

Signed at Washington, DC, this 14 day of March 2002.

**Carol J. Poleskey,**

*Chief Branch of Construction Wage Determinations.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002-15; Exemption Application No. D-10852, et al.]

#### Grant of Individual Exemptions; Rockford Corporation 401(k) Retirement Savings Plan

**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.

#### Rockford Corporation 401(k) Retirement Savings Plan (the Plan) Located in Tempe, AZ

[Prohibited Transactions Exemption 2002-15; Exemption Application No. D-10852]

#### Exemption

The restrictions of sections 406(a)(1)(D), 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)(D) and (E) of the Code,<sup>1</sup> shall not apply, effective December 30, 1999 until March 15, 2000, to an arrangement, by Rockford Corporation (Rockford), the Plan sponsor, for the reversal of the original purchase of debt securities (the Debentures) previously issued by Rockford (the Reversal Transactions), involving the following transactions affecting the individually-directed accounts in the Plan (the Plan Accounts) of certain Plan participants (the Participants): (1) The purchase, by the Participants, from their Plan Accounts of the Debentures; (2) the distribution in kind of the Debentures by the Plan Accounts to the Participants; (3) the rollover of the Debentures, if distributed in kind to the Participants, into self-directed individual retirement accounts (the IRAs) established by the Participants; and (4) any benefit that may have inured to Rockford by not having to repurchase the Debentures held by the Plan Accounts.

This exemption is subject to the following conditions:

(a) A Form 5330 was filed by Rockford with the Internal Revenue Service (the Service) and all appropriate excise taxes were paid with respect to the Plan's acquisition and holding of the Debentures, as well as for the extension of credit by the Plan to Rockford resulting therefrom.

<sup>1</sup> For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(b) With respect to each Debenture,

(1) Rockford offered to repurchase such Debentures from each affected Participant's account in the Plan (the Plan Account), at their fair market value, as determined by Arthur Andersen LLP, a qualified, independent appraiser; and

(2) By March 15, 2000 each Debenture was either—

(i) Repurchased by Rockford; (ii) purchased by or distributed in kind to each Participant whose Plan Account had held such Debentures; and (iii) rolled over, at the election of the Participant, into the Participant's self-directed IRA.

(c) At the time of the Reversal Transactions, each Plan Account received no less than fair market value for the Debentures, which was in excess of their initial cost.

(d) The Plan Accounts paid no fees or commissions in connection with the Reversal Transactions.

(e) Rockford advised each affected Participant in advance of any transaction of the various options available with respect to the divestment of the Debentures from the Participant's Plan Account.

(f) Rockford has maintained, or will cause to be maintained, for a period of six years from the date of such transactions, in a manner capable for audit and examination, such records as are necessary to enable the persons described below in paragraph (g) to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Rockford, the records are destroyed prior to the end of the six year period.

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

(A) Any duly authorized employee or representative of the Department or the Service;

(B) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any Participant or beneficiary or duly authorized employee or representative of such Participant or beneficiary.

(g)(2) None of the persons described in subparagraphs (g)(1)(B)–(g)(1)(C) shall be authorized to examine the trade secrets of Rockford or commercial or

financial information which is privileged or confidential.

**EFFECTIVE DATE:** This exemption is effective from December 30, 1999 until March 15, 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 published on December 13, 2001 at 66 FR 64459.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady, U.S. Department of Labor, (202) 693-8556. (This is not a toll-free number.)

**Morgan Stanley & Co. Incorporated (MS&Co) Located in New York, New York**

[Prohibited Transaction Exemption 2002-16; Exemption Application Number D-10886]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective September 16, 1998, to the acquisition (the Acquisition), on behalf of the Central States, Southeast and Southwest Areas Pension Fund (the Fund), of certain Argentine bonds (the Bonds) from MS&Co, a party in interest with respect to the Fund, by the Capital Asset Trust (the Trust) at the direction of Alliance Capital Management L.P. (Alliance), an investment manager for the Fund, provided the following conditions are satisfied:

(a) The Acquisition was a one-time transaction for cash;

(b) The Fund paid no more than the current fair market value of the Bonds as of the date of the Acquisition;

(c) The Fund paid no commissions or expenses with respect to the Acquisition;

(d) The Acquisition and subsequent sale of the Bonds resulted in the Fund's receipt of a one-day profit totaling \$147,250.01;

(e) Upon identifying the Acquisition as a "prohibited transaction", MS&Co and Alliance acted promptly to comply with the relevant provisions of the Act and the Code;

(f) Alliance and MS&Co took whatever actions were necessary to ensure that the Fund was adequately protected with respect to the Acquisition;

(g) Subsequent to the Acquisition, Alliance implemented an internal computer system designed to prevent transactions between client plans and named fiduciaries with respect to such plans; and

(h) The transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

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 3, 2002 at 67 FR 351.

