DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11067, et al.]

Proposed Exemptions; Sorenson Broadcasting Employee Stock Ownership Plan and Trust (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. ___, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or Fax. Any such comments or requests should be sent either by e-mail to: *"moffitt.betty@dol.gov"*, or by Fax to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Sorenson Broadcasting Employee Stock Ownership Plan and Trust (the Plan) Located in Sioux Falls, SD

[Application No. D–11067]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1] If the exemption is granted, 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 sale (the Sale) by the Plan to Sorenson Broadcasting Corporation (the Employer), a party in interest with respect to the Plan, of 930 shares of common stock (the Common Stock) of the Employer; and (2) the extension of credit by the Plan to the Employer under the terms of a subsequent adjustment to the Sale price (the True-up) in connection with the Sale.

This proposed exemption is subject to the following conditions:

(a) The Sale occurs in the following manner:

(1) The Employer pays the Plan the fair market value of the Common Stock as of December 31, 2002, as determined by a qualified, independent appraiser, plus certain positive adjustments indicated in an addendum (the First Addendum) to a purchase agreement dated May 26, 2000 (the Purchase Agreement);

(2) The fair market value of the Common Stock as of the transaction date (the Closing Value) is determined no later than two months after the transaction date;

(3) As additional consideration, the Plan receives the difference between the Closing Value and the amount paid for the Common Stock on the transaction date (*i.e.*, the True-up), plus interest based on the New York prime market rate, effective on the transaction date until the date of the True Up; and

(4) As collateral for the True-up, Mr. Dean Sorenson, the principal shareholder of the Employer, deposits $100,000 in cash in an escrow account for the benefit of the Plan to ensure that the Employer honors its obligation under the True-up.

(b) The Plan does not pay any commissions or other expenses with respect to the Sale.

(c) The transactions are approved by an independent fiduciary, who will monitor such transactions on behalf of the Plan.

(d) The Plan's trustees (the Trustees) determine that the Sale and True-up are appropriate transactions for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Employer is a South Dakota corporation maintaining its principal place of business in Sioux Falls, South Dakota. Prior to January 1, 2000, the Employer operated 17 radio stations which broadcasted on various frequencies to the Upper Midwestern States of the United States. As of January 1, 2000, the broadcasting stations have been operated by Waitt Radio Inc. (Waitt) of Dakota Dunes, South Dakota, an unrelated entity, under an interim programming agreement (the Interim Programming Agreement), the terms of which are

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

discussed below, between the Employer, as the Licensor, and Waitt, as the Programmer. Waitt is engaged in the radio broadcasting business in the Central and Upper Midwest. Waitt leases the buildings in which the Employer's radio stations are located from Mr. Dean Sorenson, the owner of the buildings.

Mr. Sorenson is President of the Employer and he owns 70 percent of the shares of outstanding Common Stock of the Employer. The Plan owns the remaining 30 percent of the shares of outstanding Common Stock of the Employer. Since January 1, 2000, the Employer has been operating as a sub-chapter ''S'' corporation.

2. The Plan is an employee stock ownership plan that is sponsored by the Employer. The Plan was established by the Employer on December 31, 1995. As of May 30, 2003, the Plan had 157 participants. As of December 31, 2002, which is the most recent date financial information is available, the Plan had total assets of approximately $3,148,522. Also, as of the same date, the Plan held 930 shares of Common Stock, valued at $3,148,230, and representing approximately 99% of the fair market value of the assets of the Plan.

Sharon Otten, Fred Smith, Scott Kooistra, Bruce Erlandson, Trent Schmotzer, Bill Grady, Holly Gill, and Tony Sieler, serve as the Trustees for the Plan, and have discretionary control over the Plan's assets involved in the transaction. These individuals were all employees of Sorenson at the time the Interim Programming Agreement went into effect, although since that time, some of the Sorenson employees have become Waitt employees.

3. The Plan originally acquired 930 shares of non-treasury Common Stock from Mr. Sorenson in a single transaction on December 31, 1996.[2] The Common Stock was valued by Mr. Gerald C. Johnson, Jr., the President and sole owner of Johnson Communications Properties, Inc. of Minneapolis, Minnesota. Mr. Johnson is a qualified, independent broker and appraiser of broadcasting properties, with extensive experience in valuing radio stations in the upper Midwest. Although Mr. Johnson's original valuation (the Original Valuation) placed the total value of such Common Stock on the date of the purchase at $3,415,300, the actual purchase price paid by the Plan to Mr. Sorenson was negotiated down to $3,331,577.[3]

4. The Plan derived the funds to purchase the Common Stock from Mr. Sorenson and from First Dakota National Bank (the Bank), an unrelated entity with respect to the Plan. Mr. Sorenson made one loan (the Sorenson Loan) to the Plan in the amount of $2,898,718 and the Bank made another loan (the Bank Loan; together, the Loans) to the Plan in the amount of $432,859.

The Sorenson Loan was evidenced by a promissory note (the Sorenson Promissory Note) dated December 31, 1996 between the Plan and Mr. Sorenson. The Sorenson Promissory Note was executed simultaneously with the Sorenson Loan and provided that the Plan repay the principal sum of the Sorenson Loan plus interest thereon at an annual interest rate of 8.5 percent. Such note required the Plan to make annual payments of both principal and interest totaling $502,226.45, commencing on September 15, 1997. There were no prepayment penalties.

The Sorenson Promissory Note was made subject to the provisions of a pledge agreement (the Sorenson Pledge Agreement), also dated December 31, 1996, between the Plan and Mr. Sorenson. The Sorenson Pledge Agreement secured Mr. Sorenson's first lien interest in the 930 shares of Common Stock purchased by the Plan. An amortization schedule indicated that under normal amortization, the Sorenson Loan would be paid off by September 15, 2004.

