DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11036]

Notice of Proposed Individual Exemption to Amend and Replace Prohibited Transaction Exemption (PTE) 85–131, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to modify and replace PTE 85–131.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption which, if granted, would amend and replace PTE 85–131 (50 FR 32333, August 9, 1985). PTE 85–131 is an individual exemption providing relief, since March 29, 1985, for (1) the leasing of certain improved real property by the Trust to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the plans (the Plans) participating in the Trust under the terms of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Watkins.

If granted, the proposed exemption would modify an option to purchase provision in the New Lease by allowing Watkins to acquire the Trust's leasehold interests in a building (the Building), the improvements (the Improvements) constructed thereon, and in a ground lease (the Ground Lease) on May 8, 2002, instead of at the end of New Lease renewal term on December 31, 2008. In addition, the proposed exemption would replace PTE 85–131, which expired by operation of law upon the consummation of the sale. If granted, the proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to the Trust.

DATES: Written comments and requests for a public hearing should be received by the Department on or before August 2, 2002.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of May 8, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington DC 20210, (Attention: Notice of Proposed Individual Exemption to Amend and Replace Prohibited Transaction Exemption 85–131, Involving the Watkins Master Trust; Application No. D–11036).

Interested persons are also invited to submit comments and/or hearing request to the Department by facsimile to (202) 219–0204 or by electronic mail to *moffittb@pwba.dol.gov.* by the end of the scheduled comment period. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that will amend and replace PTE 85–131. PTE 85–131 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption has been requested in an application filed on behalf of the Trust and Watkins,[1] pursuant to 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, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

I. Background

As stated above, PTE 85–131 provides exemptive relief from the restrictions of sections 406(a), 406(b)(1), 406(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, with respect to the leasing by the Trust to Watkins of certain real property and the potential cash purchase of the Trust's interest in the property by Watkins. PTE 85–131 is effective from March 29, 1985 until May 8, 2002, the date of the sale transaction described herein.

According to the Summary of Facts and Representations (50 FR 24067, June 7, 1985) underlying PTE 85–131, the Trust is a master trust which was originally established in 1984 to hold, manage and administer the assets of five defined contribution pension plans sponsored by Watkins, its affiliates and subsidiaries. Watkins, a Florida corporation engaged in diverse service and manufacturing enterprises, maintains its principal place of business in Atlanta, Georgia. At present, only three Plans participate in the Trust. They are the Watkins Associated Industries, Inc. Profit Sharing Plan, the LandSpan, Inc. Profit Sharing Plan, and the Southern Concrete Construction Company Profit Sharing Plan. Each of the participating Plans owns an undivided, *pro rata* interest in the assets of the Trust. As of December 31, 2000, the Trust held total assets of $39,752,458. The current trustee (the Trustee) of the Trust is SunTrust Bank, N.A. (SunTrust) of Atlanta, Georgia.

Formerly included among the assets of the Trust was a leasehold interest in a commercial office building containing approximately 20,860 net square feet of space, together with parking facilities. The Building is located at 1958 Monroe Drive, Atlanta, Georgia, and is situated on a 1.34 acre parcel of commercially-zoned real land (the Land). The Building is not located in close proximity to other real property that is owned by Watkins, Wilwat or their principals.

The Land is owned by William L. Monroe, Sr., an unrelated party, and was being leased to the Trust under the provisions of the Ground Lease. As lessee under the Ground Lease, the Trust had an estate for years under Georgia law.

The Ground Lease, which was a net lease requiring the Trust to incur such expenses as utilities, real estate taxes, assessments and maintenance, was originally acquired by the McDonough Construction Company and Affiliated Companies Profit Sharing Plan (the McDonough Plan) in 1958. At the time of the acquisition, the Land had been improved with the Building which was

[1] The Department is also considering an exemption request (D–11038) that has been filed on behalf of Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the employee benefit plans participating in the Trust. In their request, Wilwat and the Trust are seeking exemptive relief which is similar to that contemplated herein.

being leased to McDonough Construction Company (McDonough), the sponsor of the McDonough Plan. McDonough was subsequently purchased by the Atlantic States Construction Company (Atlantic States), a corporation wholly owned by Watkins. On January 1, 1971, McDonough assigned its lessee interest in the Building to Watkins. On December 31, 1981, the McDonough Plan was merged into the Atlantic States Profit Sharing Plan (the Atlantic States Plan), which became one of the Plans formerly participating in the Trust.

