determination to receive Stock, Cash or Policy Credits by an Eligible Policyholder which is a Plan, pursuant to the Plan of Reorganization, is made by one or more Plan fiduciaries which are independent of Phoenix and its affiliates and neither Phoenix nor any of its affiliates exercises any discretion or provides investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(e) In the case of the Phoenix Plans, an independent fiduciary with respect to the Phoenix Plans:

(1) Exercises its authority and responsibility to vote on behalf of the Phoenix Plans at the special meeting of Eligible Policyholders on the proposal to approve the Plan of Reorganization;

(2) Monitors, on behalf of the Phoenix Plans, the acquisition and holding of any Stock, Cash or Policy Credits received;

(3) Makes determinations on behalf of the Phoenix Plans with respect to the voting and continued holding of any Stock held by such Plans until such holding is reduced so that it does not exceed the limits of section 407(a) of the Act;

(4) Disposes of Stock exceeding the limits of section 407(a) of the Act within six months of the effective date of the Plan of Reorganization.

(5) Provides the Department with a complete and detailed final report as it relates to the Phoenix Plans prior to the effective date of the demutualization.

(f) After each Eligible Policyholder entitled to receive Stock is allocated 37 shares of Stock (subject to possible adjustment as provided in the Plan of Reorganization), additional consideration is allocated to each Eligible Policyholder who owned participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of Phoenix, which formula has been approved by the Superintendent.

(g) All Eligible Policyholders that are Plans participate in the transactions on the same basis as all Eligible Policyholders that are not Plans.

(h) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of Stock or in connection with the implementation of the commission-free purchase and sale program.

(i) All of Phoenix's policyowner obligations remain in force and are not affected by the Plan of Reorganization.

(j) The terms of the transaction are at least as favorable to the Plans as an arm's-length transaction with an unrelated party.

Section III. Definitions

For purposes of this exemption:

(a) An ''affiliate'' of Phoenix includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Phoenix. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual), and

(2) Any officer, director or partner in such person.

(b) The term ''Eligible Policyholder'' means a person who is (or collectively, persons who are) the owner(s) of one or more policies that are in force on the date of the adoption of the Plan of Reorganization.

(c) The term ''Phoenix'' means Phoenix Home Life Mutual Insurance Company and any of its affiliates, as defined in paragraph (a) of this Section III.

(d) The term ''Policy Credit'' means (a) for an individual or joint participating whole life insurance policy, the crediting of paid-up additions which will increase the cash value and death benefit of the policy; (b) for supplementary contracts issued under optional modes of settlement or annuities in the course of installment payment without a defined account value and that provide for the payment of additional interest, the crediting of an additional amount in the form of additional interest; (c) for supplementary contracts issued under optional modes of settlement or annuities in the course of installment payment without a defined account value not providing for the payment of additional interest, an increase in the installment payment amount; and (d) for all other individual or joint life policies and annuities, (i) if the policy or contract has a defined account value, an increase in the account value, to which the Company will apply no sales, surrender or similar charges, or that will be further increased in value to offset any of these charges, or (ii) if the policy or contract does not have a defined account value, the crediting of dividends under the policy or contract.

Effective Date: This exemption is effective June 8, 2001.

Written Comments

The Department received seven written comments with respect to the proposed exemption. Six comments were submitted by Plan policyholders of Phoenix. The seventh comment was submitted by Phoenix, and contained

only technical corrections to update factual information provided in the Summary of Facts and Representations included as part of the proposed exemption. The policyholders' comments, as well as the comments submitted by Phoenix, are discussed below.

Policyholder's Comments

As noted above, six policyholders submitted comments with respect to the proposed exemption. Three of the policyholders indicated concern that the demutualization would affect retirement benefits owed to them under Phoenix policies. In response, Phoenix emphasizes that the demutualization will not in any way cause a loss or a reduction in the benefits paid pursuant to Phoenix policies.

One policyholder expressed doubts as to the benefit to Phoenix of the plan of demutualization. In response, Phoenix states that converting to a stock life company will increase Phoenix's potential for long-term growth and financial strength in ways not available to it as a mutual company. Phoenix acknowledges that, as in all business ventures, there are risks. However, Phoenix asserts that as a stock company, it will be better able to attract needed capital and offer additional financial products and services to its policyholders. In sum, Phoenix states that the demutualization will make it a stronger, more flexible company.

One policyholder commented that the disclosure information provided by Phoenix did not describe with sufficient clarity the transaction with respect to which Phoenix desires an exemption. In response, Phoenix references the Policyholder Information Booklet, Part I, which contains the following description of the transaction:

Section 406 of ERISA and Section 4975 of the Code prohibit employee benefit plans from engaging in certain transactions with ''parties in interest'' and ''disqualified persons.'' If Phoenix is a ''party in interest'' with respect to an employee benefit plan under ERISA or a ''disqualified person'' under the Code, the receipt of Compensation in exchange for the Policyholders' Membership Interests owned by an Eligible Policyholder with respect to such employee benefit plan could be viewed as prohibited. Phoenix has applied to the U.S. Department of Labor for an administrative exemption to cover such transactions.

Finally, one policyholder submitted a comment that was determined not to be germane to the requested exemption.