5. The Bank Loan was also evidenced by a promissory note (the Bank Promissory Note), dated December 31, 1996, that was executed between the Plan and the Bank. The Bank Promissory Note required the Plan to repay the principal sum of the Bank Loan plus interest thereon at an annual interest rate of 8.5 percent until September 15, 2000. The Bank Promissory Note also provided that the Plan make three regular annual payments of $75,316.98 and one irregular last payment, estimated at $321,370.83. There were no prepayment penalties. The Bank Promissory Note was secured by both the Employer's and Mr. Sorenson's personal guarantees of the entire $432,859 principal amount of the Bank Loan.[4]

6. Also on December 31, 1996, Mr. Sorenson, in his capacity as President of the Employer, sent the Bank a letter agreement. The agreement stated, in pertinent part, that in consideration of the Bank Loan and all other financial accommodations provided by the Bank to the Plan, the Employer would not, without the Bank's prior written consent, amend any provision of the Plan requiring the Employer to make contributions necessary to enable the Plan to discharge its obligations under the Bank Loan and the Bank Promissory Note.

7. Cash that the Plan received from the Loans was converted into Common Stock. The Common Stock is being maintained by the Plan in a ''suspense'' account (the Suspense Account), separate from the participants' individual accounts. Initially, 317.752 shares of Common Stock were allocated to participants from the Suspense Account as payments were made by the Plan under the Loans. Because it was determined that there was insufficient compensation to permit deductible contributions, and that payments of the amounts due would violate the annual addition limits of section 415 of the Code, a freeze was placed on the Plan assets in 1999 in order to prevent any new participation in the Plan. Therefore, no further allocations of Common Stock were made to participants from the Suspense Account. At present, 612.248 shares of such stock continue to be held in the Suspense Account.

8. At the time of the freeze, there was $105,000 available in Plan assets to make payments on the Loans. Both Mr. Sorenson and the Bank agreed to receive interest only payments on the Sorenson Loan until a sale of the Common Stock held by the Plan could be made, at which point they would be paid the principal amount of their respective Loans. Interest only payments were made on the Loans throughout 2000 and briefly during 2001, until the money ran out. The last interest only payment was made by the Plan to Mr. Sorenson on October 16, 2000 and to the Bank on

[2] The applicant represents that the acquisition and holding, by the Plan, of common stock of the Employer is covered under section 408(e) of the Act. However, the Department expresses no opinion as to the applicability of the statutory exemption provided by section 408(e) of the Act to the original transaction. Further, the Department, herein, is offering no relief for transactions other than the transactions described in this exemption.

[3] The applicant represents that the difference between the negotiated price of the original 930 shares of Common Stock the Plan bought and the price listed in the Original Valuation does not constitute an excess contribution to the Plan in violation of sections 401(a)(4), 404 and 415 of the Code.

[4] The applicant represents that the Sorenson Loan and the Bank Loan comply with section 408(b)(3) of the Act and the regulations promulgated thereunder. In this regard, the Department is expressing no opinion on whether the Loans initially satisfied, or continue to satisfy, the requirements necessary for exemptive relief under section 408(b)(3) of the Act, nor is any relief provided for those Loans under this proposed exemption. The relief provided by this exemption is limited solely to the sale of the Common Stock to the Employer, a party in interest with respect to the Plan.

June 29, 2001. To date, no further payments have been made by the Plan. At present, the outstanding principal balances of the Sorenson Loan and the Bank Loan are $1,979,095 and $295,808, respectively.

9. Although the Plan defaulted on the Loans, the default provisions therein gave both Mr. Sorenson and the Bank the discretion to waive foreclosure on the Loans if the circumstances warranted. Therefore, both Mr. Sorenson and the Bank agreed that the enforcement of their rights to the collateral for the Loans was not in their best interests, as it would not be helpful to completing an eventual sale of the Employer to Waitt. On December 28, 2001, Mr. Sorenson and the Bank signed an agreement to extend the maturity date of the Loans from December 15, 2001 until June 15, 2002 in order that neither Loan could be foreclosed upon. Since then, in an agreement signed by both parties on December 27, 2002, the maturity date of the Loans was further extended until June 15, 2003. Such agreement has been re-extended pending the outcome of this exemption request.[5]

10. Mr. Sorenson wishes to retire from the day-to-day management of the individual stations. While he had hoped that a group of key employees would emerge to acquire a small ownership stake outside of the Plan and assume the role of group-wide management, this has not happened. Mr. Sorenson also believes that a decrease in the fair market value of the radio stations is likely to occur over the next several years. Therefore, he has researched the marketplace to determine a prospective sale price should there be a willing buyer. Based on his research, Mr. Sorenson and his advisors consider a multiple of cash flows (a key factor used in calculating the purchase or selling price of radio stations) within the range of 8.0 and 9.0 to be a realistic target.

11. Mr. Sorenson has been approached by Waitt, a willing buyer, and the multiple of cash flows offered and agreed upon by Waitt and the Employer is 8.75. The Employer has also negotiated with Waitt an arrangement to transfer ownership of the broadcasting stations to Waitt. The preferred method is for the parties to enter into a long-term programming agreement (the Programming Agreement) with a purchase option (the Option Agreement) at its conclusion.

12. The Interim Programming Agreement with Waitt, dated January 1, 2000, was signed by Mr. Sorenson in his capacity as President of the Employer, and was approved by the Trustees on behalf of the participants. As initially executed, the Interim Programming Agreement stipulates that, not later than September 1, 2000, the Employer and Waitt would enter into either: (a) The Programming Agreement concurrently with the Option Agreement or (b) a stock purchase agreement (the Stock Purchase Agreement). However, because the applicant did not obtain the requested exemption as of the September 1, 2000 termination date, neither option was selected. Therefore, the Interim Programming Agreement still remains in effect and it has been extended by the Employer and Waitt every six months.