As a result of these transactions, the Trust continued to lease the Building to Watkins in accordance with transitional rules set forth under section 414(c)(2) of the Act. Although the rental was increased on July 1, 1984 to $69,000 per annum to reflect the independently appraised fair market rental value of the Building, as determined by John W. Booth, M.A.I. of Atlanta, Georgia, the applicants acknowledged that Watkins's leasing arrangement with the Atlantic States Plan, and subsequently, the Trust, constituted a prohibited transaction after June 30, 1984 in violation of the Act. Accordingly, the applicants represented that they would pay excise taxes due under section 4975 of the Code within 60 days of the granting of the exemption.

The Ground Lease initially had a termination date of December 31, 1988. However, that term could be extended by the Trust for two, ten year terms through December 31, 2008, at which time the Trust would have the right to purchase its leasehold interest in the property, including the Improvements, for $16,000. Through December 31, 1993, annual rental under the Ground Lease was $3,600. Between January 1, 1994 through December 31, 2003, the annual rental under the Ground Lease was $4,000. Finally, between January 1, 2004 and December 31, 2008, the annual rental under the Ground Lease was set at $4,400.

PTE 85–131 permitted the Trust to lease the Building to Watkins under the terms of a revised lease (i.e., the New Lease), executed on March 29, 1985. The subject property then represented 19.5 percent of the Trust's assets. Like the Ground Lease, the New Lease had an original termination date of December 31, 1988. However, Watkins was given permission to extend the lease for two, ten year periods, subject to approval by Citizens and Southern National Bank (CSNB), of Atlanta, Georgia, the former Trustee, acting in the capacity as the independent fiduciary for the Trust. As lessee, Watkins was responsible for the payment of real estate taxes, insurance, utilities and other expenses associated with the property, including those attributable to the Ground Lease.

The initial annual rental under the New Lease was set at $79,700 per annum. This amount was payable in monthly installments of $6,641.67. On January 1, 1987 and every three years thereafter, the monthly rental was readjusted to reflect the then current fair market rental value as determined by a qualified, independent appraiser. In no event could the rental rate under the New Lease be less than $79,700 per annum. Upon termination of the New Lease, all Improvements constructed on the Building would belong to the Trust. Prior to the sale transaction that is described herein, Watkins paid the Trust a monthly rental of $11,613 or $139,345, annually.

The New Lease also gave Watkins the option to purchase (the Option) the Trust's ''leasehold estate and improvements'' at the end of the initial lease term and each renewal term. The Option specified that Watkins was required to pay the fair market value for such property, as determined by a qualified, independent appraiser who had been selected by the Trustee. The Option was also subject to approval of the Trustee and the purchase price was required to be paid in cash.

The transactions described in PTE 85–131 were monitored by CSNB, the Trustee of the Trust, which has also served as the independent fiduciary with respect to the New Lease. In such capacity, the Trustee reviewed the terms and conditions of the New Lease, including the Option and the condition and marketability of the property. The Trustee initially determined that the New Lease was protective of, appropriate for, and in the best interest of the Trust and the participants and beneficiaries of the Plans participating in the Trust. The Trustee also determined that the Trust was adequately diversified and had sufficient liquidity, and that the terms and conditions of the New Lease were favorable to the Trust. As the independent fiduciary, the Trustee stated that it would monitor Watkins's compliance with the terms and conditions of the New Lease, make a physical inspection of the Building, at least annually, determine whether any renewal or Option could be exercised, select independent appraisers, as required under the New Lease, and take any steps necessary to enforce and protect the rights of the Trust with respect to such property.

