Drug	Schedule
Concentrate of Poppy Straw (9670).	II

The company plans to import the basic classes of controlled substances to manufacture bulk controlled substances and a non-controlled substance flavor extract.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Penick Corporation to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: July 8, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–16385 Filed 7–19–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated March 5, 2004, and published in the **Federal Register** on March 15, 2004, (69 FR 12180), Roche Diagnostics Corporation, Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances:

Drug	Schedule
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to produce small quantities of controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Roche Diagnostics Corporation, to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 8, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–16384 Filed 7–17–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11160 & D–11161, et al.]

Proposed Exemptions; Camino Medical Group, Inc.

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.

Camino Medical Group, Inc. Matching 401(k) Plan (the 401(k) Plan) and the Camino Medical Group, Inc. Employee Retirement Plan (the Retirement Plan; Together, the Plans) Located in Santa Clara, California

[Application Nos. D–11160 & D–11161, respectively]

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 (or ERISA) 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 (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 (the New Lease) of a medical treatment center (the Treatment Center) by the Retirement Plan to Camino Medical Group, Inc. (CMG), the sponsor of the Retirement Plan and a party in interest with respect to such Retirement Plan; and (2) the exercise, by CMG, of options to renew the New Lease, for two additional terms, provided that the following conditions are met:

(a) The terms and conditions of the New Lease are no less favorable to the Retirement Plan than those obtainable by the Retirement Plan under similar circumstances when negotiated at arm's length with unrelated third parties.

(b) The Retirement Plan is represented for all purposes under the New Lease, and during each renewal term, by a qualified, independent fiduciary.

(c) The Retirement Plan's independent fiduciary has negotiated, reviewed, and approved the terms and conditions of the New Lease and the options to renew the New Lease on behalf of the Retirement Plan and has determined that the transactions are appropriate investments for the Retirement Plan and are in the best interests of the Retirement Plan and its participants and beneficiaries.

(d) The rent paid to the Retirement Plan under the New Lease, and during each renewal term, is no less than the fair market rental value of the Treatment Center, as established by a qualified, independent appraiser.

(e) The rent is subject to adjustment at the commencement of the second year of the term of the New Lease and each year thereafter by way of an independent appraisal. A qualified, independent appraiser is selected by the independent fiduciary to conduct the appraisal. If the appraised fair market rent of the Treatment Center is greater than that of the current base rent, then the base rent is revised to reflect the appraised increase in fair market rent. If the appraised fair market rent of the Treatment Center is less than or equal to the current base rent, then the base rent remains the same.

(f) The New Lease commences within 30 days after the granting of the final exemption and is triple net, requiring all expenses for maintenance, taxes, utilities and insurance to be paid by CMG, as lessee.

(g) The Retirement Plan's independent fiduciary monitors compliance with the terms of the New Lease and the conditions of the exemption throughout the duration of the New Lease and each renewal term, and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of CMG under the terms of the New Lease.

(h) The Retirement Plan's independent fiduciary expressly approves any renewal of the New Lease beyond the initial term.

(i) CMG provides the Retirement Plan's independent fiduciary with documentation that the rent has been paid on a monthly basis.

(j) At all times throughout the duration of the New Lease and each renewal term, the fair market value of the Treatment Center does not exceed 25 percent of the value of the total assets of the Retirement Plan.

(k) CMG files a Form 5330 with the Internal Revenue Service (the Service) and pays all applicable excise taxes, if any, within 90 days of the publication, in the **Federal Register**, of the grant notice with respect to the past and continued leasing of the Treatment Center by the 401(k) Plan and the Retirement Plan (together, the Plans) to CMG.

(l) To the extent CMG owes the 401(k) Plan or the Retirement Plan additional rent by reason of the past and continued leasing of the Treatment Center, (i) the independent fiduciary makes all such determinations, including the payment of reasonable interest; and (ii) CMG makes such payments to the Plans.

Summary of Facts and Representations

1. CMG, formerly known as the ''Sunnyvale Medical Clinic, Inc.'' (Sunnyvale), is one of northern California's largest physician-governed multi-specialty medical groups, with more than 190 primary care and specialist physicians, nurse practitioners and physician assistants. An affiliate of the Palo Alto Medical Foundation, CMG is a not-for-profit, community-based organization that contracts with most leading Health Maintenance Organization and Preferred Provider Organization insurance plans. While maintaining 12 California patient care sites in Cupertino/San Jose, Los Altos, Mountain View, Santa Clara and Sunnyvale, CMG is focused on delivery of health care services, patient education and health care research, and offers 28 medical specialties, which include, but are not limited to, pediatrics, urgent care, and infusion therapy.

2. CMG sponsors the Plans. Originally, CMG established the Sunnyvale Medical Clinic, Inc. Employee Retirement and Profit Sharing Plan (the ERPS Plan), which was a single plan with two trusts. The retirement portion of the ERPS Plan was a money purchase pension plan and the profit sharing portion of the ERPS Plan was a profit sharing plan. Each portion of the ERPS Plan had its own separate trust.

3. Effective January 1, 1989, the 401(k) Plan was established. Employees of CMG who were eligible to participate in the ERPS Plan were also eligible to participate in the 401(k) Plan. Also, some physicians who worked for CMG but who did not participate in the ERPS Plan were eligible to participate in the 401(k) Plan.

On or about December 31, 1989, the ERPS Plan was restated as two separate plans, the ''Sunnyvale Medical Clinic, Inc. Employee Profit Sharing Plan'' (the Sunnyvale Profit Sharing Plan) for the profit sharing portion of the ERPS Plan and the ''Sunnyvale Medical Clinic, Inc. Retirement Plan'' (the Sunnyvale Retirement Plan, now known as the Retirement Plan) for the money purchase pension portion of the ERPS Plan.

On January 1, 1992, the Sunnyvale Profit Sharing Plan was merged into the

[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.

401(k) Plan. As a result of the merger, the 401(k) Plan received the Sunnyvale Profit Sharing Plan's assets and the flow of income deriving from those assets.

4. As of June 30, 2003, the 401(k) Plan covered 758 participants. As of the same date, the 401(k) Plan had total assets of $40,927,597. T. Rowe Price serves as the 401(k) Plan trustee.

The Administrative Committee, which is comprised of physicians who are shareholders of CMG, is the agent of CMG, and in such capacity is generally responsible for the interpretation, application and administration of the 401(k) Plan. The accounts in the 401(k) Plan are participant-directed, although the Administrative Committee also has the authority to direct the trustee's investment of the assets of the 401(k) Plan's trust. Currently, participants select from a menu of 13 investment choices. Participants can also choose to invest up to 50 percent of their vested account balance outside the menu of choices. With the assistance of an investment adviser, the Administrative Committee selects and monitors the menu of investment choices from which participants direct the investment of their accounts.

5. The Retirement Plan is not a party in interest with respect to the 401(k) Plan or vice versa. As of June 30, 2003, the Retirement Plan had 965 participants. As of August 31, 2003, the Retirement Plan had total assets of $36,055,367. The trustee of the Retirement Plan is Wells Fargo Bank.

The Administrative Committee is generally responsible for the administration of the Retirement Plan. To the extent that Retirement Plan participants do not direct the investment of their own accounts, the Administrative Committee directs the trustee's investment of the assets of the Retirement Plan's trust. Investment decisions are made by the Administrative Committee, with the exception of those participants who choose to segregate their accounts. An investment adviser assists the Administrative Committee in overseeing the investment of Retirement Plan assets. There are currently 15 participants who direct the investment of their own accounts in the Retirement Plan.

6. In 1980, the ERPS Plan acquired the real property presently constituting the Treatment Center from Sunnyvale Medical Building Company, Inc. (SMBC), a California corporation.[2]

The property is located at 570, 574, 580 and 582 South Sunnyvale Avenue, Sunnyvale, California. The property was occupied by retail businesses and comprised over 5,000 square feet of space at the time of acquisition. The property and the rental income were allocated to the profit sharing portion of the ERPS Plan.

7. Following the acquisition, a portion of the Treatment Center identified as 582 South Sunnyvale Avenue was leased to Richard P. Carr Physical Therapy (Carr PT), an unrelated party. The lease term was for a period of 125 months, commencing August 1, 1980, through December 31, 1990. The rental provided for under the lease was determined by a qualified, independent real estate appraiser. Moreover, the lease provided for an annual rental increase based upon the CPI.

8. Before entering into the lease of the 582 South Sunnyvale Avenue property, Carr PT had subleased premises from CMG at a nearby location, 411 Old San Francisco Road, Sunnyvale, California. In addition, CMG furnished Carr PT various billing and administrative services. The fee charged for the administrative services was based upon a percentage of Carr PT's billings. Further, Carr PT's patients consisted primarily of referrals from CMG. The same arrangement continued after Carr PT changed its location from the subleased premises to 582 South Sunnyvale Avenue.

Also prior to entering into the lease with Carr PT, the Administrative Committee of the ERPS Plan sought and obtained an opinion of legal counsel that the lease by the ERPS Plan to Carr PT would not be a prohibited transaction because Carr PT was not a party in interest with respect to such plan.

As Carr PT grew, it leased more of the premises belonging to the ERPS Plan. In February, 1983, 580 South Sunnyvale Avenue was added; in July 1985, 574 South Sunnyvale Avenue was added; and in January, 1987, 570 South Sunnyvale Avenue was added, completing its occupancy of the entire building comprising the Treatment Center. The lease was amended to reflect these additions.

9. As of August 1, 1991, a lease extension agreement was entered into between the Sunnyvale Profit Sharing Plan and Carr PT, as lessee, to extend the lease from August 1, 1991, through December 31, 1995. About 2 years later, as of March 1, 1993, by mutual agreement between Carr PT and the 401(k) Plan, the successor in interest to the Sunnyvale Profit Sharing Plan, the lease was terminated and simultaneously replaced by a lease between the 401(k) Plan and Advanced Infusion Systems (AIS), an unrelated party, as the new lessee. AIS provides infusion therapy services, more commonly known as chemotherapy. The new lease was for a 5-year term, from March 1, 1993, through February 28, 1998. AIS made substantial tenant improvements to the Treatment Center in order to carry out its business. In addition, AIS and CMG entered into an agreement under which CMG provided administration and management services to AIS.

