

Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Siemens Energy & Automation, Alpharetta, GA has been added as a new associate member to this venture; and BHA Group, Inc. has been acquired by GE Energy, Kansas City, MO and is now listed as an associate member. Also, ABB Automation, Inc. has changed its name to ABB Incorporated, Norwalk, CT; Refratechnik GmbH has changed its name to Refratechnik North America Inc., St. Louis, MO; and W.R. Grace & Company has changed its name to Grace Construction Products, Cambridge, MA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on January 19, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 2, 2006 (71 FR 10705).

Dorothy B. Fountain,
Deputy Director of Operations, Antitrust Division.

[FR Doc. 06-5037 Filed 6-1-06; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Vehicle Infrastructure Integration Consortium

Notice is hereby given that, on May 1, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Vehicle Infrastructure Integration Consortium ("VIIC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting

the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: BMW of North America, LLC, Woodcliff, NJ; DaimlerChrysler Corporation, Auburn Hills, MI; Ford Motor Company, Dearborn, MI; Honda R&D Americas, Inc., Southfield, MI; Nissan Technical Center North America, Inc., Farmington Hills, MI; and Volkswagen of America, Inc., Auburn Hills, MI. the general area of VIIC's planned activity is evaluation of the viability of development and deployment of a national infrastructure to enable data collection and exchange in real time between vehicles and between vehicles and the roadway.

Dorothy B. Fountain,
Deputy Director of Operations, Antitrust Division.

[FR Doc. 06-5036 Filed 6-1-06; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act; Public Announcement

Pursuant to the Government in the Sunshine Act (Pub. L. 94-409) [5 U.S.C. Section 552b].

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10 a.m., Tuesday, June 6, 2006.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.
2. Reports from the Chairman, Commissioners, Chief of Staff, and Section Administrators.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492-5990.

Dated: May 30, 2006.

Rockne Chickinell,
General Counsel, U.S. Parole Commission.

[FR Doc. 06-5081 Filed 5-31-06; 10:01 am]

BILLING CODE 4140-31-M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. L-11258, et al.]

Proposed Exemptions; Retail Clerks Welfare Trust Health and Welfare Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

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

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, 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.

Retail Clerks Welfare Trust Health and Welfare Plan (the Plan) Located in Seattle, Washington

[Application No. L-11258]

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, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act shall not apply, effective July 1, 2005, to the purchase by Plan participants and beneficiaries of prescription drugs from pharmacies established and maintained by contributing employers to the Plan, or their affiliates (the Custom Network), which are parties in interest with respect to the Plan, provided the following conditions are satisfied:

(a) The terms of each transaction are at least as favorable to the Plan as those the Plan could obtain in a similar arm's-length transaction with an unrelated third party;

(b) All determinations regarding which party in interest pharmacies, if any, may participate in the Custom Network, will be made by the Plan's independent fiduciary based on objective standards developed by the independent fiduciary in reliance on information provided by NMHCrx, the Plan's Pharmacy Benefits Manager, an entity which is independent of any contributing employer to the Plan, and the Plan's independent actuarial consultants;

(c) At least 50% of the providers participating in the Custom Network are pharmacies of contributing employers other than the employer of any individual Plan participant;

(d) In the aggregate, on an on-going basis, the costs for each plan year for the Plan from participants using the Custom Network pharmacies will be at least one percentage point less than would be the costs through the use of NMHCrx's preferred provider network pharmacies (the PPN pharmacies);

(e) In the aggregate, on an on-going basis, the costs for each plan year for the Plan from participants using the PPN pharmacies will be significantly less than costs for the retail purchase of prescription drugs from non-participating pharmacies;

(f) The Plan's independent fiduciary will monitor the subject transactions to ensure that all conditions of the exemption, including conditions (d) and (e) regarding pricing, continue to be satisfied during each plan year; and

(g) All future updated summary plan descriptions, furnished to participants, will state that the purchase price of a particular prescription drug at Custom Network pharmacies may be less than the purchase price that is available either through the use of the PPN pharmacies or through retail non-participating pharmacies, and that the cost of prescription drugs in the aggregate over the course of a 12-month plan year will be: (i) Lower at Custom Network pharmacies than at the PPN pharmacies and (ii) Significantly lower at the Custom Network pharmacies than at non-participating retail pharmacies.

Effective Date: If the proposed exemption is granted, it will be effective July 1, 2005.