13. As consideration, under the Interim Programming Agreement, Waitt is required to pay the Employer $114,516, which amount is to be increased (or decreased) each month by an amount equal to $13,500 for every one percent increase (or decrease) in the New York prime rate, as published in the Wall Street Journal, on the 15th day of the preceding month. In addition, Waitt is required to reimburse the Employer for expenses incurred in the operation of the station and to deposit $1,374,000 in an escrow account. Also, pursuant to the Interim Programming Agreement, the broadcasting stations are being operated by Waitt, who supplies the stations with programming, while the Employer maintains ultimate control over the stations' finances, personnel matters and programming content. Further, the Interim Programming Agreement requires the Employer to continue to employ 15 management employees of the stations. All other employees became Waitt employees effective April 1, 2000, at the start of the Interim Programming Agreement.

14. The Interim Programming Agreement provides that upon its termination date, Waitt may exercise either of two options. First, Waitt can extend the Interim Programming Agreement into the ten year Programming Agreement that will end on December 31, 2009. At this time, Waitt may purchase the assets of the Employer for $12,967,023, under the terms of the Option Agreement, provided Waitt pays the Employer $3,200,000 as the option amount. Second, Waitt may immediately purchase, for $16,167,023 (subject to certain adjustments), all of the Employer's Common Stock held by the Employer and the Plan, pursuant to the provisions of the Stock Purchase Agreement. The Interim Programming Agreement will terminate on the earliest of (a) the effective date of the Programming Agreement and the execution of the Option Agreement, (b) the closing date of the Stock Purchase Agreement, or (c) a date mutually agreed to by the parties with at least thirty (30) days prior written notice.[6]

15. The Trustees have concluded that a sale of the Common Stock and the retirement of the Loans with the Sale proceeds would be in the best interests of the Plan participants. Moreover, the Trustees believe that allowing the debt to go into default would only disrupt this process and could damage the interests of the Plan participants. Therefore, as noted above, both Mr. Sorenson and the Bank offered, and the Trustees accepted, the waiver of default and deferral of payments pending the resolution of the proposed Sale and True-Up transactions described herein.[7]

16. To facilitate the termination of the Plan and allow the participants (most of whom are now Waitt employees) to diversify their portfolios into other investments with better future returns, the Trustees propose that the Common Stock held by the Plan be sold. The Employer is willing to purchase the Common Stock (and the Trustees are willing to sell such stock) under a deferred payment arrangement, in accordance with a "True-up" or adjustment to the purchase price. The Plan will not be required to pay any fees or expenses in connection with the Sale. Then, the Employer proposes to distribute the Sale proceeds to the participant accounts in the Plan.

Because the Employer is a subchapter S corporation, section 408(d)(2)(A) of the Act provides that the statutory relief under section 408(e) of the Act is unavailable with respect to the proposed Sale transaction since more than 50 percent of the Common Stock is owned by Mr. Sorenson, a shareholder-employee. Also, section 408(e) of the Act does not exempt extensions of credit in connection with adjustments to

[5] In regard to the deferral of payments, the Employer also agreed to waive its right to recoup interest payments made on behalf of the Plan under its guaranty agreement to the Bank with respect to the Bank Loan (see Representation 5) in order that the Plan could retain a greater amount of the final Sale proceeds. It is represented that the interest paid by the Employer through February 28, 2003 is $52,670.96.

[6] To date, neither the Programming Agreement nor the Stock Purchase Agreement have gone into effect. From correspondence in the exemption application file, it appears that the parties are inclined to enter into the Programming Agreement, which will be dated contemporaneously with the date of the Sale transaction described herein.

[7] Although the Trustees represent that such waiver should not cause the Loans to lose their status as exempt loans under section 408(b)(3) of this Act, the Department again expresses no opinion in this proposed exemption on whether the provisions of section 408(b)(3) of the Act have been violated while the Loans are outstanding.

the Sale price, such as those contemplated under the True-up. Accordingly, an administrative exemption is requested from the Department.

17. On May 26, 2000, the Plan and the Employer entered into a purchase agreement (the Purchase Agreement) to acquire the Common Stock held by the Plan. The purchase price was to be based on the amount which would have been due the Plan from Waitt for shares of Common Stock under the Stock Purchase Agreement. According to the Stock Purchase Agreement, Waitt promised to pay the Employer and the Plan a total of $16,167,023 for such Common Stock. The purchase price was, however, subject to various adjustments. For example, not later than five days prior to the transaction closing date, the sellers would be required to submit a *pro forma* balance sheet to Waitt that had been prepared in accordance with generally-accepted accounting principles, along with a schedule setting forth the value of the Employer's Common Stock (the Computation of Stock Value, as calculated by Mr. Johnson, the independent appraiser who prepared the Original Valuation of the Common Stock). The purchase price would then be adjusted to an amount equal to the total value of the Employer's Common Stock, as set forth on such schedule. In addition, the parties agreed that the purchase price would be further adjusted to reflect the loss of the depreciation on the underlying broadcast assets. However, for purposes of the Purchase Agreement, it was determined that the Plan's price per share for the Common Stock would be valued without the loss of the depreciation adjustment.

18. On January 8, 2002, an addendum (the First Addendum) was made to the Purchase Agreement. In this regard, the Plan's price per share to be paid by the Employer for the Common Stock would be calculated to include additional value due to state and Federal taxes, amounts due to certain employees under an Individual Employment and Incentive Compensation Agreement, and accrued sales commissions.

19. According to a second addendum to the Purchase Agreement (the Second Addendum), effective November 13, 2002, the Purchase Agreement was again amended. In this regard, the Programming Agreement and proposed Sale by the Plan of its Common Stock to the Employer will occur on the first month following the publication, in the **Federal Register**, of the notice granting the final exemption (the Closing Date). The Employer will pay the Plan the fair market value of the Common Stock as of December 31, 2002, as determined by an independent appraisal, plus the adjustments indicated in the First Addendum (*e.g.*, Federal and state taxes, sales commissions, *etc.*). The fair market value of the Common Stock as of the Closing Date (the Closing Value) will be determined no later than two months after the Closing Date by an independent appraisal.