10. Before the end of the lease term, the Administrative Committee for the 401(k) Plan and the Retirement Plan and AIS engaged in discussions relating to the renewal of the lease of the Treatment Center. The Administrative Committee anticipated that AIS would renew the lease. However, at the end of February 1998, AIS chose not to renew the lease and vacated the premises. Accordingly, on March 1, 1998, CMG

[2] A title search by the applicant revealed that on June 4, 1980, the Treatment Center was sold by Stephen Louis Millich to Price Walker Associates, Ltd. who were unrelated parties, the latter of which transferred the Treatment Center to SMBC on the same day. The applicant states that it has not been able to obtain any records which directly document the sales price for either of these transfers. However, the applicant represents that the recorded deed for each June 4, 1980, transfer includes a notation that the transfer tax paid was $291.50. The applicant opines that because the applicable transfer tax rate at that time was $1.10 per $1,000, it is reasonable to conclude that the sale price for each June 4, 1980, transfer was approximately $265,000.

Although the applicant explains that it searched all of its Retirement Plan files for information regarding how the Treatment Center was transferred to the ERPS Plan in 1980, the applicant states that it did not find any information to indicate whether the transfer could be characterized as an in kind contribution, a gift, a sale, or something else, or any other information regarding the circumstances or background of the transfer. The applicant believes that the transfer did not result in the violation of any tax qualification requirement under the Code.

Further, the applicant states that, to the best of its knowledge, there was no financing involved in connection with the acquisition of the Treatment Center by the ERPS Plan or deeds of trust filed at or near the time of any of the 1980 property acquisitions.

In addition, the applicant states that, while SMBC was an entity owned and operated by physicians at Sunnyvale, it is not known whether in 1980 its relationship to Sunnyvale or the ERPS Plan was such as to make it a party in interest with respect to the ERPS Plan. The applicant states that although SMBC was identified as a party in interest with respect to the ERPS Plan in connection with Prohibited Transaction Exemption (PTE 87–13) 87–13, 52 FR 2630 (January 23, 1987), it is unable to determine why SMBC was so identified. Moreover, the applicant states that SMBC formally dissolved in 1994, and to the best of its recollection, the ERPS Plan was always intended to be the ultimate transferee of the Treatment Center, with SMBC intended to serve merely as a conduit.

In this regard, the Department notes that it is not proposing, nor has the applicant requested, exemptive relief regarding the acquisition of the Treatment Center by the ERPS Plan from SMBC to the extent SMBC was a party in interest with respect to the ERPS Plan.

stepped into the shoes of AIS to continue the flow of rental income and the provision of infusion therapy to the CMG patients.

11. Currently, the Treatment Center consists of .5 acres of fully-landscaped land improved by a single-story building containing approximately 5,184 square feet of space and a parking lot that has 17 uncovered spaces. The Treatment Center is contiguous to other parcels of real property, a residence (the Residence) and an urgent care center (the Urgent Care Center), owned by the Plan and leased to CMG. The Treatment Center is also located in close proximity to certain real property that is owned by CMG. In addition, five parking spaces at the Residence are allocated for Treatment Center patients and Treatment Center employees are required to park in a nearby employee parking lot.

12. The Plans' Administrative Committee decided that it was in the best interests of the 401(k) Plan and its participants and beneficiaries to switch the 401(k) Plan's investment program and plan administration to a family of mutual funds, and to allow the participants and beneficiaries to make their own portfolio selections from a ''menu'' offered by the mutual fund provider. The Committee determined that savings would be realized if the same provider provided the investment options, the administrative services and the trustee services. After examination and consideration was given, the Committee chose T. Rowe Price as the provider for all such services.

13. Because T. Rowe Price would only serve as the trustee of mutual fund assets, the firm decided it would not serve as the trustee for the 401(k) Plan's other real estate interests.[3] In order to maintain the efficiency and cost effectiveness of the ''one-stop shop,'' and thus avoid a second trustee for the 401(k) Plan to hold only the real estate assets, the Committee determined that the 401(k) Plan should dispose of its interests in the real estate. On the other hand, since the real estate interests had proven to be a good source of income and a good vehicle for investment diversification for the Plans, the Committee chose to transfer the 401(k) Plan's interests to the Retirement Plan rather than dispose of them entirely. Accordingly, the Committee determined to cause the 401(k) Plan to sell its 76.5 percent interest in the Urgent Care Center and the Residence, and its 100 percent interest in the Treatment Center, to the Retirement Plan. Such properties represented approximately 8.97 percent of the 401(k) Plan's assets and approximately 14.16 percent of the Retirement Plan's assets. Hence, on June 17, 1999, in an all cash transaction, the 401(k) Plan sold its real estate interests, including the Treatment Center, to the Retirement Plan for $4,081,471. No fees or commissions were paid by either Plan. The expenses associated with the transaction were borne by CMG. At present, CMG leases the Treatment Center from the Retirement Plan and it pays such Plan a monthly rental of $1,456.

14. Due to the lack of oversight by a qualified, independent fiduciary with full investment discretion to review, approve and monitor the past and continuing leasing arrangements between the Plans and CMG, and the absence of contemporaneous independent appraisals establishing the fair market value or the fair market rental value of the Treatment Center at the inception of each lease or at the time of the sale of the Treatment Center by the 401(k) Plan to the Retirement Plan, the Department is not prepared to provide exemptive relief with respect to such transactions. Therefore, within 90 days of the publication in the **Federal Register** of the notice granting this exemption, CMG will file a Form 5330 with the Service and pay all applicable excise taxes that are due. In addition, to the extent the leases resulted in rental deficiencies to either the 401(k) Plan or the Retirement Plan, or the 401(k) Plan received less than fair market value when it sold the Treatment Center to the Retirement Plan, the present independent fiduciary is required to make such determinations, including the payment of reasonable interest by CMG to the affected Plans. In addition, CMG will be required to make such payments to the Plans.

Accordingly, the Administrative Committee and CMG request a prospective administrative exemption from the Department in order to allow the Retirement Plan to lease the Treatment Center to CMG under the provisions of a new written lease and to allow the exercise, by CMG, of options to renew the New Lease for two additional terms. The initial term of the New Lease will commence within 30 days after the granting of the final exemption and it will have an expiration date of February 28, 2008. The New Lease will also have options to renew for two additional five year terms, only with the express approval of the Retirement Plan's independent fiduciary. The New Lease will be triple net and will require CMG to pay all real estate taxes on the Treatment Center for the Retirement Plan, as well as all expenses that are associated with insurance, maintenance and utilities. In addition, the base rent under the New Lease will be the greater of $14,256 per month or the fair market value of the Treatment Center, as determined by a qualified, independent appraiser.[4] Moreover, CMG will provide the Retirement Plan's independent fiduciary with documentation that the rent has been paid on a monthly basis.

The applicant represents that, at the commencement of the second year of the initial term of the New Lease and each year thereafter, the Retirement Plan's independent fiduciary will select a qualified, independent appraiser to reappraise the Treatment Center to determine the appropriate fair market rental value, and based upon such determinations, it will make appropriate adjustments to the rent. However, in no event will the independent fiduciary adjust the rent below the rental amount for the preceding New Lease term.

15. In an independent appraisal report dated October 14, 2003 (the 2003 Appraisal), Walter D. Carney, MAI and Larry W. Hulberg, MAI, both independent, certified-general appraisers affiliated with Hulberg & Associates, Inc. (H&A), of San Jose, California, updated an October 18, 2002, appraisal that was prepared by their firm, in which the fair market value of

[3] In this regard, in 1987, the ERPS Plan, which was a predecessor plan to the 401(k) Plan, applied for and received a prohibited transaction exemption (*i.e.*, PTE 87–13) from the Department for the purchase and leaseback of two parcels of real estate, consisting of the Urgent Care Center and the Residence. The ERPS Plan purchased (the Original Purchase) the properties from the ERPS Plan sponsor, Sunnyvale (now known as CMG), for $3.4 million on July 17, 1985 and leased (the Original Lease) such properties back to Sunnyvale, under the provisions of a triple net lease, for an initial term of ten years, followed by two additional five-year renewal periods, for a combined total duration of 20 years which expires in 2007. Of the purchase price paid for the Urgent Care Center and the Residence, 76.5 percent came from the trust established for the profit sharing portion of the ERPS Plan and the other 23.5 percent came from the trust setup for the money purchase pension plan portion of the ERPS Plan. Rental income from the properties was allocated between the two trusts in accordance with the foregoing proportions. The initial rental, as determined by qualified, independent appraisers, was $28,216 per month. To represent the interests of the ERPS Plan, Barclays Bank of California (Barclays), the ERPS Plan trustee, reviewed, approved, and agreed to monitor such transactions as the independent fiduciary.

By letter dated May 29, 1996, the Department concluded that PTE 87–13 was still effective. This letter was requested as a result of: (a) The merger of the Sunnyvale Profit Sharing Plan into the 401(k) Plan and the 401(k) Plan's receipt of rent; (b) the renaming of Sunnyvale to CMG; and (c) the substitution of Barclays with Wells Fargo, as the new trustee, into which Barclays had merged.

[4] This is the rental amount that is currently paid by CMG to the Retirement Plan.

a leased fee interest in the Treatment Center as well as its monthly fair market rental value were placed at $1,150,000 and $10,368 (or $2.00 per square foot), respectively, as of October 15, 2002. Mr. Carney, a Principal and Executive Vice President, who has been associated with H&A since November 1984, states that he has been involved with commercial, industrial and residential appraisal assignments, as well as other assignments involving agricultural land, easements, railroad and public utility corridors, ''plottage parcels,'' wetlands and waters of the U.S., reservoirs, abandoned public streets, eminent domain/condemnation, and litigation. Mr. Hulberg, an appraiser with H&A since 1997, states that he has dealt with commercial, industrial and residential appraisal assignments, as well as special purpose assignments involving mixed-use properties, single room occupancy hotels, and residential care facilities.

Both Mr. Carney and Mr. Hulberg certify that they have no present or contemplated future interest in the Treatment Center and that they have no personal interest or bias with respect to the Treatment Center or the parties involved. In addition, Messrs. Carney and Hulberg certify that their compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

16. In the 2003 Appraisal, Messrs. Carney and Hulberg determined that a leased fee interest in the Treatment Center had a fair market value of $1,460,000 as of October 1, 2003. Messrs. Carney and Hulberg gave the most weight in their analysis to the Income Approach to valuation because of this methodology's reasonable support of rent, overall capitalization data, widespread use and its understandability to investors who would be the most likely purchasers of the Treatment Center. On the same date, Messrs. Carney and Hulberg also determined that the estimated monthly fair market rental value of the Treatment Center was $11,664 or $2.25 per square foot.[5] In a letter dated March 17, 2004, Mr. Hulberg represented that the Treatment Center has no special or unique value to CMG, either in terms of parking availability or property value, despite its proximity to other real estate owned or leased by CMG.

Thus, on the basis of the 2003 Appraisal, the fair market value of the Treatment Center currently represents approximately 4.1 percent of the Retirement Plan's total assets. Messrs. Carney and Hulberg will reevaluate the fair market rental value of the Treatment Center at the time the New Lease is executed by the Retirement Plan and CMG.