**FOR FURTHER INFORMATION CONTACT:**

Christopher J. Motta of the Department, telephone (202) 693-8544. (This is not a toll-free number.)

**State Farm Mutual Automobile Insurance Company and State Farm VP Management Corp.**

[Prohibited Transaction Exemption 2002-17; Exemption Application No. D-10961]

*Exemption*

The Department of Labor 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>2</sup>

**Section I: Transactions**

The restrictions of sections 406(a)(1)(A) through (d) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4974 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase or redemption of an institutional class of shares (the Institutional Shares) of State Farm mutual funds (the Fund(s)), as defined in Section III(c), below, by pension plans (the Plan(s)), as defined in Section III(h), below, which are established by:

(a) Independent contractor agents (the Agent(s)) of State Farm Mutual Automobile Insurance Company (State Farm) or its affiliates, who are also registered representatives of State Farm VP Management Corp. (SFVPMC), for themselves and their employees, and

(b) The family members of such Agents (the Family Member(s)) (as defined in Section III(e), below), provided that the conditions set forth in Section II, below are satisfied.

**Section II: Conditions**

(a) Neither State Farm nor its affiliates has discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

<sup>2</sup> 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.

(b) Plans do not pay any plan-level investment management, investment advisory, or similar fees to State Farm or its affiliates in connection with the investment of the assets of such Plans in any of the Funds.

(c) Plans do not pay any redemption fees in connection with the sale of shares of any of the Funds by such Plans.

(d) Plans do not pay any sales commissions in connection with the acquisition or sale of shares of any of the Funds, and the Agents do not receive any sales commission or any other compensation or benefit, direct or indirect, in connection with the transactions that are the subject of this exemption. In this regard, neither State Farm nor any of its affiliates provides production credit, bonus, trip, or other sales incentive to such Agents based on such transactions.

(e) All dealings between the Plans and the Funds and State Farm and its affiliates are on a basis no less favorable to such Plans than such dealings with other shareholders of the Funds.

(f) The price paid or received by a Plan for shares in a Fund is the net asset value per share, as defined, in Section III(d), below, at the time of the transaction and is the same price that would have been paid or received for such shares by any other investor in such Fund at that time.

(g) For each Plan, the combined total of all fees received by State Farm and its affiliates for the prevention of services to such Plan, and in connection with the provision of services to any of the Funds in which such Plan may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) Neither State Farm nor its affiliates receive any fees payable pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the 1940 Act) in connection with the transactions.

(i) The Plans are not employee benefit plans sponsored or maintained by State Farm or its affiliates for their employees.

(j)(1) Each Agent, or a Family Member of such Agent (as defined in Section III(e), below) in the case of a Plan sponsored by such Family Member, or each participant (the Participant(s)) in the case of a Plan which provides for participant investment direction, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, receives in advance of any initial investment in a Fund by such Plan (or Participant's account, in the case of a participant directed individual account plan) a full and detailed written disclosure of information concerning each Fund in which such Plan or

Participant's account, as the case may be, is considering investing, including but not limited to:

(A) A current prospectus for such Fund;

(B) A statement describing the fees for investment advisory, investment management, or similar services, a statement describing any fees for secondary services (Secondary Services), as defined below in Section III(f), (including but not limited to fees for acting as custodian, transfer agent, or for providing administrative, brokerage, or other services) payable to State Farm or its affiliates, and all other fees to be charged to or paid by such Plan, Participant's account, or such Fund to State Farm or its affiliates;

(C) A statement regarding appropriate investments for retirement plans and explaining why such Fund would be an appropriate investment for such Plan or Participant's account, as the case may be; and

(D) Upon the request of an Agent, a Family member, or a Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as the case may be, a copy of the proposed exemption and/or a copy of the final exemption, as such documents appear when published in the **Federal Register**.