Effective January 1, 1989, CSNB was acquired by Trust Company Bank of Atlanta, Georgia (TCB). TCB then became the successor Trustee and the independent fiduciary for the Trust with respect to the New Lease. TCB subsequently merged with SunBank to form SunTrust, the current Trustee and the independent fiduciary. During the entire period of Trustee/independent fiduciary succession, the Trust was, at all times, monitored by an independent fiduciary.

II. Amendment and Replacement of PTE 85–131

Over the period of time that the Trust was a party to the Ground Lease and the New Lease, there were no defaults or delinquencies in rental payments made thereunder. The Trust did, however, expend $68,000 in rental payments under the Ground Lease, whereas the cost of the Improvements, ranging from the installation of a new air conditioning system in the Building to the renovation and construction of new offices, was borne by Watkins. The Trust also received rental income under the New Lease of $1,339,952. Since the Trust's cost basis in the Building was estimated at $797,000, its total investment return with respect to the property (net of acquisition and holding costs) was approximately $474,952 [$1,339,952–($797,000 + $68,000)].

On behalf of the Trust, the Trustee and Watkins seek to amend the New Lease thereby permitting the retroactive sale, by the Trust, of its leasehold interest in the Building, the Improvements and the Ground Lease to Watkins,[2] in accordance with the pricing terms specified in the Option. In this regard, the Trust would receive as consideration no less than the fair market value of such property as of the date of the sale.[3] The consideration

[2] It is represented that the Trust would seek a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the proposed sale. However, regardless of whether the Trust obtains such a release from the owner, it is represented that Watkins would assume all liabilities under this lease and indemnify the Trust against any liability to the owner of the Ground Lease.

[3] The Trust would be conveying its entire leasehold interest in the Building, the Improvements and the Ground Lease. In this regard, a title search of the subject property during the first quarter of 2002 determined that on May 31, 1963 a predecessor to the Trust acquired a 15 percent interest in the property from an unrelated party who is presently deceased. Although the deed was never recorded, title records show that the Trust owned an 85 percent leasehold interest in such property rather than a 100 percent interest, as originally believed. Although real estate counsel for Watkins and Wilwat were in the process of taking remedial action, because the correction could not be accomplished prior to the date of the sale transaction, Watkins agreed to pay the Trust the full fair market value for the property, as valued by the independent appraisers in fee simple, in exchange for the Trust's agreement to cooperate with Watkins

would be paid in cash and the Trust would not be required to pay any real estate fees or commissions in connection therewith. Because the sale transaction effectively terminated the New Lease by operation of law, the parties also wish to replace PTE 85–131 with a new exemption. Accordingly, administrative exemptive relief is requested from the Department. If granted, the exemption would be effective as of May 8, 2002.

The Trust, the Trustee and Watkins proposed to effect the sale transaction because it would allow the Trust to achieve greater diversification, liquidity, and the potential to obtain a higher rate of return on its investments. Since the Plans participating in the Trust would be merged into separate 401(k) plans providing for participant-directed investments, the parties did not deem the subject property to be a suitable investment option due to its illiquidity. Moreover, the parties noted that the Building had appreciated substantially in value at rates that were above historical averages which might not continue in the future. Finally, the parties believed that the Building was of limited use and, should Watkins decide to move its headquarters or otherwise decline to renew the New Lease, the Trust might have difficulty marketing its interest in the Building and realizing its full value.

III. The Appraisal

The Building was appraised by Messrs. Quentin Ball, MAI, and Philip R. Thomas, Senior Appraiser, who are qualified, independent appraisers affiliated with the commercial real estate appraisal firm of Kirkland & Company, located in Atlanta, Georgia. In a appraisal report dated November 27, 2001, the appraisers, using the Income Approach to valuation, placed the fair market value of a fee simple interest in the Building and the Improvements (as if not encumbered by the Ground Lease) at $1,900,000 as of November 26, 2001.[4]

The appraisers updated their appraisal report prior to the closing of the sale transaction. By letter dated May 8, 2002, the appraisers, while noting new construction within the vicinity of the property which they believed to be indicative of a strong and improving economy, concluded that there had been no change in the value of the property as set forth in their original appraisal report.