17. An independent party, Mr. Thomas J. Nault, has served as the Retirement Plan's independent fiduciary since March 3, 2003. Mr. Nault represents that he is qualified to act as an independent fiduciary for the Retirement Plan because he has more than 22 years of experience managing assets of all types, including settlement work for the Department, intellectual property, limited partnerships, raw land development, joint venture agreements, asset recovery and liquidation, assigning and evaluating asset managers, and ESOP, profit sharing and 401(k) plans. Mr. Nault further represents that he has been acting as a court-appointed trustee of tax-qualified plans since 1994, that he has replaced trustees who were removed in connection with ERISA violations, and that in two recent cases he has been responsible for evaluating and deciding the disposition of real estate assets. Mr. Nault confirms that he has had no prior contact nor any past or current relationship with any interested party in this matter. Mr. Nault also confirms that he is not now nor has he ever been related to CMG or its principals in any way, and that he currently derives approximately 5 percent of his gross annual income from CMG.[6] Further, Mr. Nault acknowledges and accepts his fiduciary responsibilities and liabilities in acting as an independent fiduciary on behalf of the Retirement Plan.

18. As the Retirement Plan's independent fiduciary, Mr. Nault agreed to (a) determine whether the lease provisions between the 401(k) Plan and CMG were reasonable and whether the 401(k) Plan received fair market value rent; (b) determine if the 401(k) Plan received fair market value from the Retirement Plan upon upon the sale of the 401(k) Plan's interests in the Treatment Center, the Residence and the Urgent Care Center; (c) analyze the lease of the Treatment Center after its transfer to the Retirement Plan from the 401(k) Plan to determine if the lease provisions were reasonable and if the rental was at, or better than, market value; (d) examine the Retirement Plan's investment portfolio and investment policy to determine if the ownership of the Treatment Center is prudent and in compliance with such investment policy; and (e) negotiate and/or monitor the New Lease on behalf of the Retirement Plan on an ongoing basis.

Following his analysis of the transactions, Mr. Nault believes that the 401(k) Plan received fair market value on the sale of its interests in the Treatment Center, the Residence and the Urgent Care Center to the Retirement Plan. In addition, Mr. Nault has determined that the lease provisions were strongly in favor of the participants of the Plans and, averaged from 1998 to 2003, the rent paid on the Treatment Center has been well over market. Mr. Nault explains that there was only one year (1998) that CMG was paying below market rent on the Treatment Center to the Plans by $.10 per square foot and, after 2001, CMG has paid the Retirement Plan more than $.50 per square foot over market on the Treatment Center.

Mr. Nault also indicates that the terms and conditions of the New Lease are more favorable to the Retirement Plan than those obtainable by the Retirement Plan in an arm's length transaction with unrelated third parties. Mr. Nault attributes this observation to the timing of the New Lease and the decline in the real estate market at the contemplated inception of the New Lease. In reaching this conclusion, Mr. Nault states that he has considered the terms of similar leases between unrelated parties, the Retirement Plan's overall investment portfolio, the Retirement Plan's liquidity and diversification requirements.

Further, Mr. Nault certifies that the proposed transactions are appropriate investments for the Retirement Plan and are in the best interests of the Retirement Plan and its participants and beneficiaries. Mr. Nault bases his statement on all data at his disposal, discussions with the independent appraisers, as well as reviews of the Treatment Center's performance.

Finally, Mr. Nault represents that he will monitor, on behalf of the Retirement Plan, compliance with the New Lease terms throughout the duration of such lease, and each renewal term, and, if necessary, he will take the appropriate actions to enforce the payment of the rent and the proper performance of all other obligations of CMG under the terms of the New Lease.

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

[5] The applicant represents that, to the best of its knowledge, to the extent that the rent to be paid by CMG to the Retirement Plan exceeds fair market rental value, such excess rent (if treated as an employer contribution) will not cause the annual additions to such Plan to exceed the limitations prescribed by section 415 of the Code.

[6] In the ensuing years that the New Lease is in effect, Mr. Nault expects to derive less than 3 percent of his gross revenues from CMG.

(a) The terms and conditions of the New Lease are no less favorable to the Retirement Plan than those obtainable by the Retirement Plan under similar circumstances when negotiated at arm's length with unrelated third parties.

(b) The Retirement Plan is represented for all purposes under the New Lease, and during each renewal term, by a qualified, independent fiduciary.

(c) The Retirement Plan's independent fiduciary has negotiated, reviewed, and approved the terms and conditions of the New Lease and the options to renew the New Lease on behalf of the Retirement Plan and has determined that the transactions are appropriate investments for the Retirement Plan and are in the best interests of the Retirement Plan and its participants and beneficiaries.

(d) The rent paid to the Retirement Plan under the New Lease and during each renewal term will be no less than the fair market rental value of the Property, as established by a qualified, independent appraiser.

(e) The rent is subject to adjustment at the commencement of the second year of the term of the New Lease and each year thereafter by way of an independent appraisal. A qualified, independent appraiser will be selected by the independent fiduciary to conduct the appraisal. If the appraised fair market rent of the Treatment Center is greater than that of the current base rent, then the base rent will be revised to reflect the appraised increase in fair market rent. If the appraised fair market rent of the Treatment Center is less than or equal to the current base rent, then the base rent will remain the same.

(f) The New Lease will commence within 30 days after the granting of the final exemption and will be triple net, requiring all expenses for maintenance, taxes, utilities and insurance to be paid by CMG, as lessee.

(g) The Retirement Plan's independent fiduciary will monitor compliance with the terms of the New Lease and the conditions of the exemption throughout the duration of the New Lease and each renewal term, and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of CMG under the terms of the New Lease.

(h) The Retirement Plan's independent fiduciary will expressly approve any renewal of the New Lease beyond the initial term.

(i) CMG will provide the Plan's independent fiduciary with documentation that the rent has been paid on a monthly basis.

(j) At all times throughout the duration of the New Lease and each renewal term, the fair market value of the Treatment Center will not exceed 25 percent of the value of the total assets of the Retirement Plan.

(k) CMG will file a Form 5330 with the Service and will pay all applicable excise taxes, if any, within 90 days of the publication of the grant notice in the **Federal Register** with respect to the past and continued leasing of the Treatment Center by the 401(k) Plan and the Retirement Plan.

(1) To the extent CMG owes the 401(k) Plan or the Retirement Plan additional rent by reason of the past and continued leasing of the Treatment Center, (i) the independent fiduciary will make all such determinations, including the payment of reasonable interest; and (ii) CMG will make such payments to the Plans.

Tax Consequences of the Transactions

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and, therefore, must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

The Prudential Insurance Company of America (Prudential) Located in Newark, New Jersey

[Application No. D–11213]

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 (or ERISA) 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).[7] If the exemption is granted, as of November 21, 2003, Prudential shall not be precluded from functioning as a ''qualified professional asset manager'' (QPAM), pursuant to Prohibited Transaction Class Exemption 84–14 (PTCE 84–14), 49 FR 9494 (March 13, 1984), solely because of a failure to satisfy Section I(g) of PTCE 84–14, as a result of Prudential's affiliation with an entity convicted of violating a dual-penalty law of Korea, Japan or Taiwan, provided that the following conditions have been met:

(a) The affiliate convicted under a dual-penalty law does not provide fiduciary or QPAM services to ERISA-covered plans or otherwise exercise discretionary control over ERISA assets.

(b) ERISA-covered assets are not involved in the misconduct that is the subject of the affiliate's conviction(s).

(c) Prudential imposes its internal procedures, controls, and protocols on the affiliate to reduce the likelihood of any recurrence of misconduct to the extent permitted by local law.

(d) This exemption is not applicable if Prudential, or any affiliate (other than affiliates convicted of violating a dual-penalty law of Korea, Japan or Taiwan) is convicted of any of the crimes described in Section I(g) of PTCE 84–14.

(e) Prudential maintains records that demonstrate that the conditions of the exemption have been and continue to be met for at least six years following the conviction of an affiliate under the dual-penalty laws of Korea, Japan or Taiwan.

(f) The criminal acts in question are neither authorized nor condoned by Prudential.

(g) Prudential complies with the other conditions of PTCE 84–14, combined with the procedures it adopts to afford ample protection of the interests of participants and beneficiaries of employee benefit plans.

Effective Date: If granted, this proposed exemption will be effective as of November 21, 2003.

Summary of Facts and Representations

1. Prudential is a life insurance company organized under the laws of New Jersey. Prudential is a subsidiary of Prudential Financial Inc., a financial services holding company. Prudential provides a wide range of financial services and products including investment management, brokerage, mutual funds and real estate services. In addition, Prudential provides fiduciary and other services to employee benefit plans described in section 3(3) of the Act. Prudential currently manages billions of dollars representing ERISA-covered plan assets.

2. Section I(g) of PTCE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal

[7] 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.

activity described under Section I(g) of PTCE 84–14, section 411 of the Act and various laws incorporated by reference in section 411 of the Act. On July 9, 2003, Prudential received Final Authorization Number (FAN) 2003–10E, made pursuant to PTCE 96–62 (61 FR 39988, July 31, 1996) (EXPRO). Such authorization allows Prudential to maintain its QPAM status, notwithstanding its possible failure to satisfy Section I(g) of PTCE 84–14 following its acquisition of a Korean corporation which has been convicted of certain Korean dual-penalty securities law violations. The corporate acquisition giving rise to Prudential's affiliation with the Korean company described in FAN 2003–10E was eventually finalized on February 26, 2004.[8]

As described in Prudential's submission for FAN 2003–10E, the violations which would jeopardize Prudential's QPAM status involved convictions of a potential Korean affiliate of Article 215 of the Korean Securities and Exchange Law (KSEL). Article 215 is codified in the ''penalty'' section of the KSEL. An English translation of Article 215 of the KSEL provides the following:

> If a representative of a juristic person, or an agent, servant, or other employee of a juristic person or individual commits any offense as prescribed in Articles 207–2 through 212 of the KSEL in connection with the affairs of the juristic person or individual, the fine as prescribed in the respective article shall also be imposed on such juristic person or individual, in addition to a punishment of the offender.

Under Article 215 of the KSEL, liability for certain criminal violations committed by an employee is imposed automatically on an employer without regard to fault. Under this provision, like other Korean dual-penalty laws, when an employee is convicted of certain enumerated criminal securities violations (in this case, violations of Articles 207–2 through 212 of the KSEL), a criminal penalty is imposed against the employee's employer even though there is no required showing of wrongdoing on the part of the company. There is no requirement to show intent to commit the wrongful act or negligence on the part of the company in order to be fined under Article 215 of the KSEL. These penalties are imposed without regard to whether the company was negligent in any way in hiring or supervising the employee or otherwise acted unreasonably. Therefore, when a company is fined under a dual-penalty provision, it is automatically criminally fined for the wrongdoing of its employee. Fines under Article 215 of the KSEL are imposed by a court, rather than a governmental agency. The applicant states that it is not aware of any similar automatic imposition of criminal liability on an employer in connection with violations of an employee in American criminal jurisprudence.