(2) Each Participant, in the case of a Plan that does not provide for participant investment direction, receives from the fiduciary responsible for directing the investment of plan asset in advance of any initial investment in a Fund by such Plan:

(A) A statement that the Plan is investing in the Funds;

(B) The name of each Fund in which such Plan is investing; and

(C) A current prospectus for each such Fund.

(k) Any investment of the assets of a Plan (or a Participant's account in the case of a participant directed individual account plan) in each particular Fund is implemented only at the express direction of an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, after such Agent, Family Member, or Participant, or other fiduciary of a plan who has the authority to acquire or dispose of shares of the Funds, receives the information described in paragraph (j) of Section II, above.<sup>3</sup>

(1) Pursuant to paragraph (k) of Section II, above, the investment of any assets of a Plan (or Participant's account, in the case of a participant directed individual account plan) in a Fund shall be terminable at will by an Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as appropriate, without penalty to such Plan (or Participant's account, in the case of an individually directed account plan), upon receipt by State Farm or its affiliates of a written notice of termination. A form (the Termination Form) expressly providing an election to terminate the investment in a Fund by a Plan (or Participant's account, in the case of an individually directed account plan) with instructions on the use of the form must be supplied to Agents, Family Members, or Participants, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, as the case may be, no less than annually; provided that the Termination Form need not be supplied to Agents, Family Members, or Participants, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, pursuant to this paragraph, sooner than six (6) months after such Termination Form is supplied pursuant to paragraph (m) of this Section II, below, except to the extent required by such paragraph in order to disclose an additional service or a fee increase. The instructions for the Termination Form must include a statement that the investment by a Plan in the Fund is terminable at will by a Plan (or Participant's account in the case of a participant directed individual account plan) without penalty to such Plan (or Participant's account), upon receipt by State Farm or its affiliates of written notice from the appropriate Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds.

exemption, and that satisfaction of the conditions of this exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the Department notes that the selection and the retention of any of the Funds as an investment or an investment option under a Plan is a fiduciary act. In this regard, the Department expects the fiduciary of a Plan to determine, if such selection and retention of any of the Funds by a Plan is appropriate after taking into consideration the investment performance of such Funds and the fees paid by such Funds (including advisory fees and administrative fees paid to State Farm and other persons).

(m) (1) In the event of an increase in fees paid by a Fund for any service, or

(2) In the event of an addition of any Secondary Service for which a fee is charged, or

(3) In the event of an increase in the rate of any fee that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed for such fee, State Farm or its affiliates will, at least 30 days in advance of the implementation of such fee increase or a fee for an additional service or increase in the rate of a fee, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and that explains the nature and amount of the additional service for which a fee is charged or the increase in fees or the increase in the rate of any fee) to the appropriate Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds. Such notice shall be accompanied by a Termination Form with instructions, as described above in paragraph (1) of this Section II, which will permit a Plan (or Participant's account, in the case of a participant directed individual account plan) to redeem shares of such Fund without penalty.

(n)(1) On an annual basis, each Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, receives from State Farm the following information for each Fund in which a Plan (or Participant's account, in the case of a participant directed individual account plan) invests:

(A) A copy of the current prospectus,

(B) Upon the request of the appropriate Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, a copy of the Statement of Additional Information that contains a description of all fees paid by such Fund to State Farm or its affiliates;

(C) A copy of the annual report prepared by State Farm or its affiliates that includes information about such Fund, as well as audit findings of an independent auditor, within 60 days of the preparation of such report; and

(D) Oral or written responses to inquiries of an Agent, Family Member, or Participant, or other fiduciary of a Plan who has the authority to acquire or

<sup>3</sup> The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this

dispose of shares of the Funds, as such responses arise.

(2) On an annual basis, each Participant in the case of a Plan that does not provide for participant investment direction receives from the fiduciary responsible for directing the investment of plan assets copies of the annual report for each of the Funds in which the assets of such Plan are invested.

(o) Any plan subject to this exemption that is a prototype retirement plan sponsored by State Farm or its affiliates may not require the investment of a minimum percentage of the total assets of such Plan in State Farm investment products.