The Second Addendum also provides that the True-up, which is the difference between the Closing Value and the amount which has already been deposited on the Closing Date, will be paid to the Plan, plus interest based on the New York prime market rate, effective on the Closing Date until the date of the True-up. As collateral for the True-up, Mr. Sorenson has agreed to deposit $100,000 cash in an escrow account for the benefit of the Plan.

20. In an independent appraisal report dated February 27, 2003, Mr. Johnson again valued the Common Stock held by the Plan and Mr. Sorenson, as of December 31, 2002 (the 2002 Appraisal). Mr. Johnson noted that the established value of all of the radio stations owned by the Employer was $16,167,023 as opposed to the value of the Common Stock. He explained that the valuation of the Employer's assets was based upon a multiple of 8.75 times the adjusted cash flow of the Employer's radio affiliates for the year ending December 31, 1998, including a provision for the costs incurred in constructing a radio station located in South Dakota, which was not completed until mid-1999. Mr. Johnson further noted that the $16,167,023 aggregate value of the Employer's assets had been reduced by $3,500,000 to compensate Waitt for the fact that it would be acquiring Employer Common Stock as opposed to the Employer's underlying assets. He indicated that he believed the 8.75 multiple for the Employer's radio stations was entirely appropriate and that the $16,167,023 selling price was realistic for such stations. Although Mr. Johnson did not express an opinion regarding the $3,500,000 downward adjustment to the selling price, he acknowledged that such a price reduction was common in the industry.

As stated above, it was Mr. Johnson's opinion that $16,167,023 represented the total fair market value of the various broadcast properties that were owned by the Employer as of December 31, 2002 rather than the value of the Common Stock. For the year ending December 31, 2002, he noted that the Computation of Stock Value equaled $10,494,101. Because the Plan holds a 30 percent interest in all of the Employer's assets, Mr. Johnson placed the fair market value of the Common Stock held by the Plan at $3,148,230 ($10,494,101 × 30%) as of December 31, 2002.

21. Thus, on the basis of the 2002 Appraisal, the Plan will receive 30% of $15,794,416 from the Employer prior to time of the True-up. This gross amount reflects the $10,494,101 value attributed to the Common Stock, plus the following positive adjustments: (a) State and Federal income taxes totaling $3,500,000, (b) a $1,692,315 aggregate amount due to certain employees under an "Individual Employment and Incentive Agreement," and (c) accrued sales commissions of $108,000 that the Employer would be obligated to pay. Therefore, the net amount owed by the Employer to the Plan will be $4,738,325, without the inclusion of the True-Up.

22. Upon conclusion of the Sale, proceeds from the Sale will effectively be split into two pools: (a) The proceeds related to the allocated shares (the Allocated Share Proceeds) and (b) the proceeds related to the unallocated shares (the Unallocated Share Proceeds). The Allocated Share Proceeds will be allocated to each Plan participant based on the shares held in their account. The Unallocated Share Proceeds will be used to pay off the Loans to the Bank and Mr. Sorenson. It is anticipated that the share proceeds will exceed the Loans by approximately $290,000 and that such gain will be allocated to the participants.

23. Mr. John F. Archer, an attorney with the law firm of Hagen Wilka & Archer, P.C., of Sioux Falls, South Dakota, was designated by the Trustees to serve on behalf of the Plan as the independent fiduciary. In such capacity, Mr. Archer is representing the interests of the Plan and the Plan participants in connection with the Sale and the True-up. Mr. Archer asserts that he is qualified to act as an independent fiduciary for the Plan because of his background as it relates to reviewing business valuations. Such experience includes his position as the South Dakota Division of Securities Director from 1978 until 1983, in which he was chairman of the North American Securities Administrators Association Franchise Committee, and his private practice, which covers securities law, mergers and acquisitions, real estate law, franchise law, corporate law and title insurance law. In addition, Mr. Archer represents that he has been a speaker discussing securities and franchise law at various Continuing Legal Education seminars and has served on the South Dakota State Bar Committee on Corporations. Mr. Archer represents that he has had a professional

relationship with Mr. Sorenson at various times between 1989 and 1994 and has assisted Mr. Sorenson in the purchase of his personal residence as well as the sale or purchase of Mr. Sorenson's commercial enterprises. However, Mr. Archer does not believe that these matters carry any conflict of interest with respect to the proposed transactions.

Mr. Archer states that he has no current ongoing relationship with Mr. Sorenson or the Employer, and he confirms that his firm will derive less than one percent of its gross annual income from the Employer. Mr. Archer has agreed to represent the interests of the Plan and its participants and he has executed a representation agreement (the Representation Agreement) with the Trustees containing the duties and capacities that such representation includes.

24. As independent fiduciary, Mr. Archer certifies that he has reviewed and analyzed the proposed transactions and related documents, as well as their potential effects, both direct and collateral, to the Plan participants. In addition, Mr. Archer states that he has evaluated the overall fairness of the subject transactions, specifically as to the other parties involved, and the validity of the proposed valuation. Based on such review and evaluation, Mr. Archer states that he is of the opinion that the 2002 Appraisal reflects a fair valuation of the Employer. He also explains that the sale of the shares owned by the Plan to the Employer based on the price set forth in the Purchase Agreement, treats the Plan participants fairly and justly in comparison to the other parties involved in such transaction. Further, after reviewing the 2002 Appraisal, Mr. Archer states that he concurs with the appraisal amount and he is of the opinion that the Sale is in the best interests of the Plan.