3. Dual-penalty provisions similar to Article 215 of the KSEL are found in many areas of Korean law including Korean securities, financial, construction, labor and employment laws. For example, at least six major Korean securities laws contain dual-penalty provisions that are nearly identical to and impose automatic liability similar to Article 215 of the KSEL. In addition, the applicant represents that it has identified several laws in Japan and Taiwan that contain similar dual-penalty provisions.[9] The dual-penalty laws which the applicant has identified are listed in the Appendix.

4. Because the liability of a company under a dual-penalty provision derives from a criminal violation committed by an employee, there may be no liability of a company without a finding of an underlying violation by an employee. The underlying violations that may give rise to employer liability under a dual-penalty law are likewise codified in the ''penalty'' provisions of the relevant statutes, as are the dual-penalty provisions themselves.

In court proceedings involving allegations of a dual-penalty violation, the applicant explains that the company/employer is named as a defendant along with the employee. However, the company's opportunity to defend itself is limited to supporting the employee's arguments that the employee is innocent of the alleged underlying violation or challenging the amount of the penalty. Accordingly, Prudential points out that the company would have no opportunity to argue that it should not be liable under a dual-penalty law because it was not negligent in hiring or supervising the employee or otherwise acted reasonably under the circumstances.[10]

5. According to Prudential, certain Korean legal commentators have expressed the view that liability under a dual-penalty provision such as Article 215 of the KSEL is based on a theory that a principal shall be liable for the acts of its agent. Prudential represents that these laws reflect a cultural belief that the principal has a duty to supervise its employees and thus should be held accountable for the acts of its employees, regardless of whether the principal has any wrongful intent or has engaged in any misconduct.

The applicant states that it understands that the legal systems of certain European countries such as Germany may have enacted dual-penalty laws such as those found in Korea. Specifically, in Germany there were efforts made to change certain penalties imposed for violations of administrative regulations (such as finance-related regulations) from criminal sanctions to administrative sanctions. In response, in 1952, amendments were made to certain German laws which reclassified many of the penalties under certain financial laws from criminal violations to administrative fines. No similar amendments have been made to Korean statutes, and as such, these dual-penalty provisions remain classified as criminal violations.

6. The applicant has reviewed the range of fines that may be imposed under several of the major Korean dual-penalty statutes. In general, the maximum fine that may be imposed against a company for a dual-penalty violation is less than $100,000 U.S. dollars. Courts in their discretion may impose fines less than the maximum permitted fine depending on the severity of the violation and other relevant circumstances. The applicant states that, in its limited experience, fines actually imposed under Article

[8] On February 26, 2004, Prudential Financial, Inc. announced that it had closed the purchase of an 80 percent interest of Hyundai Investment and Securities Co., Ltd. (HITC) and its subsidiary, Hyundai Investment Trust Management Co., Ltd. (HIMC), with an option to purchase the remaining 20 percent three to six years after the closing date. At that time Prudential assumed operational control of HITC and HIMC. The names of the Hyundai units acquired have been subsequently changed from HITC to Prudential Investment & Securities Co., Ltd.

[9] The applicant states that although the dual-penalty provisions that it has identified under Japanese law closely resemble Korean and Taiwanese dual-penalty laws, Japanese dual-penalty provisions differ slightly from those of Korea and Taiwan. For example, under the Securities and Exchange Laws of Japan, the burden of proof is transferred to the defendant company wherein penalties are automatically imposed unless the company mounts a successful defense. Thus, companies may be able to assert certain defenses to liability that are unavailable under similar Korean and Taiwanese laws. However, the applicant represents that it has been advised by Japanese counsel that while there may be a right to a defense under Japanese law, no company has succeeded in avoiding dual-penalty liability once it has been indicted, so that the imposition of a dual penalty on the Japanese company remains virtually certain.

[10] As noted above, the applicant understands that Japanese dual-penalty laws may provide an opportunity for an employer to present evidence in its own defense in response to an allegation of liability under certain dual-penalty provisions under relevant case law, subject to the limitations described above.

215 of the KSEL have amounted to less than $10,000 U.S. dollars. Given that expenses associated with challenging the imposition of these fines or settling these matters can easily exceed $100,000 U.S. dollars or more, Prudential explains that companies faced with these penalties frequently choose to pay fines rather than incur the much higher cost of settling the case or challenging the fine.[11] Even though these fine amounts are relatively minor, the applicant indicates that it is concerned that, because of the criminal nature of the penalties, they would cause a company like it to fail to satisfy the requirements of Section I(g) of PTCE 84–14.

7. Prudential has several foreign affiliates in Japan, Korea and Taiwan.[12] As stated above, in these countries, criminal liability is automatically imposed on employers in connection with the criminal actions of their employees through so-called dual-penalty laws, and liability is imposed even though there is no finding of actual criminal conduct by the company. For QPAMs that have foreign affiliates in these countries, such as Prudential, convictions of affiliates under these laws may jeopardize QPAM status even though the misconduct at issue places no ERISA-covered assets at risk.

However, the applicant states that convictions of individual employees of Prudential affiliates in the United States would not, by themselves, disqualify Prudential from serving as a QPAM because, in this regard, individual employees of Prudential affiliates would not constitute ''affiliates'' of Prudential for purposes of Section I(g) of PTCE 84–14.[13]

Inasmuch as the dual-penalty laws in Korea, Japan and Taiwan automatically impose criminal liability on an employer in connection with certain convictions of employees, the applicant believes that QPAMs that have these foreign affiliates in countries that have enacted dual-penalty laws, such as Korea, Japan and Taiwan, are unfairly disadvantaged. The applicant believes this because any time an employee of such a foreign affiliate is convicted of certain underlying criminal violations that give rise to automatic employer liability under a dual-penalty law, the U.S. parent's QPAM status is jeopardized under Section I(g) of PTCE 84–14. This is the case even if the foreign affiliate has no ERISA-covered business, exercises no control or discretion over ERISA plan assets and has no intention of doing so in the future. The applicant believes that this is an unfair result given that the purpose of Section I(g) of PTCE 84–14 is to protect ERISA-covered assets against risk of loss arising from criminal misconduct. The applicant states that when a foreign affiliate has no contact with ERISA-covered assets whatsoever, no risk of loss arises from any misconduct that may result in the criminal liability of a foreign affiliate under a dual-penalty statute. The applicant opines that these dual-penalty laws will present increasing problems for QPAMs given the growing trend of globalization among major companies providing QPAM services, such as Prudential.

8. Accordingly, the applicant requests an exemption to enable Prudential and any of its current or future affiliates to act as a QPAM despite their failure to satisfy Section I(g) of PTCE 84–14 solely as a result of a violation of a dual-penalty law of Korea, Japan or Taiwan. The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTCE 84–14. If granted, the exemption will enable Prudential and its current and future affiliates to qualify as QPAMs by satisfying all conditions of PTCE 84–14, except that when an employee of a Korean, Japanese or Taiwanese affiliate is convicted of certain underlying criminal violations that give rise to automatic employer liability under dual-penalty law, such conviction will not prevent satisfaction of the condition stated in Section I(g) of PTCE 84–14 solely because of Prudential's affiliation with such affiliate.

9. The applicant maintains that the requested exemption is protective of the rights of participants and beneficiaries of affected plans because: (a) None of the alleged misconduct involved ERISA-covered plan assets; (b) the applicant is not involved in any of the alleged misconduct; (c) any Korean, Japanese or Taiwanese affiliate charged with criminal misconduct is not and will not in the future be involved in the provision of QPAM or investment management services to ERISA plans and will not otherwise exercise discretionary control over plan assets; (d) the fines are imposed against the Korean, Japanese or Taiwanese affiliate without any finding that such affiliate itself engaged in any wrongful conduct in its corporate capacity or that it may have ratified the acts of its employees and generally without any opportunity to present mitigating evidence;[14] and (e) the applicant will take steps to implement its internal control procedures on the Korean, Japanese or Taiwanese affiliate during a transition period after acquisition of the affiliate, to the extent permitted by foreign law, to reduce the likelihood of recurrence of misconduct consistent with its worldwide operations.[15]

[11] The following list describes the range of fines that may be imposed for violations of some of Korea's dual-penalty laws: (a) Korean Securities and Exchange Law, Article 215: up to the greater of (i) 30 million won ($26,000 U.S. dollars) or (ii) 3 times the profit gained (or loss evaded) by the offense (depending on the type of crime, up to 2 million won, 5 million won, 10 million won or 30 million won); (b) Futures and Exchange Law, Article 100: up to the greater of (i) 20 million won ($17,000 U.S. dollars) or (ii) 3 times the profit gained (or loss evaded) by the offense (depending on the type of crime, up to 5 million won, 10 million won, or 20 million won); (c) Foreign Exchange Transactions Act, Article 31: up to the greater of (i) 200 million won ($174,000 U.S. dollars) or (ii) 3 times the value of the object with respect to which a violation is committed (depending on the type of crime, up to 50 million won, 100 million won or 200 million won); (d) Foreign Investment Promotion Act, Article 36: up to not less than twice and not more than ten times the amount of the illegal transfer (depending on the type of crime, up to 10 million won or 30 million won ($36,000 U.S. dollars)); (e) Securities Investmet Trust Business Act, Article 63: up to 30 million won ($26,000 U.S. dollars) (depending on the type of crime, up to 5 million won, 20 million won, or 30 million won); (f) Securities Investment Company Act, Article 89: up to 30 million won ($26,000 U.S. dollars) (depending on the type of crime, up to 5 million won, 20 million won, or 30 million won); (g) Labor Standards Act, Article 116: up to 30 million won ($26,000 U.S. dollars) (depending on the type of crime, 5 million won, 10 million won, 20 million won or 30 million won).

[12] The following list contains a sampling of the current foreign affiliates of Prudential located in Korea, Japan and Taiwan: (a) POK Securitization Specialty Co., Inc. located in Seoul, Korea; (b) Prudential Asset Management Co., Ltd. (previously Hyundai Investment Trust Management, HIMC) located in Seoul, Korea; (c) Prudential Asset Management Japan, Inc. located in Tokyo, Japan; (d) Prudential Holdings of Japan, Inc. located in Tokyo, Japan; (e) Prudential Financial Securities Investment Trust Enterprise located in Taipei, Taiwan; and (f) Prudential Life Insurance Company of Taiwan Inc. located in Taipei, Taiwan.