(p) State Farm or its affiliates maintain for a period of six (6) years the records necessary to enable the persons described in paragraph (q) of this Section II, below, 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 State Farm or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than State Farm and its affiliates 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 (q) of this Section II, below.

(q)(1) Except as provided in paragraph (q)(2) of this Section II, below, and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (p) of this Section II, above, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service.

(ii) Any Agent, Family Member, Participant in the case of a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (q)(1)(ii) and (iii) of this Section II, above, shall be authorized to examine trade secrets of State Farm or its affiliates, or commercial or financial

information that is privileged or confidential.

### Section III—Definitions

For purposes of this exemption:

(a) The term, “affiliate” or “affiliates,” means:

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

(2) Any officer, director, employee, Family Member (as defined in paragraph (e) of this Section III, below), or partner in any such person; and

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

(b) The term, “control,” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, “Funds or Funds,” shall include any individual investment portfolios that are part of the State Farm Mutual Fund Trust, a diversified open-end investment company registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

(d) The term, “net asset value,” means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities (determined by a method as set forth in a Fund’s prospectus and Statement of Additional Information) and other asset’s belonging to such Fund, less the liabilities charged to each such Fund, by the number of outstanding shares.

(e) The term, “Family Member or Family Members,” means a “relative” as that term is defined in section 3(15) of the Act (or a “member of the family” as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(f) The term, “Secondary Service,” means a service other than an investment management, investment advisory, or similar service, which is provided by State Farm or its affiliates to a Fund, including custodial, accounting, brokerage, administrative, or any other service.

(g) “Termination Form,” means the form supplied to an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares

of the Funds, as appropriate, that expressly provides an election to terminate on behalf of a Plan (or the Participant’s account in the case of a participant directed individual account plan) the investment of plan assets in a Fund. Such Termination Form may be used at will by an Agent, Family Member, or Participant in a participant directed individual account plan, or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds to terminate the investment by a Plan in a Fund without penalty to the Plan (or the Participant’s account, in the case of a participant directed individual account plan) and to notify State Farm and its affiliates in writing to effect a termination by selling the shares of a Fund held by the Plan (or Participant’s account) requesting such termination within one (1) business day following receipt by State Farm or its affiliates of the form; provided that if, due to circumstances beyond control of State Farm or its affiliates, the sale cannot be executed within one (1) business day, State Farm or its affiliates shall have one (1) additional business day to complete such sale.

(h) The term, “Plan” or “Plans,” means any pension plan subject to the Act and/or the Code, including but not limited to plans that provide for participant investment direction, traditional individual retirement accounts (IRAs), SEP-IRAs, and Keogh plans.

**EFFECTIVE DATE:** This exemption is effective, as of May 1, 2001.

### 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 within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on December 13, 2001. All comments and requests for a hearing were due by January 28, 2002.

In a letter dated February 5, 2002, the applicants confirmed that State Farm had provided notice to interested persons of the pendency of the proposed exemption. The notification was provided via electronic mail (e-mail) to all State Farm agents who are registered representatives. It is represented that on December 20, 2001, the Corporate Department of State Farm sent an e-mail to all of its Agency Field Executives (AFEs or AFE) and its Agency Resource Managers (ARMs or ARM). The e-mail contained a copy of the Notice, as published in the **Federal Register**, along

with a notice to interested persons (the Supplemental Statement), as described at 29 CFR 2570.43(b)(2) of the Department's regulations. The Supplemental Statement provided that interested persons had a right to comment on the proposed exemption and/or request a hearing by January 28, 2002.

The AFEs were instructed to send to the registered representatives who report to them an e-mail containing the Supplemental Statement with the Notice attached. The AFEs were further required to "cc" a corporate mailbox on the e-mail to each registered representative. In any area where an AFE's position was not currently filled or an AFE was out of the office on vacation or for any other reason, ARMs were instructed to send the e-mail to the registered representatives, using the same procedure that AFEs were instructed to use.