In addition, Mr. Archer states that the subject transactions are in the best interests of the Plan and its participants because the price being paid to the Plan is based on the sale of the Employer's Common Stock to a third party and it was determined on an arm's length basis between the Employer and Waitt. In reviewing other similar sales, Mr. Archer states that the Sale price in this case is consistent with other transactions dealing with radio stations and that the Plan's price per share will be higher than that paid to Mr. Sorenson because the Plan's interest in the Employer's Common Stock will be valued to include certain special adjustments (*i.e.*, Federal and state income taxes, amounts due to employees under Individual Employment and Incentive Compensation Agreements and accrued sales commissions). Mr. Archer states that his role as representative and adviser to the Plan will continue until such time as the transactions are completed or abandoned. Mr. Archer explains that the transactions will be deemed complete for purposes of his representation upon receipt of the final valuation to be used in the distribution of funds to Plan participants or will be deemed abandoned upon receipt of notice from the trustee of the Plan, the Employer, or Mr. Sorenson that the transactions will not be completed.

25. Mr. Archer notes that while the Employer is receiving a programming fee of $13,500 per month under the Interim Programming Agreement from Waitt, it would appear that this fee is normal and customary in today's marketplace and that it is not uncommon that when a transaction of this sort is made that this type of fee is paid to a licensor such as the Employer. Mr. Archer states that he has reviewed this matter with other owners of radio stations and has found this practice to be consistent. Consequently, he believes that the payment of this programming fee by Waitt to the Employer does not make the Sale unfair to the Plan participants. Mr. Archer also notes that Mr. Sorenson is receiving lease payments from Waitt for the rental of the buildings that are owned by Mr. Sorenson in which the Employer's radio stations are located. Assuming that the lease payments are fair market value, Mr. Archer does not believe these rental payments would make the proposed Sale transaction unfair to the Plan participants.

Further, Mr. Archer opines that the subject transactions are protective of the Plan, participants and beneficiaries because they comply with the organization and governing documents of the Plan and the Trustees have been given all information necessary to determine their fairness.

Finally, Mr. Archer confirms that his duties with respect to the transactions are to ensure that there is a final valuation of the Common Stock as of the Sale date, to supervise the payment of the True-up and disbursement of the funds to Plan participants, and the filing of tax notices and final Form 5500, among other things. Mr. Archer also confirms that he will take all actions that are necessary and proper to enforce and protect the rights of the Plan participants and beneficiaries.

26. In summary, it is represented that the transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Sale will occur in the following manner:

(1) The Employer will pay the Plan the fair market value of the Common Stock as of December 31, 2002, as determined by a qualified, independent appraiser, plus certain adjustments indicated in the Second Addendum to the Purchase Agreement;

(2) The Closing Value of the Common Stock will be determined no later than two months after the transaction date;

(3) As additional consideration, the Plan will receive the difference between the Closing Value and the amount paid for the Common Stock on the transaction date (*i.e.*, the True-up), plus interest based on the New York prime market rate, effective on the transaction date until the date of the True-up; and

(4) As collateral for the True-up, Mr. Dean Sorenson will deposit $100,000 in cash in an escrow account for the benefit of the Plan to ensure that the Employer honors its obligation under the True-up.

(b) The Plan will not pay any commissions or other expenses with respect to the Sale.

(c) The transactions have been approved by an independent fiduciary who will monitor such transactions on behalf of the Plan.

(d) The Trustees have determined that the Sale and True-up will be appropriate transactions for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Hayden O. Grona IRA (the IRA) Located in San Antonio, Texas

[Application No. D–11192]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain unimproved land (the Property) by the IRA to Mr. Grona's children (the Children), disqualified persons with respect to the IRA; [8] provided that the following conditions are met:

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

(b) The IRA receives the current fair market value for the Property, as established at the time of the sale by an independent, qualified appraiser; and

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

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described in section 408(a) of the Code, which was established by Hayden O. Grona (Mr. Grona) in 1989. As of March 19, 2003, the IRA had approximately $6,701,128 in total assets. The Trust Company, N.A., located at 711 Navarro, Suite 750, in San Antonio, Texas, is the custodian of the IRA (the Custodian). Mr. Grona is the trustee for the IRA (the Trustee). The Children are identified as Mr. Nelson Grona, Ms. Suzanne Grona White, and Mr. James Grona.

2. On February 8, 2001, the IRA purchased the Property from Leigh Stelmach, an unrelated third party, for $1,791,403. The IRA paid the entire amount of the purchase price in cash at closing. At the time of purchase, the Property represented approximately 21% of the IRA's total assets. The applicant represents that the Property is not adjacent to any other property owned individually, or jointly, by Mr. Grona and/or the Children. It is represented that Mr. Grona, as the Trustee, made the decision to purchase the Property for the IRA as a investment, to be developed by the IRA into an income-producing asset. However, it is represented, that shortly after acquisition, Mr. Grona realized that the Property was not a suitable investment for the IRA. The IRA has paid approximately $5,484 in real estate taxes due to its ownership of the Property. There have been no additional expenses incurred by the IRA as a result of its ownership of the Property.

3. The Property is an approximately 1,515 acre tract of unimproved land, located in Medina and Bandera Counties, Texas. The applicant represents that since the acquisition of the Property by the IRA, the Property has not been leased to or used by any disqualified persons, as defined under section 4975(e)(2) of the Code. In addition, the Property has not generated any income for the IRA since its acquisition.

4. The Property was appraised on February 27, 2003 (the Appraisal). The Appraisal was prepared by Grady Hoermann, MSA (Mr. H), who is an independent, Texas state certified, general real estate appraiser. Mr. H is with Grady Hoermann Appraisal Service, which is located in San Antonio, Texas. Mr. H relied primarily on the sales comparison approach, with an analysis of recent sales of similar properties in the local geographic area. After examining available sales data, Mr. H determined that the Property's fair market value would be approximately $900 per acre.

Accordingly, Mr. H represents that the Property had a fair market value of approximately $ 1,363,000, as of February 27, 2003.