[13] For purposes of Section I(g) of PTCE 84–14, the term ''affiliate'' includes only certain employees of the QPAM (certain officers and highly compensated employees, and employees possessing authority, responsibility or control over plan assets). Pursuant to Section V(d)(4) of PTCE 84–14, it does not include employees of an affiliate of the QPAM unless the employee is a director of, a relative of, or a partner in the QPAM.

[14] As noted, certain defenses to liability may exist under Japanese dual-penalty laws that are unavailable under similar Korean or Taiwanese provisions. However, the applicant believes that, notwithstanding the defenses, the imposition of the dual penalty is virtually automatic once a company is indicted.

[15] Prudential states that it has adopted substantial compliance policies and procedures intended to ensure that applicable legal requirements are satisfied and the highest standard of business integrity is maintained wherever Prudential conducts business. Prudential further states that the compliance program for Prudential's International Investments organizations has been developed over the last five years. Prudential explains that the compliance program was initially modeled after

The proposed exemption also contains conditions, in addition to those imposed by PTCE 84–14, which are designed to ensure the presence of adequate safeguards to protect the interests of the ERISA plan participants and beneficiaries against wrongdoers now and in the future. In this regard, the proposed exemption will be applicable if: (a) The affiliate convicted under a dual-penalty law has not provided, nor in the future will it provide, fiduciary or QPAM services to ERISA-covered plans, or otherwise exercise discretionary control over ERISA assets; (b) ERISA-covered assets have not been involved nor will they be in the future involved in the misconduct that is the subject of the affiliate's conviction(s); (c) Prudential has imposed and will continue to impose its internal procedures, controls, and protocols on the affiliate to reduce the likelihood of any recurrence of misconduct to the extent permitted by local law; (d) Prudential has kept and will continue to keep records that demonstrate that the conditions of the exemption have been and continue to be met for at least 6 years following the conviction of an affiliate of the dual-penalty laws of a foreign country; (e) the criminal acts in question have been neither authorized nor condoned by Prudential; and (f) the other conditions of PTCE 84–14, combined with the procedures adopted by Prudential, have afforded and will continue to afford ample protection of the interests of participants and beneficiaries of employee benefit plans.

10. The applicant represents that the proposed exemption is administratively feasible because it does not require the Department to oversee or administer any aspect of the relief provided. For example, the applicant states that the exemption, as drafted, does not require the Department to review or make findings regarding Prudential's acquisition of entities that may have been convicted under a dual-penalty law of Korea, Japan or Taiwan.

Further, the applicant represents that the requested exemption does not require the Department to review the laws to determine if exemptive relief is appropriate. The applicant opines that the Department oversight of the convictions described in the requested exemption should not be required because the exemption requires that the convicted entity provide no fiduciary or QPAM services to ERISA plans and that no ERISA assets were involved in the subject conviction.

In addition, the applicant believes that the exemption is administratively feasible because the burden will be on Prudential to demonstrate that the conditions of the exemption have been met should the Department audit Prudential's compliance with the described requested exemption.

Moreover, the applicant notes that if the Department denies the requested exemption, Prudential will be forced to obtain individual exemptive relief or final authorization under EXPRO each time Prudential either seeks to acquire an entity in one of the covered foreign jurisdictions with a dual-penalty conviction or an existing Prudential affiliate is convicted under a described dual-penalty law. The applicant believes that this process will be costly and time-consuming for both the Department and Prudential.

Finally, because the conditions of the proposed exemption require the entity convicted provide no fiduciary or QPAM services to ERISA-covered plans, and that ERISA plan assets not be involved in the misconduct that is the subject of the conviction, the applicant represents that the proposed exemption poses no risk to ERISA-covered assets. In this regard, the applicant believes that the requested exemption is more administratively feasible than approaching the Department for individual relief on a case-by-case basis.

11. In the absence of an exemption, Prudential states that it could be precluded from engaging in numerous routine, non-abusive transactions for its employee benefit plan customers, resulting in the loss of investment opportunities for those customers. Prudential further states that these opportunities would be lost even though the ERISA-covered assets were not placed at any risk by the criminal conduct giving rise to the conviction of the Prudential affiliate.

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

(a) The affiliate convicted under a dual-penalty law has not provided and will not provide fiduciary or QPAM services to ERISA-covered plans or otherwise exercise discretionary control over ERISA assets.

(b) ERISA-covered assets have not been involved and will not be involved in the misconduct that is the subject of the affiliate's conviction(s).

(c) Prudential has continued and will continue to impose its internal procedures, controls, and protocols on the affiliate to reduce the likelihood of any recurrence of misconduct to the extent permitted by local law.

(d) This exemption is not applicable and will not be applicable if Prudential, or any affiliate (other than affiliates convicted of violating a dual-penalty law of Korea, Japan or Taiwan) is convicted of any of the crimes described in Section I(g) of PTCE 84–14.

(e) Prudential has maintained and will maintain records that demonstrate that the conditions of the exemption have been met for at least six years following the conviction of an affiliate of the dual-penalty laws of a foreign country.

(f) The criminal acts in question have not been authorized or condoned and will not be authorized or condoned by Prudential.

(g) The other conditions of PTCE 84–14, combined with the procedures adopted by Prudential, have afforded and will afford ample protection of the interests of participants and beneficiaries of employee benefit plans.

Notice to Interested Persons

The Applicant represents that because those potentially interested ERISA-covered plans cannot all be identified, the only practical means of notifying such plans of this proposed exemption is by publication in the **Federal Register**. Therefore, comments and

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Prudential's domestic programs and has now evolved into a global program. Prudential maintains that, whether it has acquired an international business or grown one from within, the compliance approach has been uniformly applied.

Prudential's compliance program requires that the following steps be taken: (a) An assessment of the regulatory environment is conducted, which includes an identification (through local counsel) of applicable local laws and regulations, including any special laws or requirements that apply because of the nature of particular investment activities, and an analysis of applicable regulatory and enforcement schemes; (b) due diligence is conducted on possible acquisition candidates; (c) regulatory examination issues are evaluated and action plans are developed to avoid repeat issues; (d) reviews are conducted to assess the adequacy of a company's written compliance policies and procedures, including recommendations that may be made to improve compliance activities to address local legal and Prudential requirements, and progress is tracked on recommendations made during compliance reviews; (e) a core set of policies and procedures is established, and these policies and procedures, as well as ethical standards, are documented in compliance manuals; (f) a local compliance staff is hired and reports to the Chief Compliance Officer of International Investments to ensure independence; (g) training is conducted in the local language; (h) monitoring programs are put in place, and periodic regulatory risk assessments are conducted during compliance reviews to assure compliance as legal, regulatory, and Prudential requirements change. Prudential states that, since no control system can guarantee compliance, in the event of a breach of the policies and/or procedures, an evaluation is performed to determine if any modifications are needed in the overall compliance structure.

The applicant also notes that the process of implementing Prudential's internal procedures and controls on recently acquired foreign entities could take as many as 12 to 18 months from the date of Prudential's acquisition of a foreign entity, subject to the constraints of local law.

requests for a public hearing must be received by the Department not later than 30 days from the publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Appendix—Sample Dual-Penalty Provisions of Foreign Countries

The following list contains English translations of Korean, Japanese, and Taiwanese dual-penalty laws. The dual-penalty provisions cited below are codified within the ''penalty'' section of the statute, and fines imposed under these laws are imposed by a court rather than a governmental agency.

Korean Laws

Securities and Exchange Act, Article 215

Joint Penal Provisions ''If a representative of a juristic person, or an agent, servant, or other employee of a juristic person or individual commits any offense as prescribed in Articles 207–2 through 212 in connection with the affairs of the juristic person or individual, the fine as prescribed in the respective article shall also be imposed on such juristic person or individual, in addition to a punishment of the offender.''

Foreign Investment Promotion Act, Article 36

Joint Penal Provisions ''Where the representative of a corporation or agent, full-time or part-time employee of a corporation or individual person has committed with respect to business matters of the corporation or individual person, a violation as prescribed by the provisions of Articles 35, the corporation or individual person shall be sentenced to the fine prescribed by the provisions of the respective Articles, in addition to the punishment of the person who has committed the violation.''

Securities Investment Company Act, Article 89

Provisions of Dual Punishment ''When a representative of a corporation, or an agent or employee of a corporation or an individual violates Article 86 through Article 88 with respect to the business affairs of such corporation or individual, a fine falling under each pertinent Article shall also be imposed to such corporation or individual, in addition to a punishment against the offenders.''

Securities Investment Trust Business Act, Article 63

Joint Penal Provisions ''If a representative of a juristic person, or an agent, employee or other personnel of a juristic person or an individual, commits an offense prescribed by Articles 59 though 62 in connection with the affairs of the juristic person of the individual, the fine prescribed in the respective Article shall also be imposed on such a juristic person or individual in addition to the punishment upon the offender.''

Foreign Exchange Transactions Act, Article 31

Joint Penal Provisions ''If the representative of a juristic person, or an agent, an employee or other employed persons of a juristic person or a private person commits such violations as provided in Articles 27 through 29 in connection with the property of affairs of the juristic person or the private person, not only such violators shall be punished, but the juristic person or the private person shall be punished by a fine as provided in the respective pertinent Articles.''

Futures Trading Act, Article 100

Joint Penal Provisions ''Where a representative of a juristic person, or an agent, employer or other employee of a juristic person or individual, violates Article 96 through 98, during the course of carrying out business of such juristic person or individual, such juristic person or individual, in addition to the very person who committed such offence, shall be subject to a fine to the extent of the amount prescribed in respective Articles.''

Mortgage-Backed Securitization Company Act, Article 25

Provisions of Dual Punishment ''When a representative of corporation an agent or servant for corporation or individual, and other employees violated § 23 or § 24 against the corporation or the individual, in addition to punishment, the fine pursuant to the corresponding Article shall be imposed on the corporation or the individual.''

Banking Act, Article 68–2

Joint Penal Provisions ''When a representative of a juristic person, or an agent, employee or other employed person of a juristic person or an individual has violated Article 67 or 68 concerning the business of the relevant juristic person or individual, the juristic person or individual shall be punished by a fine as prescribed by each Article concerned in addition to punishment of the offender.''

Depositor Protection Act, Article 43

Joint Penal Provisions ''When a representative or an agent, an employee or other employed person of an insured financial institution performs any act of violating the provisions of subparagraph 2 of Article 40 or Article 41 with respect to the business of the insured financial institution, the insured financial institution shall be sentenced to a fine as stated in the same Article, in addition to punishing the offender.''

Financial Holding Company Act, Article 71

[No English translation currently available.]