The Corporate Department of State Farm monitored the corporate mailbox to determine whether a follow-up from the Vice President-Agency (VPA) or the ARM for the region was necessary. Through the "cc" to the corporate mailbox, State Farm was able to verify whether each AFE or ARM, if applicable, had forwarded the Notice and the Supplemental Statement to the registered representatives. The appropriate VPA or ARMs were instructed to take corrective action if a "cc" was not received from an AFE or an ARM.

Through this verification process, State Farm determined that 7,935 out of 10,175 registered representatives received the e-mail notification by December 28, 2001. State Farm was also able to confirm that the remaining 2,240 registered representatives received the e-mail notification by January 15, 2002.

Although State Farm represents that it was able to notify all of the registered representatives through the process described above, the process was slower than anticipated. In light of the fact that notification to some interested persons was delayed until January 15, 2002, and in order to allow such interested persons the benefit of the full thirty (30) day comment period, the Department required, and the applicants agreed to, an extension of the deadline within which to comment and request a hearing on the proposed exemption. In this regard, the applicants confirmed in a letter dated February 5, 2001, that all 10,175 registered representatives were sent via first class U.S. mail on January 23, 2002, notification that the comment period had been extended and that all comments and/or requests for a hearing

on the proposed exemption were due by February 15, 2002.

During the comment period, the Department received one (1) comment letter in which the commentator requested a hearing. In this regard, the commentator wished to use the hearing to discuss the possibility of providing State Farm Mutual Funds for herself and her family members.

The Department has considered the request of the commentator for a hearing. In this regard, the commentator has not indicated any manner in which she or her family would be adversely affected by the exemption. Rather, the comment supports the issuance of the exemption. As the commentator will be able to purchase shares in the Funds for herself and her family members upon the publication of the exemption, the Department does not believe that any issue has been raised which would require the convening of a hearing.

During the comment period, the Department received favorable comment letters from fifty-six (56) commentators. In this regard, these commentators expressed support for the grant of the exemption.

The Department also received unfavorable comment letters from four (4) commentators. At the close of the comment period, the Department forwarded copies of all of the comment letters, both favorable and unfavorable, to the applicants. With respect to the four (4) unfavorable comment letters, the Department requested that the applicants respond in writing to the issues raised by the commentators. The concerns expressed by these commentators and the applicants response thereto are summarized below.

One commentator did not think that the exemption was necessary, not did he think that the Act should be changed to satisfy the wishes of a few individuals. In response to this commentator, the applicants point out that State Farm's exemption request has been submitted and proposed under the relevant procedures of the Department's regulations; and therefore, the granting of the proposed exemption does not change the Act, but on the contrary, is within the scope of the Act. Further, the applicants point out, as evidenced by the number of comments in favor of the proposed exemption, that many registered representative agents favor having the Funds available as investment options for their plans and the plans of their family members. If the exemption is granted, the applicants note that the exemption will in no way obligate the commentator to invest in the Funds.

Another commentator did not understand why State Farm had not previously allowed investments in the Funds by the agents' plans. In response, the applicants state that State Farm did not permit its registered representative agents to sell shares of the Funds to their plans (or those of family members) because of the possibility that such sales could be considered prohibited transactions, absent an exemption. The applicants point out that the grant of proposed exemption will allow investments in the Funds to be made available to the commentator, with appropriate safeguards, as reflected in the conditions and other terms of the exemption.

This same commentator complained that State Farm had placed a quota requirement on registered representatives. Another commentator indicated that State Farm had recently notified agents that they must produce a minimum number of sales per year or lose their license to sell State Farm products. This commentator expressed the opinion that sales of shares in the Funds would help agents and their clients who happen to be relatives.

It is the Department's view that crediting transactions subject to the exemption for purposes of satisfying a minimum number of sales per year in order to retain a license to sell State Farm products is a benefit to State Farm agents, in violation of Section II(d) of the exemption. In this regard, the applicants confirm that transactions subject to this exemption will not be credited in determining whether the requirement of a minimum number of sales per year has been met.

The fourth commentator objected to the proposed exemption because it does not permit him to be paid for his work. In response, the applicants presume that this commentator would support the exemption, if it allowed him, as an agent, to receive commissions on sales of shares in the Funds to plans established by such agent for himself and his employees or to plans established by family members of such agent. The condition that no commissions be paid in connection with the subject transactions is designed as a safeguard to protect against potential self-dealing. In this regard, Section II(d), ensures that, where the agent is a plan fiduciary, the agent's decision whether to invest plan assets in the Funds is not unduly influenced by the potential for personal gain and that personal gain will not be a motivating factor in any other transaction covered by the exemption.

