

Register pursuant to Section 6(b) of the Act on March 29, 2001 (66 FR17205).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-21644 Filed 8-27-01; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 15, 2001, Cedarburg Pharmaceuticals, LLC, 870 Badger Circle, Grafton, Wisconsin 53024, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm will manufacture tetrahydrocannabinols for another firm.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 29, 2001.

Dated: August 20, 2001.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of diversion Control, Drug Enforcement Administration.*

[FR Doc. 01-21716 Filed 8-27-01; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**Prohibited Transaction Exemption 2001-27; [Exemption Application No. D-10935, et al.]**

#### Grant of Individual Exemptions; The Walston & High, P.A. Profit Sharing Plan (the Plan) 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.

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

[Prohibited Transaction Exemption No. 2001-27; Application No. D-10935]

#### Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application

of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the 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 exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

- (a) The Sale is a one-time transaction for cash;
- (b) The Plan does not pay any commissions, costs or other expenses in connection with the Sale; and
- (c) The Plan will receive an amount equal to the greater of:
  - (i) \$234,000; or
  - (ii) The current fair market value of the Property, as established by an independent, qualified, appraiser at the time of 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 June 28, 2001 at 66 FR 34471.

#### FOR FURTHER INFORMATION CONTACT:

Khalif Ford of the Department, telephone (202) 219-8883 (this is not a toll-free number).

#### Retirement Plan of Dime Bancorp, Inc. (The Dime Plan); Retirement 401(k) Plan of Dime Bancorp, Inc. (the Dime 401(k) Plan); North American Mortgage Company Retirement and 401(k) Savings Plan (the NAMCO Plan); and Lakeview Savings Bank Employee Stock Ownership Plan (the ESOP; together, the Plans), Located in New York, New York

[Prohibited Transaction Exemption 2001-28; Exemption Application Nos. D-10962 through D-10965]

#### Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(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 (E) of the Code, shall not apply, as of December 29, 2000, to: (1) the receipt by the Plans of certain Litigation Tracking Warrants (the Warrants) pursuant to the distribution of Warrants (the Warrant Distribution) by Dime Bancorp, Inc. (Dime) to all of its common stockholders as of December 22, 2000 (the Record Date);<sup>1</sup> (2) the past

<sup>1</sup> In addition to all of Dime's common stockholders as of December 22, 2000 receiving Warrants pursuant to the Warrant Distribution, any person or entity (including the Plans) who bought the common stock of Dime (the Stock) during the

and proposed future holding of the Warrants by the Plans;<sup>2</sup> and (3) the disposition or exercise of the Warrants by the Plans; provided that the following conditions are satisfied:

(A) The Plans' acquisition and holding of the Warrants resulted from an independent act of Dime as a corporate entity, and all holders of Stock, including the Plans, were treated in a like manner with respect to the Warrant Distribution (with the exception of one holder of Stock, who did not receive Warrants);

(B) With respect to Warrants allocated to the Dime 401(k) Plan and the NAMCO Plan, the Warrants were acquired solely for the accounts of participants who had directed investment of all or a portion of their account balances in Stock pursuant to Plan provisions for individually-directed investment of participant accounts;

(C) With respect to Warrants allocated to the Dime Plan and the ESOP, the authority for all decisions regarding the holding, disposition or exercise of the Warrants by such Plans will be exercised by an independent fiduciary acting on behalf of such Plans; and

(D) With respect to Warrants allocated to the Dime 401(k) Plan and the NAMCO Plan, all decisions regarding the holding, disposition or exercise of the Warrants have been, and will continue to be made, in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Warrants in connection with the Warrant Distribution, including all determinations regarding the exercise or sale of the Warrants received through the Warrant Distribution,<sup>3</sup> except for

period from December 20, 2000 through December 29, 2000 received such Stock with certain accompanying "due bills" reflecting the seller's obligation to deliver Warrants to the buyer upon the seller's receipt of such Warrants pursuant to the Warrant Distribution, and therefore also received Warrants in connection with such purchases of Stock. Accordingly, the exemption proposed herein shall also apply to the acquisition, holding, disposition and exercise of Warrants acquired by the Plans in connection with the purchase of Stock with due bills.

<sup>2</sup> On June 25, 2001, Dime signed an agreement to merge (the Merger) with Washington Mutual, Inc. (WM). After the closing of the Merger, Dime will no longer be a separate corporate entity, and the Warrants will convert into warrants to purchase shares of WM common stock in accordance with their terms.

<sup>3</sup> On January 1, 2001, the NAMCO Plan was merged with and into the Dime 401(k) Plan. As a result, for a period of time, there was a temporary administrative freeze period (the Freeze Period) during which former participants of the NAMCO Plan (the Former NAMCO Participants) could not direct the investment of their accounts under the Dime 401(k) Plan, including any Warrants allocated

to those participants who fail to file timely and valid instructions concerning the exercise of the Warrants, with respect to whom the Warrants allocated to their accounts will, to the extent a public trading market for the Warrants exists, be sold.

**EFFECTIVE DATE:** This exemption is effective as of December 29, 2000.

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 Proposal) published on June 28, 2001 at 66 FR 34472.

#### Written Comments

The Department received two written comments with respect to the Proposal. One comment was submitted by a Dime Plan participant who, after receiving an explanation of the Proposal over the telephone by a representative of the Department, withdrew her objection to the Proposal.