Insurance Business Act, Article 208

Joint Penal Provisions (1) ''In case of a representative of a juristic person (hereinafter in this paragraph, including an unincorporated association or foundation which has a representative or a system of administrator), or an agent, employee or other workers or a juristic person or of an individual has committed any offense prescribed in Article 200–, 202, or 204 in connection with the business of such juristic person or of the individual, the person who has committed such offense as well as the juristic person or the individual concerned shall be subject to a fine as prescribed in each respective Article.

(2) In case where an unincorporated association or foundation is subject to punishment in accordance with paragraph (1), the representative or administrator thereof shall represent the association or foundation concerned with regard to the procedures and the provisions of those Acts dealing with criminal sanctions which apply to a juristic person as a defendant, which shall be applicable mutatis mutandis thereto.''

Trade Union and Labor Relations Adjustment Act, Article 94

Joint Penal Provisions ''When the representative of a juristic person or association, or an agent, servant or any employee of a juristic person, association or individual commits an action in violation of Article 88 through 93 with respect to the business of the juristic person, association, or individual, a fine as prescribed in each of the pertinent Articles shall be imposed on the juristic person, association or individual in addition to the punishment of the actual offenders.''

Japanese Laws

Foreign Exchange and Foreign Trade Control Law, Article 73

''When representatives of a juridical person* * *, or an agent, employee, or other operator engaged by a juridical or natural person committed any offense mentioned in the provisions of article 69–6, up to the preceding Article in regard to the business or property of such a juridical or natural principal, the juridical or natural principal shall be liable to the fine specified in each Article, in addition to the offender himself.''

Banking Law, Article 64

''When representatives of a corporation (including representatives, or administrators or organizations, not corporations. Hereinafter in the Paragraph, the same), or an agent, employee, or other operator engaged by a juridical or natural person committed an act violating any of the three previous articles, in regard to the business or property of such a juridical or natural principal, in addition to punishing the perpetrator, the juridical or natural principal shall be liable to the punishments specified in each Article.''

Trademark Law, Article 82

Dual Liability ''Where an officer representing a legal entity or a representative, employee or any other servant of a legal entity or of a natural person has committed an act in violation of the following paragraphs with regard to the business of the legal entity or natural person, the legal entity shall, in addition to the offender, be liable to the fine prescribed in the following paragraphs and the natural person shall be liable for the fine prescribed in those sections:

section 78, subject to a fine up to 150 million yen; section 79 or 80, subject to a fine up to 100 million yen.

Taiwanese Law

Fair Trade Law, Article 38

''In the event that the violator referred to in any of the three preceding Articles is a legal person, in addition to the punishment to be imposed upon the person committing the act, the said legal person shall also be subject to the fine specified in the respective Article.''

The Employees' Retirement Plan of Storytown U.S.A., Inc. and Participating Affiliated Companies (the Plan) Located in Glen Falls, New York

[Application No. D–11251]

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).[16] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The making of a loan (the Loan) to the Plan in an original principal amount sufficient to cover the Plan's unfunded liability upon termination, by Storytown U.S.A., Inc. (Storytown), the Plan sponsor and a party in interest with respect to the Plan; (2) the assignment (the Assignment) by the Plan to Storytown of all rights, title and interest the Plan has in claims (the Claims) against certain investment advisers (the Responsible Parties), in connection with losses the Plan incurred during 2003 and 2004; and (3) the potential repayment, by the Plan to Storytown, of the Loan obligation from proceeds recovered on the Claims against the Responsible Parties.

This proposed exemption is subject to the following conditions:

(a) The Plan pays no interest in connection with the Loan.

(b) The Loan proceeds only are utilized to satisfy the Plan's unfunded liability.

(c) None of the assets of the Plan are pledged to secure the Loan amount.

(d) The Loan is a non-recourse obligation of the Plan.

(e) The Plan is properly terminated and Mr. Charles Wood, the principal shareholder of Storytown, agrees to waive any benefits he will receive on the termination of the Plan.

(f) The Plan's rights to any Claims that are not resolved before final distributions are completed are assigned by the Plan to Storytown under the terms of the Assignment.

(g) The Assignment is deemed a repayment in full of the Loan by the Plan. As a result, the Plan has no liability for the Loan and no interest in the Claims. However,

(1) If the net amount recovered on the Claims against the Responsible Parties after the Assignment, from any judgment or settlement of any arbitration proceeding, is equal to or less than the amount of the Loan, the balance due on the Loan is automatically forgiven and such unpaid balance is treated by Storytown as an employer contribution to the Plan; or

(2) If the net amount recovered on the Claims against the Responsible Parties from any judgment or settlement of arbitration proceeding exceeds the amount of the Loan (the Excess Amount), such Excess Amount is treated as a reversion paid by the Plan to Storytown pursuant to the Plan document.

(h) Notwithstanding the Assignment, the Plan does not release any claims, demands and/or causes of action which it may have against Storytown and/or its affiliates.

(i) The Plan incurs no expenses, commissions or transaction costs in connection with the contemplated transactions, all of which are one-time occurrences.

(j) All terms of the transactions are at least as favorable to the Plan as those which the Plan could obtain in similar transactions negotiated at arm's length with unrelated third parties.

(k) The subject transactions do not involve any risk of loss to either the Plan or to any of the participants and beneficiaries of the Plan.

(l) Prior to the Plan's entering the transactions, a qualified, independent fiduciary (the I/F), which is acting on behalf of the Plan and which is unrelated to Storytown and/or its affiliates,

(1) Reviews, negotiates and approves the terms and conditions of the Loan and the Assignment exclusively (but does not monitor legal proceedings against the Responsible Parties following the Assignment);

(2) Determines that such transactions are prudent and in the interest of the Plan and its participants and beneficiaries; and

(3) Confirms that the Loan amount will be sufficient to satisfy all Plan liabilities, including the Plan's unfunded liability, and permit the Plan to terminate on a standard termination basis.

(m) If the I/F resigns, is removed, or for any reason is unable to serve as I/F, prior to the Plan's entering into the transactions, such I/F is replaced by a successor I/F:

(1) Who is appointed immediately upon the occurrence of such event;

(2) Who is independent of Storytown and its affiliates;

(3) Who is qualified to serve as the I/F; and

(4) Who assumes the duties and responsibilities of the predecessor I/F.

The Department is also provided written notification of such change in I/F.

Summary of Facts and Representations

1. Storytown is a New York State corporation with its principal headquarters in Glen Falls, New York. Storytown is a privately-held corporation engaged in the amusement park industry. Its principal shareholder is Mr. Charles Wood. Since 1996 (when a majority of its assets were sold to an unrelated party), Storytown has been winding up its operations in order to complete a corporate dissolution under New York State Business Corporation Law. As part of this process, Storytown wishes to terminate the Plan it sponsors, which is described below.

2. The Plan was established on June 30, 1970, but amended and restated on January 1, 2001. The Plan is a defined benefit plan, which is designed to qualify under section 401(a) of the Code. All contributions to provide Plan benefits and to cover administrative expenses are made by Storytown. As of December 31, 2002, the Plan had approximately 24 participants and total assets of approximately $1,889,006.

Storytown, as Plan sponsor, appointed Glen Falls National Bank and Trust Company (GFNB), as the Plan trustee (the Trustee) and Georgia Beckos-Wood and Shirley Myott, both employees of Storytown, as members of the Plan's Trustee Committee.

As discussed more fully below, GFNB will also serve as the I/F with respect to the transactions that are the subject of this proposed exemption.

3. As of the end of the 2000 Plan Year, the Plan was substantially overfunded. In this regard, no contributions had been required to be made to the Plan for several years and Plan assets exceeded liabilities by $3 million. As part of its proposed dissolution, Storytown retained the services of certain unrelated investment advisers to address the Plan's overfunded status. Storytown followed the advice of these Responsible Parties by amending the

[16] For purposes of this proposed exemption, references to specific sections of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Plan to increase benefits and provide for flexible premium variable life insurance policies for the Plan participants. The action was taken in December 2000 and it absorbed all of the excess Plan assets. Although the Plan was amended as of July 2003 to freeze future benefit accruals,[17] the stock market dropped and interest rates dropped. Thus, the once overfunded Plan became underfunded by approximately $2 million as of March 30, 2004.[18] As of May 13, 2004, the Plan had filed claims (*i.e.*, the Claims) with the National Association of Securities Dealers, Inc. (NASD) to commence arbitration proceedings against the Responsible Parties.

4. As stated above, a majority of Storytown's assets have been sold to an unrelated third party. Since that time, Storytown has been in the process of a corporate dissolution under the New York State Business Corporation Law, but it has not made a formal filing of articles of dissolution. As a Plan sponsor, Storytown represents that it cannot dissolve until the Plan is fully terminated in order to avoid impairing the Plan's qualified status under section 401(a) of the Code.

Upon termination of the Plan, Storytown represents that it will formally commence the corporate dissolution process.

5. On September 27, 2003, Storytown initially applied to the Pension Benefit Guaranty Corporation (PBGC) to have the Plan terminated on a ''negotiated'' termination basis under section 4042 of the Act.[19] During the course of PBGC's review, the health of Storytown's sole shareholder, Mr. Wood, began to fail. Thus, a decision was subsequently made to withdraw the application for the Plan's termination under section 4042 of the Act and instead have the Plan terminated on a ''standard'' termination basis.

For the Plan to terminate on a standard termination basis, the Plan would need to cover the unfunded liability, which is currently projected at slightly under $2 Million. Therefore, Mr. Wood agreed to waive any benefits he might receive from the Plan under a standard termination and lend Storytown, an amount sufficient to cover the unfunded liability. Then, Storytown proposed to take Mr. Wood's loan and make a prospective interest-free loan to the Plan to cover the unfunded liability. The Loan would also be unsecured and a non-recourse obligation of the Plan.

6. In exchange for the Loan, the Plan would assign Storytown, under the terms of the Loan and Assignment agreement, its rights, title and interest in the Claims[20] against the Responsible Parties who advised the Plan to purchase flexible premium variable life insurance policies that insure the lives of each Plan participant for a premium of over $3 million. These Claims against the Responsible Parties include, among other things, misrepresentation, fraud, breach of contract, breach of fiduciary duties, unsuitability, violations of the Securities and Exchange Act, violations of the NASD Rules of Fair Practice, aiding and abetting, failure to supervise and common law fraud.

Accordingly, Storytown requests an administrative exemption from the Department to permit the proposed Loan, the Assignment and the Plan's potential repayment of its Loan obligation to Storytown from proceeds recovered from the Claims.