The Department also received, on February 12, 2002, a comment letter

from the applicants. In their comment letter, the applicants requested certain amendments to the operant language in the exemption, as set forth in the Notice published in the **Federal Register**. The applicants' comments and the Department's response thereto are discussed in the numbered paragraphs below.

1. The applicants requested that the language of Section II(i), as published in the Notice, be revised to add the phrase, "for their employees," after the word, "affiliates." In this regard, State Farm wished to clarify that compliance with Section II(i) would not preclude agents or their family members from relying on the relief provided by the exemption to purchase shares of the Funds for various prototype plans sponsored by State Farm.

The Department concurs with the applicants' request and has modified Section II(i) of the exemption to read as follows: "The Plans are not employee benefit plans sponsored or maintained by State Farm or its affiliates for their employees."<sup>4</sup>

2. The applicants requested that the language of Section II(j), (k), (l), (m), (n), and Section III(g), as published in the Notice in the **Federal Register**, be amended. In this regard, State Farm requested that the phrase, "or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds," be added at the end of the phrase, "Agent, Family Member, or Participant in a participant directed individual account plan," each time such phrase or a variation of such phrase appears in Section II(j), (k), (m), (n), or in Section III(g). State Farms believes that in cases where a separate independent fiduciary, such as an investment committee, has been appointed to make relevant investment decisions for a plan concerning the acquisition or disposition of shares of the Funds, that it would be appropriate to include such fiduciary among the parties listed in Section II(j), (k), (m), (n), or in Section III(g).

The Department concurs with the applicants' request. Accordingly, the Department has modified the language of the exemption to add the phrase, "or other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds," as indicated below:

(a) in Section II(j)(1), after the word, "direction," on page 64473, column 2, line 12 of the Notice;

<sup>4</sup> Throughout this exemption words that have been stricken from the text as published in the Notice appear in closed brackets and additions to the language of text as published in the Notice appear in bold.

(b) in Section II(j)(1)(D), after the word, "plan," on page 64473, column 2, line 48 of the Notice;

(c) in Section II(k), after the word, "plan," on page 64473, column 3, line 4 of the Notice, and after the word, "Participant," on page 64473, column 3, line 6 of the Notice;

(e) in Section II(1), after the word, "Participant," on page 64473, column 3, lines 15 and 49 of the Notice, and after the word, "Participants," on page 64473, column 3, lines 38 and 32 of the Notice;

(f) in Section II(m)(3), after the word, "plan," on page 64474, column 1, line 25 of the Notice;

(g) in Section II(n)(1), after the word, "plan," on page 64474, column 1, line 37 of the Notice;

(h) in Section II(n)(1)(B), after the word, "plan," on page 64474, column 1, line 46 of the Notice;

(i) in Section II(n)(1)(D), after the word, "Participant," on page 64474, column 1, line 60 of the Notice; and

(j) in Section III(g), after the word, "plan," on page 64474, column 3, lines 57 and 67 of the Notice.

Further, in order to maintain consistency in the language of the exemption, the Department has modified Section II (q)(ii) to read as follows:

Any Agent, Family Member, Participant in the case of a participant directed individual account plan, or [any] other fiduciary of a Plan who has the authority to acquire or dispose of shares of the Funds [owned by such Plan], or any duly authorized employee or representative of such fiduciary.

3. The applicants sought clarification that the meaning of the term, "prototype retirement plan," as set forth in Section II(o) of the Notice, referred only to Section 401(a) qualified plans, and does not preclude State Farm IRAs approved under the Internal Revenue Service prototype IRA program from limiting permissible investment to State Farm products only. In this regard, State Farm proposed that the term, "prototype retirement plan," as set forth in Section II(o), be replaced by the phrase, "a section 401(a) qualified prototype plan." Subsequently, in a letter dated February 26, 2002, the applicants withdrew this comment.

The Department has accepted the applicants' withdrawal of the comment and notes that the language of Section II(o) in the exemption remains the same as the language published in the Notice.