IV. Views of the Trustee/Independent Fiduciary

As stated above, the Trustee had been acting on behalf of the Trust as the independent fiduciary for the New Lease. Serving in this capacity was SunTrust, a banking subsidiary of SunTrust Banks, Inc., the tenth largest financial services holding company in the United States. In its independent fiduciary statement, the Trustee represented that it had been acting as a corporate fiduciary for more than 100 years, had approximately $130 million in fiduciary assets in its custody, and served as a fiduciary or custodian to more than 1,700 qualified retirement plans. The Trustee also asserted that although it conducted an ongoing deposit and lending business with Watkins and its affiliates, such deposits and loans represented less than one percent of its total deposits and loans. Further, the Trustee stated that it understood and acknowledged its duties, responsibilities and liabilities under the Act in serving as an independent fiduciary for the Trust.

The Trustee represented that the sale transaction compared favorably with the terms of similar transactions between unrelated parties because the Trust's leasehold interests in the Building, the Improvements and the Ground Lease would be sold at the appraised value of a fee simple interest and without the payment of any real estate fees or commissions by the Trust. Moreover, the Trustee explained that it had relied upon the independent appraisers to identify and reconcile sales of comparable properties in their preparation of the initial appraisal report. On the basis of such information, the Trustee concluded that the appraisal had been conducted by the appraisers in a reasonable manner.

The Trustee also believed the sale transaction would be in the best interests of the Trust and its participants and beneficiaries for the following reasons:

- The proposed modification of the Trust into participant-directed accounts would make accounting and participant direction virtually impossible due to the indivisible nature of the subject property.
- The sale transaction would compare favorably with other sales of property which might be achieved in the market place.
- The sale transaction would permit the conversion of an illiquid investment with material maintenance costs (i.e., the underlying New Lease payments and associated Trustee monitoring) into cash which could be invested in lower-maintenance assets.
- The sale transaction would eliminate the conflict of interest and associated administrative burdens of ongoing special supervision implicit in the Trust's holding of employer real property.
- The sale transaction would enable the Trust to realize appreciation in the property, the continuation of which could not be assured in the current economic climate.
- The sale transaction would eliminate a 6 percent concentration of the Trust's assets in two adjacent parcels of real estate.

Before forming its opinion, the Trustee stated that it had examined the Trust's overall investment portfolio, considered the liquidity requirements of the Plans participating therein, examined the diversification of each Plan's assets in light of the proposed transaction, and considered whether the proposed transaction complies with the Trust's investment objectives and policies. The Trustee explained that it would monitor the transaction and take all appropriate actions, if required, to safeguard the interests of the Trust.

V. The Sale

On May 8, 2002, the Trust sold its leasehold interests in the Building, the Improvements and the Ground Lease to Watkins for $1,900,000, which reflected the independently appraised value of such property, as determined by the independent appraisers in their initial and updated appraisal reports. The sales price was greater than the Trust's total investment return on the property of $474,952. Watkins paid the consideration in cash and the Trust did not pay any real estate fees or commissions in connection with the sale transaction. In addition, the Trustee monitored the transaction on behalf of the Trust.

VI. General Conditions

If granted, this proposed exemption will be subject to the following general conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

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

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified,

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in obtaining an appropriate correction of the chain of title and, if necessary, conveying the remaining 15 percent leasehold interest in the property to Watkins after the closing of the sale.

[4] It is represented that the fee simple valuation of the Building and the Improvements was more beneficial to the Trust than a leased fee interest valuation because the latter valuation did not take into consideration the Option for the Land underlying the Ground Lease.

independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, no less than the greater of the fair market value of its leasehold interests in the Building, the Improvements and the Ground Lease, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Watkins agreed to assume all liabilities under such lease and indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

Notice to Interested Persons

Notice of the proposed exemption will be sent by first-class mail to each participant of the Plans participating in the Trust within 15 days of the publication of the proposed exemption in the **Federal Register**. The notification will contain a copy of the proposed exemption as published in the **Federal Register**, and a copy of the supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement, will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Comments and hearing requests are due within 45 days of the publication of the notice in the **Federal Register**.