The other comment letter was submitted by the applicants. In that letter, the applicants informed the Department that on June 25, 2001, Dime signed an agreement to merge with WM. After the closing of the Merger, Dime will cease to be a separate corporate entity, and WM will be the surviving corporate entity. After the Merger, the Warrants will therefore be exercisable, following the occurrence of their triggering event, with respect to WM stock rather than Dime Stock, in accordance with the terms of the Warrant Agreement (the Agreement). The Agreement was attached as an exhibit to Dime's Form 8-A Filing with the Securities and Exchange Commission in connection with the distribution of the Warrants. The Agreement also provides for the adjustment of the exercise price of the Warrants in the event of a corporate transaction, such as the Merger.

As a result of the anticipated Merger, the applicants requested that the granted exemption reflect this factual change by adding the information contained in footnote 2. The Department has modified the exemption accordingly.

to such accounts. During such Freeze Period, an independent fiduciary had the authority to hold, sell or exercise (to the extent the Warrants were then exercisable) all of the Warrants transferred from the NAMCO Plan and allocated to the accounts of the Former NAMCO Participants under the Dime 401(k) Plan. Once the Freeze Period ceased, the Former NAMCO Participants immediately regained the ability to direct the investment of their accounts under the Dime 401(k) Plan, including any Warrants allocated to such accounts.

In addition, the applicants requested some changes in language to clarify the Proposal. With respect to Transaction (1) above, the applicants note that because the effective date of the exemption is December 29, 2000, and the Warrants were first distributed as of that date, there was no "past receipt by the Plans" of the Warrants, as indicated in the language of the Proposal, and a reference to "receipt by the Plans" would be more accurate. For purposes of clarification, the Department has deleted the word "past" as it appeared in this section of the Proposal.

The applicants also wanted to correct a typographical error that appeared in footnote 2 of the Proposal at 66 FR 34472. The last word of the fourth line should read "bought," not "brought."

The applicants further noted that all references to "Dime" in Paragraph 3 of the Summary of Facts and Representations (the Summary) in the Proposal should actually be to "Dime Savings" and not to "Dime," as Dime Savings, not Dime Bancorp, maintains the ongoing Goodwill Litigation discussed therein.

Finally, the applicants pointed out that in the description of the number of participants and amount of assets for the Dime 401(k) Plan in Paragraph 8 of the Summary, the statistics listed reflect the Dime 401(k) Plan prior to its merger with the NAMCO Plan on January 1, 2001. Thus, the Dime 401(k) Plan *had* (not "has") prior to the January 1, 2001 merger, approximately 3,000 participants and total assets with a fair market value of approximately \$147,955,000, with Dime Stock representing approximately 15% of the fair market value of such assets.

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

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

**Gooch Enterprises, Inc. Money Purchase Pension Plan (the Plan), Located in Thomasville, North Carolina**

[Prohibited Transaction Exemption 2001-29; Exemption Application No. D-10969]

#### 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 two tracts of land (the Property) by the Plan to Harold L. Gooch, Jr. and Susan M. Gooch, who are shareholders of the

Plan sponsor, the trustees of the Plan and, therefore, 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 current fair market value for the Property, as established by an independent qualified appraiser at the time of the sale; 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 June 28, 2001 at 66 FR 34483.

**FOR FURTHER INFORMATION CONTACT:**

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

**J.P. Morgan Chase & Co. (Morgan Chase) and its Affiliates (collectively, the Applicants), Located in New York, New York**

[Prohibited Transaction Exemption 2001-30; Exemption Application No. D-10998]

*Exemption*

Based on the facts and representations set forth in the application, the Department is 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).<sup>4</sup>

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).<sup>5</sup>

(e) The Applicants agree 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

(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 Applicants will 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 Applicants. 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" that is described in the Prospectus for the Debt Securities.

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

(1) Created and maintained<sup>6</sup> by an entity that is unrelated to the Applicants

<sup>4</sup>For purposes of this exemption, references to Title I of the Act, unless otherwise noted herein, refer also to corresponding provisions of the Code.

<sup>5</sup>The Department is providing no opinion herein as to whether any principal transactions involving 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.

<sup>6</sup>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.

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 under the Securities Exchange Act of 1934, and

(iii) The index value for the Index is publicly-disseminated through an independent pricing service, such as Reuters Group, PLC or Bloomberg L.P., 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;

(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.

(o)(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 published on July 10, 2001 at 66 FR 36010.

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

**Wagner, Doxey and Company Money Purchase Plan (the Plan), Located in San Francisco, California**

[Prohibited Transaction Exemption 2001-31; Exemption Application No. D-11003]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain improved real property (the Property) by the individual account of Warren L. Wagner (the Account) in the Plan, to Mr. Wagner, who is a disqualified person with respect to the Plan,<sup>7</sup> provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash; (b) the Account pays no commissions nor other expenses relating to the sale; (c) the Account receives an amount that is the greater of \$750,000, or the fair market value of the Property as of the date of the sale, as determined by a qualified, independent appraiser; (d) within 30 days of publication in the **Federal Register** of the notice granting this exemption, Mr. Wagner reimburses the Account for the fair market rental value of the Property with respect to his past and present use of such Property, including a reasonable rate of interest for the period from the date such amounts were due to the Account to the date of payment; and (e) within 30 days of publication in the **Federal Register** of the notice granting this exemption, Mr. Wagner files Form

<sup>7</sup> Because Warren L. Wagner and Robert J. Doxey, who are partners, are the only participants in the Plan, the Plan is not within the jurisdiction of Title I of the Act, pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

5330 with the Internal Revenue Service and pays all applicable excise taxes due by reason of the above prohibited transactions.

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 July 10, 2001 at 66 FR 36016.

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

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the 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) 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 22nd day of August, 2001.

**Ivan Strasfeld,**

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

[FR Doc. 01-21628 Filed 8-27-01; 8:45 am]

**BILLING CODE 4510-29-P**