4. In Section III(c) of the Notice, the term, "Fund or Funds" is defined to include:

Any diversified open-end investment company or companies registered under the

1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

State Farm believes that this definition would be more accurate if it referred to the individual investment portfolios within the State Farm Mutual Fund Trust in light of the manner in which the terms, "Fund and Funds," were used throughout the Notice. Therefore, State Farm proposes that Section III(c) be revised to read as follows:

The term, "Fund or Funds," shall include any individual investment portfolios that are part of the State Farm Mutual Fund Trust, a diversified open-end investment company [or companies] registered under the 1940 Act for which State Farm or its affiliates serve as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other Secondary Service (as defined in paragraph (f) of this Section III, below), which has been approved by such Fund.

The Department concurs with the applicants' request and has modified Section III(c) of the exemption, accordingly. Further, in order to maintain consistency in the language of the exemption, the Department has modified three (3) other sections of the exemption. In this regard, Section I has been modified to read as follows:

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase or redemption of an institutional class of shares (the Institutional Shares) of State Farm mutual funds (the Fund(s)), [open-end management investment companies registered under the Investment Company Act of 1940 (the 1940 Act)] as defined in Section III(c), below, by pension plans (the Plan(s)), as defined in Section III(h), below, which are established by \* \* \*.

Section III(d) of the exemption has been modified to read as follows:

The term, "net asset value," means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities (determined by a method as set forth in a Fund's prospectus and Statement of Additional Information) and other assets belonging to such Fund [or portfolio of such Fund], less the liabilities charged to each such [portfolio or] Fund, by the number of outstanding shares.

In addition, Section II(n)(1)(C) of the exemption has been modified to read as follows:

A copy of the annual report prepared by State Farm or its affiliates that includes information about [the portfolios in] such Fund, as well as audit findings of an independent auditor, within 60 days of the preparation of such report.

5. The applicants sought to clarify the use of the words, "relative" and "Family Member or Family Members," as those terms are used in the Notice. In this regard, the applicants noted that the term, "Family Member or Family Members," is defined solely by reference to section 3(15) of the Act in parenthetical phrases that appear in Section I(b) and Section II(j)(1) of the Notice, whereas the word, "relative," as defined in Section III(e) of the Notice, references the relevant provisions of both the Act and the Code and includes within the definition of a relative—"a brother, a sister, or a spouse of a brother or a sister." As the term, "Family Member or Family Members," appears in Section I(b) and in Sections II(j)(1); (j)(1)(D); (k); (l); (m)(3); (n)(1); and d(q)(1)(ii), in order to minimize the need to modify the text of the exemption, State Farm proposes that the term defined in Section III(e) of the Notice be changed from "relative" to "Family Member or Family Members." Further, State Farm proposes that the parenthetical phrase, "(as defined in section 3(15) of the Act)," be deleted from both Section I(b) and Section II(j)(1).

The Department concurs with the applicant's request and has amended the relevant provisions of the exemption. In this regard, Section III(e) in the exemption has been modified to read, as follows:

The term, ["relative,"] "Family Member or Family Members," means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

Section I(b) in the exemption has been modified to read, as follows:

The family members of such Agents (the Family Member(s)) (as defined in Section III(e), below [section 3(15) of the Act]), provided that the conditions set forth in Section II, below are satisfied.

Section II(j)(1) in the exemption has been modified to read, as follows:

Each Agent, or a Family Member of such Agent (as defined in Section III(e), below [section 3(15) of the Act]) in the case of a Plan sponsored by such Family Member, or each participant (the Participant(s)) in the case of a Plan which provides for participant investment direction, receives in advance of any initial investment in a Fund by such Plan (or Participant's account, in the case of a participant directed individual account plan)

a full and detailed written disclosure of information concerning each Fund in which such Plan or Participant's account, as the case may be, is considering investing, including but not limited to \* \* \*

Section III(a)(2) in the exemption has been modified to read as follows:

Any officer, director, employee, [relative] Family Member (as defined in paragraph (e) of this Section III, below), or partner in any such person.