5. The applicant proposes that the Children purchase the Property from the IRA in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the IRA. The IRA will be able to dispose of the Property, which has depreciated in value since it was originally acquired, at its fair market value and will not pay any commissions or expenses associated with the sale. The Appraisal will be updated at the time the transaction is consummated. It is represented that Mr. Grona is currently age 68. He will be required to begin receiving distributions from the IRA when he attains age 70½. The applicant states that the sale of the Property will increase the IRA's liquidity, therefore putting the IRA into a better position to make distributions to Mr. Grona once he reaches the age of 70½. In this regard, the Children will pay the IRA an amount in cash equal to the current fair market value of the Property at the time of the transaction, based on an update of the Appraisal. Thus, the applicant maintains that the sale of the Property by the IRA to the Children will: (i) Increase the liquidity of the IRA's portfolio; (ii) enable the Trustee to diversify the assets of the IRA; (iii) enable the IRA to sell an illiquid non-income producing asset; and (iv) facilitate future distributions of assets to Mr. Grona.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) The sale will be a one-time cash transaction;

(b) The IRA will receive the current fair market value for the Property, as established at the time of the sale by an independent, qualified appraiser;

(c) The IRA will pay no commissions or other expenses associated with the sale; and

(d) The sale will:

(i) Provide the IRA with more liquidity and facilitate future distributions to Mr. Grona;

(ii) Enable the IRA to diversify its assets;

(iii) Allow the IRA to divest itself of a non-income producing asset that has depreciated in value; and

(iv) Allow the IRA to reinvest the proceeds of the sale in other investments that potentially could yield greater returns.

Notice to Interested Persons

Because Mr. Grona is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons (other than the Custodian). Comments and requests for a hearing are due thirty (30) days from the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

Newspaper Agency Corporation Pension Trust (the Plan) Located in Salt Lake City, Utah

[Application No. D–11194]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[9]

I. Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A)–(D), 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 leasing of certain improved real property (the Property) by the Plan to the Newspaper Agency Corporation (the Employer), a party in interest with respect to the Plan, pursuant to the terms of a lease (the New Lease), effective August 1, 2003; and (2) the guarantee by MediaNews Group, Inc. (MediaNews) and Deseret News Publishing Corporation (Deseret) (collectively, the Owners of the Employer) of the obligations of the Employer under the terms of the New Lease.

[8] Pursuant to CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

[9] 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.

II. Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) An independent, qualified fiduciary (the I/F), acting on behalf of the Plan, determines that each of the proposed transactions is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of such Plan;

(b) The I/F manages the Property on an on-going basis and is empowered to take whatever action it deems appropriate to serve the best interest of the Plan and its participants and beneficiaries, including but not limited to the retention, leasing, or sale of the Property;

(c) The fair market value of the Property does not now and will at no time exceed twenty-five percent (25%) of the fair market value of the total assets of the Plan;

(d) The I/F negotiates, reviews, and approves the terms of the subject transactions;

(e) The terms and conditions of the subject transactions are, and will at all times be, no less favorable to the Plan than terms obtainable by the Plan under similar circumstances when negotiated at arm's length with an unrelated third party;

(f) An independent, qualified appraiser determines the fair market value of the rental of the Property, as of August 1, 2003, and annually thereafter;

(g) The I/F monitors compliance with the terms of the New Lease throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance by the Employer and/or the Owners of the Employer of all other obligations of the Employer under the terms of such lease;

(h) The Plan incurs no fees, costs, commissions, or other charges or expenses as a result of its participation in the transactions which are the subject of this exemption, other than the fee payable to the I/F for services rendered to the Plan and the fee payable to the independent, qualified appraiser for the annual appraisal of the fair market value of the Property;

(i) The I/F ensures that the terms and conditions described herein are at all time satisfied;

(j) The I/F will place the Property on the market for sale or lease to unrelated third parties, within fifteen (15) calendar days of the date of the publication of the grant of this proposed exemption in the **Federal Register**, and subject to the termination of the New Lease, as provided in section II(k), below, of this exemption, will proceed to sell or lease such Property to any such unrelated third party who presents a *bona fide* sale or lease offer which the I/F determines to be prudent and in the best interest of the Plan and its participants and beneficiaries; and

(k) Notwithstanding anything to the contrary in the New Lease, the Plan may at any time upon six (6) month prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property, effective as of the date specified in such notice, which date shall be at least six (6) months after the date such written notice is given to the Employer (but in no event extending the New Lease beyond the then current lease term.

Effective Date: If the proposed exemption is granted, the exemption will be effective August 1, 2003.

Summary of Facts and Representations

1. The Plan is a tax-qualified defined benefit pension plan covering 860 participants and beneficiaries, as of June 20, 2003. The total fair market value of the Plan's assets, as reflected in the FORM 5500 annual report for 2001 was $37,143,730.

2. The current trustee of the Plan is Wells Fargo Bank, N.A. (Wells Fargo), which is solely responsible for the investment of Plan assets. In addition, Wells Fargo has acknowledged and represented that it has accepted the appointment to serve as the I/F, acting on behalf of the Plan for purposes of the subject exemption. It is represented that the Plan is responsible for the payment of Wells Fargo's fees.

It is represented that on April 1, 1996, Wells Fargo acquired First Interstate Bank, the former trustee of the Plan and the I/F under terms of a prior exemption,[10] and concurrently assumed the responsibilities and obligations of First Interstate Bank. In this regard, it is represented that there was no period of time when the Plan did not have a bank, acting as trustee and an I/F on its behalf.

It is represented that Wells Fargo is independent in that there are no common officers or directors with the Employer or the Owners of the Employer. Substantially less than one percent (1%) of Wells Fargo's total deposits and substantially less than 1% of its outstanding loans (both in dollar amounts) are attributable, respectively, to deposits and loans of the Employer and its affiliates.

It is represented that Wells Fargo is qualified to serve as the I/F on behalf of the Plan in that Wells Fargo is knowledgeable as to its duties and responsibilities as a fiduciary under the Act and is knowledgeable as to the subject transactions. In addition, Wells Fargo represents that it has many years experience managing assets and is currently responsible for managing approximately $183,000,000,000 in assets of its customers.