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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

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

(4) This proposed exemption, if granted will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 85–131 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption by regular mail, electronic mail or facsimile to the addresses or facsimile number noted above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested 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, August 10, 1990).

If the proposed 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, effective May 8, 2002, to the sale by the Watkins Master Trust (the Trust) of its leasehold interests in certain improved real property, consisting of a building (the Building), the improvements constructed thereon (the Improvements), and ground lease (the Ground Lease), to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the Trust, in connection with an amendment to an option to purchase provision contained in a written lease between the Trust and Watkins, as described in Prohibited Transaction Exemption 85–131 (50 FR 32333, August 9, 1985).

This proposed exemption is subject to the following conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

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

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified, independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, no less than the greater of the fair market value of its leasehold interests in the Building, the Improvements and the Ground Lease, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Watkins agreed to assume all liabilities under such lease and indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of May 8, 2002.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 85–131, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 13th day of June, 2002.

Ivan L. Strasfeld,

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

[FR Doc. 02–15318 Filed 6–17–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11038]

Notice of Proposed Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 90–15, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to modify and replace PTE 90–15.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption which, if granted, would amend and replace PTE 90–15 (55 FR 12967, April 6, 1990). PTE 90–15 is an individual exemption providing relief, since September 20, 1989, for (1) the leasing of office space in a commercial office building (the Building) by the Trust to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the plans (the Plans) participating in the Trust under the provisions of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Wilwat.

If granted, the proposed exemption would modify an option to purchase provision in the New Lease by allowing Wilwat to acquire the Trust's leasehold interests in the Building, including the improvements constructed thereon (the Improvements), and the Trust's interest in a ground lease (the Ground Lease) on May 8, 2002, instead of at any time during the final six months of the New Lease renewal term ending on December 31, 2008. In addition, the proposed exemption would replace PTE 90–15, which expired by operation of law upon the consummation of the sale. If granted, the proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to the Trust.

DATES: Written comments and requests for a public hearing should be received by the Department on or before August 2, 2002.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of May 8, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington DC 20210, (Attention: Notice of Proposed Individual Exemption to Amend and Replace Prohibited Transaction Exemption 90–15, Involving the Watkins Master Trust; Application No. D–11038).

Interested persons are also invited to submit comments and/or hearing request to the Department by facsimile to (202) 219–0204 or by electronic mail to *moffittb@pwba.dol.gov* by the end of the scheduled comment period. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that will amend and replace PTE 90–15. PTE 90–15 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption has been requested in an application filed on behalf of the Trust and Wilwat,[1] pursuant to 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, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

I. Background

As stated above, PTE 90–15 provides exemptive relief from 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, with respect to (1) the leasing, by the Trust to Wilwat, of office space in a building located in Atlanta, Georgia and (2) the potential cash purchase of the Trust's interest in the property by Wilwat. PTE 90–15 is effective from September 20, 1989 until May 8, 2002, the date of the sale transaction described herein.

According to the Summary of Facts and Representations (55 FR 2900, January 29, 1990) underlying PTE 90–15, the Trust is a master trust which was originally established in 1984 to hold, manage and administer the assets of five defined contribution pension plans sponsored by Watkins, its affiliates and subsidiaries. Watkins, a Florida corporation engaged in diverse service and manufacturing enterprises, maintains its principal place of business in Atlanta, Georgia. At present, only three Plans participate in the Trust. They are the Watkins Associated Industries, Inc. Profit Sharing Plan, the LandSpan, Inc. Profit Sharing Plan, and the Southern Concrete Construction Company Profit Sharing Plan. Each of the participating Plans owns an undivided, *pro rata* interest in the assets of the Trust. As of December 31, 2000, the Trust held total assets of $39,752,458. The current trustee (the Trustee) of the Trust is SunTrust Bank, N.A. (SunTrust) of Atlanta, Georgia.

Formerly included among the assets of the Trust was a leasehold interest in a commercial office building containing

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