7. Due to the uncertainty in the outcome of the arbitration proceedings between the Plan and the Responsible Parties, it is represented that it is difficult to calculate a precise value of the rights against the Responsible Parties which the Plan proposes to assign to Storytown. In this regard, as stated in Representation 9, the I/F has reviewed and determined that the Assignment is appropriate to essentially repay the Loan. It is represented that to the extent the net amount recovered from the Claims against the Responsible Parties, if any, from such arbitration proceedings is equal to or less than the aggregate amount of the Loan, the Plan will not be responsible for any amount. Such unpaid balance will be treated by Storytown as an employer contribution to the Plan. Furthermore, in the event that the net recovery on the Claims exceeds the amount of the Loan, such Excess Amount will be treated as a reversion paid by the Plan to Storytown pursuant to the Plan document.

8. Storytown represents that the proposed transactions will adequately protect the rights of the participants and beneficiaries of the Plan. In this regard, the Loan will bear no interest. Assets of the Plan, other than the Claims, will not be pledged as collateral to secure the Loan, nor will assets of the Plan, other than the Claims, be used to repay the Loan.

As discussed fully above, in exchange for the Loan, the Plan intends to assign to Storytown any and all the Plan's rights, title and interests in the Claims, it may have against the Responsible Parties pursuant to the arbitration proceedings.

In addition, Storytown states that the proposed transactions are designed to resolve the Plan's unfunded liability problem. On a standard termination basis, the proposed transactions are deemed to be in the best interests of the Plan and its participants and beneficiaries because they will allow the Plan to terminate quickly without any benefit cutbacks.

Further, Storytown notes that with respect to a defined benefit plan such as the Plan, it is permitted to recapture the residual assets of the Plan upon termination, provided all Plan liabilities to participants and beneficiaries have been satisfied, the distribution is not contrary to any law, and the Plan provides for such distribution upon termination. Thus, Storytown explains that the net recovery on the Claims exceeding the amount of the Loan will not be needed to pay benefits pursuant to the Plan's standard termination and that such Excess Amount from the recovery will be properly payable to it as a reversion pursuant to the Plan document.

9. As an additional safeguard, GFNB has agreed to serve as the I/F with respect to the proposed transactions. The Department notes the proposed exemption is conditioned upon the I/F reviewing and monitoring the terms and conditions of the proposed transactions to ensure that such terms and conditions are at all times satisfied. The proposed exemption contains a further condition which specifies in the event the I/F resigns, is removed, or for any reason is unable to serve, including but not limited to the death or disability of

[17] The purpose of the freeze was to ensure that the Plan was in compliance with section 204(h) of the Act. Section 204(h) of the Act provides that a pension plan may not be amended to significantly reduce the rate of future benefit accruals unless the plan administrator provides timely written notification of the amendment to participants and certain other parties likely to be affected.

[18] The initial strategy adopted by Storytown to deal with the Plan's underfunding problem was to ''wait and see'' if adverse market conditions would become more favorable. However, the situation never changed.

[19] A termination under section 4042 of the Act or, for that matter, section 4041(c) of the Act, occurs when a plan is underfunded on a termination basis. When a plan is underfunded and certain circumstances exist, the PBGC may, in its discretion, take over a plan to effect a termination on either a distress termination basis under section 4041(c) of the Act or on a negotiated termination basis under section 4042 of the Act. Under these terminations, the PBGC takes over the plan and its assets, terminates the plan, and pays benefits, that have been adjusted for required cutbacks and the amount of PBGC guarantees.

In Storytown's case, the Plan's assets were substantially less than the Plan's liabilities. This resulted in the Plan being underfunded on a termination basis. Thus, Storytown originally applied to the PBGC for termination on a negotiated termination basis under section 4042 of the Act.

[20] The Plan's rights also include, but are not limited to, any and all rights in and to any recovery thereon and the recovery of any expenses of pursuing the Claims against the Responsible Parties.

such I/F, or if at any time such I/F does not remain independent of Storytown and its affiliates, such I/F will be replaced by a successor: (a) Who is appointed immediately upon the occurrence of such event; (b) who is independent of Storytown and its affiliates; (c) who is qualified to serve as the I/F; and (d) who assumes all the duties and responsibilities of the predecessor I/F. The Department will also be notified of such successor I/F.

GFNB represents that it has extensive experience as a custodian and/or trustee for over 250 qualified retirement plans. GFNB states that it has been in the qualified plan business for over 25 years. In addition to maintaining its own daily valuation platform, wholesaling qualified retirement plan investment and record-keeping services to other banks, GFNB explains that it has significant experience with employee stock ownership plans and other sophisticated fiduciary transactions. Further, GFNB represents that it, its affiliates and its holding company, Arrow Financial Corporation (Arrow Financial), are independent of all parties involved in the proposed exemption. In this regard, although GFNB explains that it has a depository relationship with both Storytown and Mr. Wood, its gross revenues from these deposits amount to less than 1 percent (1%) of GFNB's total gross revenues. Further, GFNB states that the sum of the assets of Storytown and Mr. Wood on deposit with, or held by it, over its total assets on deposit is less than 1 percent. Finally, GFNB explains that it has no loan relationships with either Storytown or Mr. Wood, and that Mr. Wood is not an officer or director of GFNB, Arrow Financial or any of GFNB's affiliates.

GFNB has acknowledged its status as an I/F under the Act, including the responsibilities and duties of a fiduciary involving the assets of the Plan. Specifically, prior to the Plan's entering the proposed transactions, GFNB is responsible for reviewing, negotiating, and approving the terms and conditions of the Loan and the Assignment, and determining whether such transactions are prudent, administratively feasible, in the interest of the Plan and its participants and beneficiaries, and protective of the participants and beneficiaries of the Plan. In this regard, GFNB as the Plan Trustee, has examined the Plan's overall investment portfolio, considered the Plan's liquidity needs, examined the diversification of the Plan's assets in light of the proposed transactions and fully considered whether the proposed transactions comply with the Plan's investment objectives and policies.

GFNB has determined that the proposed transactions are necessary in the event that the Claims are not fully resolved before final distributions are required pursuant to the Plan termination. According to GFNB, the Loan is designed to solve the Plan's unfunded liability on a standard termination basis and the Assignment of Claims is appropriate to repay the Loan.

Additionally, GFNB notes that if the net recovery on the Claims exceeds the amount of the Loan, any Excess Amounts will be properly payable to Storytown as a reversion pursuant to the Plan document. As a result of these transactions, GFNB concludes that there will not be any benefit cutbacks to participants and beneficiaries and the Plan will not be harmed or impaired, legally or financially.

Finally, GFNB represents that it will continue to monitor the proposed transactions on behalf of the Plan through the termination of the Plan, and it will take all actions that are necessary and proper to safeguard the interests of the Plan and its participants and beneficiaries. In addition, GFNB will confirm that the Loan amount will be sufficient to satisfy all Plan liabilities, including the Plan's unfunded liability, and permit the Plan to terminate on a standard termination basis.

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

(a) The Plan will pay no interest in connection with the Loan.

(b) The Loan proceeds will be utilized to satisfy the Plan's unfunded liability.

(c) None of the assets of the Plan will be pledged to secure the amount of the Loan.

(d) The Loan will be a non-recourse obligation of the Plan.

(e) When the Plan properly terminates, Mr. Charles Wood, the principal shareholder of Storytown, agrees to waive any benefits he will receive on the termination of the Plan.

(f) The Plan's rights to any Claims that are not resolved before final distributions are completed will be assigned by the Plan to Storytown under the terms of the Assignment.

(g) The Assignment will be deemed a repayment in full of the Loan by the Plan. As a result, the Plan will have no liability for the Loan and no interest in the Claims. However, if the net amount recovered on the Claims against the Responsible Parties after the Assignment, from any judgment or settlement of any arbitration proceeding, is equal to or less than the amount of the Loan, the balance due on the Loan will be automatically forgiven and such unpaid balance will be treated by Storytown as an employer contribution to the Plan.

(h) Notwithstanding the Assignment, the Plan will not release any claims, demands and/or causes of action which it may have against Storytown and/or its affiliates.

(i) The Plan will incur no expenses, commissions or transaction costs in connection with the contemplated transactions, all of which will be one-time occurrences.

(j) All terms of the transactions are at least as favorable to the Plan as those which the Plan could obtain in similar transactions negotiated at arm's length with unrelated third parties.

(k) The subject transactions will not involve any risk of loss to either the Plan or to any of the participants and beneficiaries of the Plan.

(l) Prior to the Plan's entering the transactions, a qualified I/F, which is acting on behalf of the Plan and which is unrelated to Storytown and/or its affiliates,

(1) Will review, negotiate and approve the terms and conditions of the Loan and the Assignment exclusively (but will not monitor legal proceedings against the Responsible Parties following the Assignment);

(2) Will determine that such transactions are prudent and in the interest of the Plan and its participants and beneficiaries; and

(3) Will confirm that the Loan amount will be sufficient to satisfy all Plan liabilities, including the Plan's unfunded liability, and permit the Plan to terminate on a standard termination basis.

(m) If the I/F resigns, is removed, or for any reason is unable to serve as I/F, prior to the Plan's entering into the transactions, such I/F will be replaced by a successor I/F:

(1) Who is appointed immediately upon the occurrence of such event;

(2) Who is independent of Storytown and its affiliates;

(3) Who is qualified to serve as the I/F; and

(4) Who assumes the duties and responsibilities of the predecessor I/F.

In addition, the Department will be provided written notification of such change in I/F.

Notice to Interested Persons

Notice of proposed exemption will be provided to all interested persons by first class mail within 7 days of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and a

supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on the proposed exemption and/or to request a hearing. Comments and hearing requests are due within 37 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Shelly Mui of the Department, telephone (202) 693–8530. (This is not a toll-free number.)