3. The Property consists of a parcel of real estate (1.208 acres) improved by a one-story masonry warehouse building, constructed in 1968, and estimated to contain 52,635 square feet of space. The Property is located south of the downtown central business district of Salt Lake City, Utah. This neighborhood is primarily a general business area with some commercial and light industrial uses.

The Property is situated on a railroad spur. However, it is represented that the Salt Lake City Mayor's office has verbally expressed possible plans which may lead to the elimination of such railroad spur.

The Plan owns the Property, unencumbered by any outstanding mortgage or any other indebtedness. As of December 31, 2001, the fair market value of the Property constituted 4.361% of the total assets of the Plan.

The Plan purchased the Property in July of 1971, from Wycoff Warehouse, Inc., an unrelated third party, for a purchase price of $259,000. The Plan began leasing the Property to the Employer, pursuant to the terms of a lease (the Original Lease) entered into on July 21, 1971. The applicant represents that the Original Lease satisfied the conditions provided by section 414(c) of the Act, because: (1) The Original Lease was entered into before July 1, 1974, when such a lease was not a prohibited transaction within the meaning of section 503(b) of the Code; and (2) the terms of the Original Lease were as favorable to the Plan as those of an arm's length transaction with an unrelated party.[11]

On August 1, 1983, the Plan and the Employer entered into another lease (the Old Lease) which superseded the Original Lease. With regard to the Old Lease between the Plan and the Employer, the Department issued, in 1985, a retroactive prohibited

[10] Prohibited Transaction Exemption 85–37 (PTE 85–37) was published at 50 FR 7008 (February 19, 1985). The proposed exemption (D–5540) was published at 49 FR 47452 (December 4, 1984).

[11] Section 414(c)(2) of the Act provided a statutory exemption for a transitional period ending June 30, 1984, for certain leases meeting specified conditions. The Department expresses no opinion, herein, as to the applicability of section 414(c)(2) of the Act to the past leasing of the Property by the Plan to the Employer under the terms of the Original Lease.

transaction exemption, PTE 85–37, effective, as of July 1, 1984. The Old Lease provided for an initial ten (10) year rental term with two (2) additions renewal period of ten (10) years each, exercisable at the discretion of the Employer. In July 1993, the Employer opted to renew the Old Lease. On July 31, 2003, rather than extend the Old Lease for an addition term of ten (10) years, the Employer elected to terminate the Old Lease. On August 1, 2003, the Employer and the Plan entered into the New Lease.

4. The New Lease provides for an initial term of three (3) years with up to (4) four additional one (1) year extension options exercisable by the Employer, subject to the approval of the I/F. Notwithstanding anything to the contrary in the New Lease, the Plan may at any time upon six (6) month prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property, effective as of the date specified in such notice. Such date shall be at least six (6) months after the date such written notice is given to the Employer, but in no event extending the New Lease beyond the then current lease term.

The initial rental amount under the provisions of the New Lease will be $16,448.42 a month ($197,381 annually). In this regard, for the purpose of portfolio management and lease negotiation, Mr. Howard J. Layton (Mr. Layton), MAI, CCIM, CRE, (dba The Appraisal Source, L.L.C.) prepared an appraisal report estimating the ''as is'' market value of the Property, as of November 26, 2002, the date the Property was inspected. In the opinion of Mr. Layton, as of November 26, 2002, the fee simple ''as is'' market value of the Property was $1,700,000. Based on the terms of the Old Lease, Mr. Layton further concluded that, as of November 26, 2002, the annual rental rate for the Property would be $197,381 ($3.75/SF × 52,635 SF in the Property) rounded to approximately $16,448 a month. After examining a copy of the New Lease, Mr. Layton, represented in a letter dated July 28, 2003, that there is no value impact to the subject Property, as a result of the terms of the New Lease.

Mr. Layton is qualified to serve as an appraiser of real property in that he is a designated MAI member of the Appraisal Institute, a CCIM member of the Commercial Investment Real Estate Institute, a CRE member of the Counselors of Real Estate, and a certified general appraiser for the state of Utah. In addition, Mr. Layton has been engaged as a real estate appraiser since 1983.

Mr. Layton represents that he is independent in that he is not related to the Employer, the Owners of the Employer, or their principals. Further, Mr. Layton has no present or prospective interest in the Property and has no personal interest or bias with respect to the parties involved. Mr. Layton's compensation was not contingent on reporting a predetermined value or a requested minimum valuation.

The New Lease also provides for a periodic adjustment annually to the rental amount, so that the rent will be no less than the fair market rental value of the Property at the time of each adjustment. Such adjustments will be made by retaining a qualified, independent appraiser, selected by Wells Fargo. The cost of each such appraisal will be paid for by the Plan. It is represented that in no event shall the rental amount paid by the Employer be reduced below $16,448 a month during the term of the New Lease.

The New Lease is a triple-net lease, such that the Employer is obligated to pay all taxes levied against the Property, all utility charges, the cost of installing any fixtures and equipment, all maintenance and repair costs, and premiums for both liability and casualty insurance for the benefit of the Plan as an additional named insured. All trade fixtures and equipment installed by the Employer remain the property of the Employer and may be removed by the Employer, who must repair any damage caused by such removal. In addition, the Employer has agreed to indemnify the Plan from all liabilities for personal injury or property damage occurring on the Property and not caused by the negligence of the Plan.

5. The Employer and sponsor of the Plan is engaged in the business of producing two (2) daily newspapers seven (7) days a week. It is represented that the Employer uses the Property to receive (via the railroad spur on the Property and by truck) newsprint and other supply items for printing newspapers and related functions and to store such supplies. It is represented that the Employer has consistently complied with the terms of both the Original Lease and the Old Lease in a timely manner.