Phoenix's Comment

The Department notes the following clarifications made to the Summary of Facts and Representations by Phoenix:

1. Representation 1. In the fourth paragraph of Representation 1, it is stated that Holdings has an approximate 60% ownership interest in publicly traded Phoenix Investment Partners, Ltd. (PXP). Phoenix wishes to clarify this to state that Holdings is now the sole owner of PXP.

2. Representation 2. Phoenix wishes to revise the fourth paragraph of Representation 2 in a number of respects. Phoenix clarifies that the Phoenix Plans are employee benefit plans sponsored by Phoenix, PXP and a PXP subsidiary, Pasadena Capital Corporation. Phoenix states that, with respect to subparagraphs (e) and (f), the actuaries have determined that the Phoenix Home Life Mutual Insurance Company Employee Group Life Insurance Plan and the Phoenix Home Life Mutual Insurance Company Agent Group Life Insurance Plan were not be entitled to any demutualization compensation. Therefore they should not be included in the list of Phoenix Plans which are expected to be Eligible Policyholders. With respect to subsection (g) (redesignated as (e) below), Phoenix notes that the Phoenix Investment Partners Ltd. Group Profit Sharing Plan and Trust was terminated effective March 19, 2001, and that the demutualization proceeds will be used to pay a small portion of the legal expenses for obtaining an IRS determination letter. With respect to subsections (h) and (i) (redesignated as (f) and (g) below), Phoenix states that the Phoenix Investment Partners, Ltd. Group Life Insurance Plan and the Phoenix Investment Partners, Ltd. Group Long Term Disability Plan were terminated effective December 31, 2000, and the demutualization proceeds received by those plans which constitute plan assets will be used to reduce participants contributions under essentially similar plans maintained by Phoenix and in which PXP employees participate. Finally, Phoenix adds the Pasadena Capital Corporation Major Medical and Dental Treatment Plans (the Pasadena Plans), welfare plans, to the listing of plans which are considered Phoenix Plans. As of December 31, 1999, the Pasadena Plans had 87 participants.

Accordingly, as revised, the fourth paragraph of Representation 2 reads as follows:

Phoenix, PXP, and a PXP subsidiary, Pasadena Capital Corporation, sponsor the following Plans, which are expected to be Eligible Policyholders (collectively referred to herein as the ''Phoenix Plans''):

(a) The Phoenix Home Life Mutual Insurance Company Employee Pension Plan (the Pension Plan) is a defined benefit pension plan. As of December 31, 1999, the Pension Plan had approximately 6,160 participants.

(b) The Phoenix Home Life Mutual Insurance Company Savings and Investment Plan (the Savings Plan) is a defined contribution plan. As of December 31, 1999, the Savings Plan had 3,002 participants.

(c) The Phoenix Home Life Mutual Insurance Company Agent Pension Plan (the Agent Pension Plan) is a defined contribution plan. As of December 31, 1999, the Agent Pension Plan had 1,024 participants.

(d) The Phoenix Home Life Mutual Insurance Company Agent Savings and Investment Plan (the Agent Savings Plan) is a defined contribution plan. As of December 31, 1999, the Agent Savings Plan had 535 participants.

(e) The Phoenix Investment Partners, Ltd. Group Profit Sharing Plan and Trust (the PXP Profit Sharing Plan) is a defined contribution plan. As of December 31, 1999, the PXP Profit Sharing Plan had 193 participants. The PXP Profit Sharing Plan was terminated effective March 19, 2001. The anticipated distribution will be used to pay a small portion of the legal expenses for obtaining an IRS determination letter.

(f) The Phoenix Investment Partners, Ltd. Group Life Insurance Plan (the PXP Group Life Plan) is a welfare benefit plan. As of December 31, 1999, the PXP Group Life Plan had 493 participants. The PXP Group Life Plan was terminated effective December 31, 2000. Consideration received by the plan which constitutes plan assets will be used to reduce participants' contributions under essentially similar plans maintained by Phoenix and in which PXP employees participate.

(g) The Phoenix Investment Partners, Ltd. Group Long Term Disability Plan (the PXP Long Term Disability Plan) is a welfare benefit plan. As of December 31, 1999, the PXP Long Term Disability Plan had 359 participants. The PXP Long Term Disability Plan was terminated effective December 31, 2000. Consideration received by the plan which constitutes plan assets will be used to reduce participants' contributions under essentially similar plans maintained by Phoenix and in which PXP employees participate.

(h) The Pasadena Capital Corporation Major Medical and Dental Treatment Plans (the Pasadena Plans) are welfare

benefit plans. As of December 31, 1999, the Pasadena Plans had 87 participants.

After giving full consideration to the entire record, including the written comments, 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 Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For Further Information Contact: Karen Lloyd of the Department, telephone (202) 219–8194. (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, DC, this 25th day of June, 2001.

Ivan Strasfeld,

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

[FR Doc. 01–16236 Filed 6–27–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10935, et al.]

Proposed Exemptions; The Walston & High, P.A. Profit Sharing Plan (the Plan) et al.

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, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of 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.

The Walston & High, P.A. Profit Sharing Plan (the Plan) Located in Wilson, North Carolina

[Application No. D–10935]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Sale (the Sale) by the Plan to A.J. Walston and Arthur T. High, the trustees of the Plan (the Trustees), of three parcels of improved real property (the Parcels). This proposed exemption is conditioned upon adherence to the material facts and representations described herein