Carpenters' Joint Training Fund of St. Louis (the Plan), Located in St. Louis, Missouri

[Application No. L–11181]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to: (1) The purchase of a parcel of improved real property located at 8300 Valcour Avenue, St. Louis County, Missouri, (the Property) by the Plan from the Carpenters District Council of Greater St. Louis (the CDC), a party in interest to the Plan; (2) The guarantee (the Guarantee) by the CDC of a $6 million loan from an unrelated bank (the Bank Loan) for the benefit of the Plan; and (3) An unsecured loan for up to $1 million from the CDC to the Plan (the CDC Loan), provided that the following conditions are met:

(a) The Plan pays the lesser of (1) $7,985,000 or (2) the fair market value of the Property at the time of the purchase of the Property;

(b) The fair market value of the Property is established by an independent, qualified real estate appraiser that is unrelated to the CDC or any other party in interest with respect to the Plan;

(c) The Plan will not pay any commissions or other expenses with respect to the transactions;

(d) An independent, qualified fiduciary (the I/F), after analyzing the relevant terms of the transactions, determines that the transactions are in the best interest of the Plan and its participants and beneficiaries;

(e) In determining the fair market value of the Property, the I/F obtains an appraisal from an independent, qualified appraiser and ensures that the appraisal is consistent with sound principles of valuation;

(f) The terms and conditions of the CDC Loan are at least as favorable to the Plan as those which the Plan could have obtained in an arm's-length transaction with an unrelated party;

(g) The Bank Loan is repaid by the Plan solely with funds the Plan retains after paying all of its operational expenses;

(h) The I/F will ensure that the terms and conditions relating to the Guarantee are in the best interest of the Plan and its participants and beneficiaries;

(i) The CDC will waive any right to recover from the Plan in the event that the Bank enforces the Guarantee against the CDC;

(j) If at any time the Plan does not have sufficient funds to make a payment on the CDC Loan, after meeting operational expenses and payments on the Bank Loan, then payments on the CDC Loan will be suspended, without additional interest or penalty, until such funds are available; and

(k) The I/F will take whatever actions it deems necessary to protect the rights of the Plan with respect to the Property and the transactions.

Summary of Facts and Representations

1. The Plan is an apprenticeship training plan, the assets of which are subject to the fiduciary responsibility provisions of part 4 of Title I of the Act. The Plan is a Taft-Hartley trust established pursuant to collective bargaining, jointly trusteed by representatives of employer and labor organizations. The Plan is an employee welfare benefit plan within the meaning of section 3(1) of ERISA, and a multiemployer plan within the meaning of section 3(37). The Plan is established in accordance with the requirements for representation on the Board of Trustees imposed by section 302(c)(5) of the Labor Management Relations Act. Currently, there are approximately 2745 participants covered by the Plan. As of August 1, 2003, the Plan had total assets of $4,528,000.

The CDC is an employee organization, some of whose members are covered in the Plan, and is, therefore, a party in interest within the meaning of section 3(14) of ERISA with respect to the Plan. The CDC purchased the Property from an unrelated third party in 2001 for $3,702,164, slightly less than its appraised value. The CDC expended over $5.4 million to renovate the Property for the particular needs of the training programs carried out by the Plan. The CDC is willing to sell the Property to the Carpenters' Plan for $7,985,000, approximately $1.1 million less than the CDC expended for the acquisition and renovation of the Property.

2. The Property is a parcel of improved real property located at 8300 Valcour Avenue, St. Louis County, Missouri, containing a building of approximately 171,000 square feet that has been renovated to provide shop, classroom and office space designed for the particular needs of the training programs conducted by the Plan.

3. In order for the Plan to carry out the purpose of providing apprentice and journeyman training for the benefit of its participants, the trustees of the Plan (the Trustees) have determined that the Plan requires the use of facilities including shop space, classrooms, and offices for faculty and administrative staff of the training programs. The Property has been renovated especially for the needs of the Plan, and it is unlikely that another facility as well suited to these needs could be found for lease without additional expenditures for tenant improvements. By owning the Property, the Plan will be free to make any changes or additions to meet future requirements without consent of a landlord; the Plan will be assured of the continued availability of the facility indefinitely; and the Plan will acquire an equity interest in the property having future value.

4. The Plan began to occupy the Property on September 1, 2002. The Plan has paid no rent or other expenses during its occupancy. The CDC has determined to forego any claims for rent or other compensation from the Plan for the use of the Property.[21]

5. The Property was appraised by J. Lawrence Von Trapp, a State of Missouri Certified General Real Estate Appraiser of McReynolds, Von Trapp and Daniel-Gentry (the Appraiser), a real estate appraisal firm located in St. Louis, Missouri. The Appraiser determined that the fair market value of the Property was $7,985,000, as of September 1, 2002. On May 3, 2004, McReynolds, Von Trapp and Daniel-Gentry updated the appraisal of the Property and stated that the fair market value of the Property is $8,800,000. However, the CDC agrees to allow the Plan to purchase the Property for $7,985,000.

The Appraiser analyzed among other factors the following in determining the fair market value of the Property: (1) The level of activity in the local economy, particularly as it pertains to and affects the value of the Property; (2) recent trends in real estate development,

[21] The Department expresses no opinion herein concerning the decision by the CDC to forego rent and other expenses as described above.

occupancy, rental rates, and property values; and (3) the comparable sales and rental information.

6. The purchase of the Property will be financed, in part, by the Bank Loan, which will be a first mortgage loan to the Plan from a commercial bank for $6 million, secured by a mortgage on the Property, with an initial term of five years at a fixed rate of interest and twenty year amortization. Principal may be prepaid at any time. CDC will provide the Guarantee with respect to the first mortgage loan. The CDC will waive any right to recover from the Plan in the event that the Bank enforces the Guarantee against the CDC. Therefore, the Guarantee by the CDC will be non-recourse to the Plan.

The CDC Loan is to be an unsecured loan from the CDC to the Plan for $1 million. The interest rate will be one-half per cent less than the Bank Loan. The loan terms will provide that, if at any time the Plan does not have sufficient funds to make a payment on the CDC Loan, after meeting operational expenses and payments on the Bank Loan, then payments on the CDC Loan will be suspended, without additional interest or penalty, until such funds are available. Except as stated, the terms of the CDC Loan will be the same as the Bank Loan. The Plan will not pay any commissions or other expenses with respect to the transactions.

7. The Plan has engaged Brian Goding (Mr. Goding), of the firm Fiduciary Consultants, Inc., (FCI) to act as the Plan's I/F. FCI is an investment consulting firm, of which Mr. Goding is the principal. Mr. Goding and his firm are experienced in the investment of assets of ERISA funds, including real estate. Mr. Goding acknowledges his duties, responsibilities and liabilities in acting as a fiduciary for the Plan for purposes of the proposed transaction. Mr. Goding represents that he is an independent fiduciary and not an affiliate of, or related to, the entities involved in the subject transaction. In this regard, Mr. Goding certifies that: (i) Less than one (1) percent of FCI's annual income (measured on the basis of the prior year's income) comes from business derived from the CDC.

8. Mr. Goding has reviewed all of the terms and conditions of the proposed transactions. Mr. Goding states he has reviewed the essential documents (including the collective bargaining agreement) associated with the transactions. With respect to the proposed purchase and loan transactions, Mr. Goding concluded that, based on the historical financial statements and projected operating results, it is economically feasible, and within the range of reasonable and prudent judgment, for the Trustees to proceed with the proposed transactions. Mr. Goding represents that the Plan is in a position to make the requisite down payment for the purchase of the Property while retaining adequate reserves for its activities. In analyzing the proposed purchase, Mr. Goding represents that the purchase price of the Property does not exceed a reasonable price, and is in fact advantageous to the Plan. Furthermore, the cost of purchasing the Property at the price offered by the CDC is comparable to, and likely to be lower than, the cost of leasing similar property.

It is Mr. Goding's opinion that the decision of the Trustees to purchase the Property from the CDC is reasonable and prudent under the circumstances and the Trustees are justified in concluding that the terms of the Bank Loan are the best of the available alternatives. Mr. Goding has also examined the Appraiser's reports and has found the methodology and analysis to be consistent with sound principles of real estate valuation. Additionally, Mr. Goding represents that, based on his analysis, it is in the best interest of the Plan to engage in the $1 million CDC Loan, rather than increase the Bank Loan amount by $1 million. As I/F, Mr. Goding will take whatever actions he deems necessary to protect the rights of the Plan with respect to the Property and the transactions. In conclusion, Mr. Goding represents that under the current collective bargaining agreement, which extends to 2009, there will be sufficient funds to enable the Plan to make both Bank and CDC Loan payments. Mr. Goding also represents that it is in the best interest of the Plan to engage in the transactions.

9. In summary, the applicant states that the transactions have satisfied the statutory criteria of section 408(a) of the Act because: (a) The Plan pays the lesser of (1) $7,985,000 or (2) the fair market value of the Property at the time of the purchase of the Property; (b) The fair market value of the Property is established by an independent, qualified real estate appraiser that is unrelated to the CDC; (c) The Plan does not pay any commissions or other expenses with respect to the transactions; (d) The I/F determines, after analyzing the relevant terms of the transactions, that the transactions are in the best interest and protective of the Plan and its participants and beneficiaries; In determining the fair market value of the Property, the I/F obtains an appraisal from an independent, qualified appraiser and ensures that the appraisal is consistent with sound principles of valuation; (f) The terms and conditions of the CDC Loan are at least as favorable to the Plan as those which the Plan could have obtained in an arm's-length transaction with an unrelated party; (g) The Bank Loan is repaid by the Plan solely with funds the Plan retains after paying all of its operational expenses; (h) The I/F ensures that the terms and conditions relating to the Guarantee are in the best interest of the Plan and its participants and beneficiaries; (i) The CDC will waive any right to recover from the Plan in the event that the Bank enforces the Guarantee against the CDC; (j) If at any time the Plan does not have sufficient funds to make a payment on the CDC Loan, after meeting operational expenses and payments on the Bank Loan, then payments on the CDC Loan will be suspended, without additional interest or penalty, until such funds are available; and (k) The I/F will take whatever actions it deems necessary to protect the rights of the Plan with respect to the Property and the transactions.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif I. Ford 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 15th day of July, 2004.

Ivan Strasfeld,

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

[FR Doc. 04–16418 Filed 7–19–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,140]

A.O. Smith Electrical Products Co., Mebane, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act 1974, as amended, an investigation was initiated on June 24, 2004, in response to a worker petition filed by a company official on behalf of workers at A.O. Smith Electrical Products Co., Mebane, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of July, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–16426 Filed 7–19–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,011]

Caspain International Group, New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 2, 2004, in response to a petition filed on behalf of workers at Caspain International Group, New York, New York.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 6th day of July, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–16421 Filed 7–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,151]

Charleston Hosiery, Inc., Fort Payne, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 28, 2004, in response to a petition filed on behalf of workers at Charleston Hosiery, Inc., Ft. Payne, Alabama.

The petition is invalid because two of the three workers have not been separated nor is there a threat of separation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 6th day of July, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–16427 Filed 7–19–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,169]

Dresser, Inc., Dresser Piping Specialties Division, Bradford, PA; Notice of Termination of Reconsideration

On June 16, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The Department's Notice of Determination was published in the **Federal Register** on June 30, 2004 (69 FR 39501).

In a communication dated July 8, 2004, the petitioner withdrew the request for administrative reconsideration. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 9th day of July, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–16419 Filed 7–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,038]

Duracell GBMG, Lexington, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 7, 2004, in response to a petition filed by the company on behalf of workers at Duracell GBMG, Lexington, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of July, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–16422 Filed 7–19–04; 8:45 am]

BILLING CODE 4510–30–P