6. The Owners of the Employer are each engaged in the newspaper publishing business. MediaNews owns 100 percent (100%) of Kearns-Tribune, LLC (Kearns-Tribune), which owns 50 percent (50%) of the stock of the Employer. MediaNews purchased its ownership in Kearns-Tribune MediaNews from AT&T Corporation. The remaining 50 percent (50%) of the stock of the Employer is owned by Deseret. The Owners of the Employer have guaranteed performance of all conditions of the New Lease, including the payment of rent, by the Employer and have agreed to perform such conditions themselves, if the Employer is unable to do so. Wells Fargo has reviewed various information and financial data on MediaNews and Deseret and believes that each is creditworthy.

7. The Employer is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act. The Owners of the Employer are parties in interest with respect to the Plan, pursuant to section 3(14)(E) of the Act. The Plan and the Employer entered into the New Lease, effective August 1, 2003, on the condition that the proposed exemption is granted. In addition the Owners of the Employer have guaranteed the obligations of the Employer under such New Lease. Accordingly, the applicant has requested relief from section 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and 4975 of the Code by reason of 4975(c)(A)(A) through (E) for both transactions, the leasing of the Property by the Employer and the guarantee by the Owners of the Employer.

8. It is represented that the proposed transactions are administratively feasible in that the Property has been previously leased by the Employer from the Plan for an extended period of time, pursuant to PTE 85–37. Further, no modification of the Property would be required to accommodate the Employer who is the current tenant. In addition, the appraisal of the Property, the drafting of the New Lease, and the other administrative requirements necessary to continue the leasing of the Property to the Employer by the Plan have already been accomplished.

9. It is represented that there are sufficient safeguards in the proposed exemption for the protection of the Plan and its participants and beneficiaries. Wells Fargo has reviewed the terms of the New Lease and compared such terms with similar leases between unrelated parties. Further, Wells Fargo has agreed to monitor the New Lease and the conditions of the exemption on behalf of the Plan throughout the term of the New Lease and has authority to take all appropriate actions to safeguard the interests of the Plan.

It is represented that Wells Fargo has examined the Plan's overall investment portfolio, considered the Plan's liquidity and diversification requirements in light of the proposed leasing, and has determined that the proposed leasing complies with the Plan's investment objectives and policies. In this regard, of the total assets of the Plan an estimated 4.361 percent (4.361%) will be involved in the leasing of the Property between the Plan and the Employer. By diversifying a small percentage of the total Plan assets into real estate, Wells Fargo asserts that it is taking steps to protect the Plan and its participants and beneficiaries from fluctuations in the stock and bond markets.

10. The exemption contains additional protections for the Plan and its participants and beneficiaries. In this regard, the exemption contains a condition that the Plan may at any time upon six (6) months prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property. Further, the exemption contains a requirement that Wells Fargo, acting as the I/F on behalf of the Plan, place the Property on the market for sale or lease to an unrelated third party, within fifteen (15) calendar days of the date of the publication of the grant of this proposed exemption in the **Federal Register**, and proceed to sell or lease such Property to any such unrelated third party who presents a *bona fide* sale or lease offer which Wells Fargo determines to be prudent and in the best interest of the Plan and its participants and beneficiaries. It is represented that the Employer may build a new facility within the next two (2) years, and at the conclusion of the initial term of the New Lease, may not exercise an option to renew the lease on the Property. Accordingly, the conditions and requirements of the exemption assure that the Plan will have sufficient time to search for a replacement tenant or a purchaser, and will have the ability to terminate the New Lease within a reasonable period.

11. Wells Fargo has stated that it believes the proposed leasing is in the best interest of the Plan and its participants and beneficiaries. In this regard, according to Wells Fargo, the estimated average annual total rate of return to the Plan from the Property over the past seven (7) years, based on both unrealized gain and income has been 13.31 percent (13.31%). Wells Fargo believes that rental payments to the Plan will be maximized by continuing to lease the Property to the Employer at a fair market rental amount (adjusted annually). In this regard, Wells Fargo estimates an annual rate of return for the Property in the coming year of approximately 11.61 percent (11.61%), even assuming that there is no increase in the fair market value of the Property. Accordingly, Wells Fargo has concluded that by leasing the Property to the Employer, the Plan will gain uninterrupted occupancy of the Property for an extended period of time and continued maintenance of the Property by a responsible and financially viable tenant. Further, the Plan will avoid additional expenses for modifications to the Property, and will avoid lost profits.

12. In summary, the applicant represents that the proposed transactions satisfy the criteria for exemption, as set forth in section 408(a) of the Act, because: (a) The Employer will pay the fair market rental rate, as determined by a independent, qualified appraiser; (b) the rental rate under the terms of the New Lease will be adjusted every year to reflect the fair rental value of the Property at the beginning of each such period, as determined by an independent, qualified appraiser, but will never be less than $16,448 a month; (c) the New Lease does not require the Plan to pay any costs relating to the Property and requires the Employer to indemnify the Plan for certain liabilities relating to the Property; (d) the Employer will maintain both liability and casualty insurance, naming the Plan as an additional insured, with respect to the Property; (e) Wells Fargo, acting as the trustee and I/F with respect to the Plan, represents that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries; (f) Wells Fargo will monitor the New Lease throughout its duration on behalf of the Plan, taking any appropriate actions to safeguard the interests of the Plan; (g) Wells Fargo will place the Property on the market for sale or lease to unrelated third parties, within fifteen (15) calendar days of the date of the publication of the grant of this proposed exemption in the **Federal Register**, and, subject to six (6) months prior written notice to the Employer, will proceed to sell or lease such Property to any such unrelated third party who presents a *bona fide* sale or lease offer which Wells Fargo determines to be prudent and in the best interest of the Plan and its participants and beneficiaries; and (h) the Plan may at any time upon six (6) months prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc, of the Department, telephone (202) 693–8540. (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 of the Act and/or the 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, 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional 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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of September, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

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BILLING CODE 4510–29–P