6. Section III(g) of the exemption, sets forth the requirements for the Termination Form. The applicants sought confirmation that for this purpose, "termination" means the pricing and redemption of the Fund shares and does not necessarily include the actual mailing of a redemption check or other physical transfer of funds (e.g., by rollover to another account). Subsequently, by letter dated February 26, 2002, the applicants withdrew this comment. In this regard, State Farm represented that in accordance with its standard operating procedures, State Farm will price and redeem shares within one business day (except when circumstances outside of State Farm's control prevent such execution) and will mail redemption checks or otherwise disburse the funds within a reasonable time thereafter.

7. The Department also wishes to correct certain typographical errors that appeared in the Notice. In this regard, in Section II(h), the word, "receives," should be replaced by the word, "receive," and the phrase, "the Investment Company Act of 1940," should be inserted before the parenthetical, "(the 1940 Act)." The subparagraphs under Section II(n)(1) should be designated by capital letters, "(A)," "(B)," "(C)," and "(D)." In Section III(g), the parenthetical "(1)," should be inserted after the word, "one," whenever that word appears in such section.

After giving full consideration to the entire record, including the written comments from the commentors, the Department has decided to grant the exemption, as amended herein. In this regard, the comment letters, both favorable and unfavorable, 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, DC 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 in December 13, 2001, at 66 FR 64472.

**FOR FURTHER INFORMATION CONTACT:**

Angelena C. Le Blanc of the Department, telephone (202) 693-8551 (This is not a toll-free number.)

**Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Plan) Located in Pine Bluff, Arkansas**

[Prohibited Transaction Exemption 2002-18; Exemption Application No. D-11035]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) 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 (E) of the Code, shall not apply to: (1) The secured loans (the Loans) by the Plan to Motors Finance Company (Motors), a party in interest with respect to the Plan, and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions, as set forth in paragraph #6 of the notice of proposed exemption; and (c) the balance of all Loans will at no time exceed 15% of the assets of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, see the notice of proposed exemption published on January 18, 2002 at 67 FR 2689.

*Temporary Nature of Exemption*

This exemption is temporary and will expire September 16, 2007. However, the exemption will extend until the maturity of any of the 90 day Loans made prior to September 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (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 13th day of March, 2002.

**Ivan Strasfeld,**

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

[FR Doc. 02-6430 Filed 3-21-02; 8:45 am]

**BILLING CODE 4510-29-M**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02-041)]

### NASA Advisory Council, Space Science Advisory Committee, Education and Public Outreach Task Force; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Education and Public Outreach (E/PO) Task Force.

**DATES:** Thursday, April 18, 2002, 8:30 a.m. to 5:30 p.m., and Friday, April 19, 2002, 8:30 to 5:30 p.m.

**ADDRESSES:** Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jeffrey D. Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358-2470.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Role of E/PO in Office of Space Science Program
- Role of the Office of Space Science E/PO Program in the Overall NASA Education Program
- Background on the Office of Space Science E/PO Program
- Issues to be addressed by the Task Force
- Task Force Schedule and Assignments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**Sylvia K. Kraemer,**

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

[FR Doc. 02-6986 Filed 3-22-02; 8:45 am]

**BILLING CODE 7510-01-P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02-042]

### NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

**DATES:** Wednesday, May 1, 2002, 9 a.m. to 4 p.m., and Thursday, May 2, 2002, 9 a.m. to 12 Noon.

**ADDRESSES:** NASA George C. Marshall Space Flight Center, Center Directors Conference Room, Huntsville, AL 35812.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358-2088.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Review of Previous Meeting
- Office of Small and Disadvantaged Business Utilization Update of Activities
- NAC Meeting Report
- Overview of NASA Ames Research Center
- Overview of Small Business Program
- Public Comment
- Panel Discussion and Review
- Committee Panel Reports
- Status of Open Committee Recommendations
- New Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**Sylvia K. Kraemer,**

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

[FR Doc. 02-6987 Filed 3-21-02; 8:45 am]

**BILLING CODE 7510-01-P**

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## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Biological Sciences (1110).

*Dates/Time:* April 25, 2002 8:30 a.m.-5 p.m., April 26, 2002 8:30 a.m.-3 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Open.

*Contact Person:* Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 292-8400.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

*Agenda:* 21st Century Biology—Planning and Issues Discussion.

Dated: March 19, 2002.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 02-6979 Filed 3-21-02; 8:45 am]

**BILLING CODE 7555-01-M**