Summary of Facts and Representations

1. The Plan is a multi-employer welfare benefit plan, which has been in existence since June 18, 1957. The Plan was established to provide health and welfare benefits, including life, sickness, accident and other benefits for Plan participants and their beneficiaries. The Plan is directed by a twelve-person Board of Trustees (the Trustees). The six

Trustees representing labor are appointed by the United Food and Commercial Workers Local Union 1105 (the Union). The six employer Trustees are appointed by Allied Employers, Inc., a trade association of which the Plan's contributing employers are members. The Plan currently has approximately 27,600 participants, and it covers approximately 30,700 beneficiaries as well, so that the total number of participants and related family members affected by the subject transactions is approximately 58,300.

2. The applicant represents that the Plan has a long established and on-going relationship with a third-party administrator, Zenith Administrators, Inc. (Zenith). Prior to October 1, 1999, Zenith processed all pharmacy benefit claims for the Plan. Participants paid the total prescription cost and then submitted claim forms to Zenith for reimbursement of the portion in excess of the required co-payment.

3. In 1999, the Plan's Board of Trustees asked the Plan's consultants, Mercer Human Resource Consulting (Mercer) and The Segal Company (together, the Consultants)¹ to conduct a search for a Pharmacy Benefits Manager (PBM) to take over as primary processor for pharmacy benefit claims. Pursuant to that search, Pharmaceutical Care Network (PCN) was selected as the entity most able to fill the needs of the Plan. Effective October 1, 1999, PCN became the PBM for the Plan. Effective September 1, 2003, National Medical Health Card Systems, Inc. (NMHCrx) became the PBM for the Plan, replacing PCN. NMHCrx is not affiliated with Zenith, the Plan or any contributing employer. The agreement with NMHCrx includes a 90-day termination clause which permits the Plan to terminate the contract, without cause, and without penalty, upon 90 days advance written notice.

4. NMHCrx, headquartered at Port Washington, New York, has been managing prescription drug programs since 1981 and has a nationwide network of over 53,000 pharmacies. It manages the prescription benefits of more than 1.5 million participants in governmental, single employer and multiemployer plans. NMHCrx is a public company with its shares trading on NASDAQ. NMHCrx is an independent organization not related to Zenith, the Plan or the employers

¹ In 2003, The Segal Corporation was replaced as one of the Consultants by Cheiron, a firm of financial consultants and actuaries with offices in Washington, DC, McLean, Virginia and Charlotte, North Carolina. Cheiron and Mercer continue to provide financial, actuarial and general consulting to the Plan.

maintaining the Plan. The applicant represents that the transactions described herein are not part of an agreement, arrangement or understanding designed to benefit a party in interest.

5. NMHCrx maintains an extensive system of participating pharmacies in its preferred provider network (*i.e.*, the PPN pharmacies). In addition, NMHCrx maintains a Custom Network consisting of pharmacies that are, or are owned by, the Plan's participating employers or their affiliates. Thus, some of the pharmacies in the Custom Network are part of corporations that are employers of employees covered by the Plan; the other pharmacies in the Custom Network are wholly-owned by corporations that have affiliates whose employees are covered by the Plan.

6. NMHCrx also receives rebates from the drug manufacturers and, pursuant to the agreement with the Plan, pays over a portion of such rebates to the Plan. The parties have also memorialized agreed-upon terms regarding rebates due to the Plan from NMHCrx. The pricing and rebates are disclosed by NMHCrx to the Plan as part of its mandatory periodic reporting to the Plan. The records are open to examination pursuant to the audit provisions of the contract. The Plan and NMHCrx have agreed to specific dispensing fees and drug pricing. These terms are stated in the contract. For purchases made at NMHCrx PPN pharmacies, the Plan will pay the lower of (i) an agreed discount from average wholesale price (brand) or maximum allowable cost (generic) and (ii) the "usual and customary" charge for the drug. NMHCrx is obligated to maintain records needed to establish the cost the Plan pays for each drug. These records, which are to be maintained for the year that the Plan pays for the drugs and the following seven years, will be available for inspection or audit by the Plan at the offices of NMHCrx on reasonable notice during regular business hours.²

7. Plan participants and beneficiaries may acquire their prescription drugs through the regular PPN or the Custom Network established by NMHCrx. This choice is described in the Plan's summary plan description and other communication materials. NMHCrx adjudicates prescription claims that have been submitted and performs claims-related processing functions, not limited to determining the validity and the accuracy of the claims submitted.

² The Department is expressing no opinion herein as to whether the pricing and rebate arrangements between NMHCrx and the Plan, and the disclosures thereof, are in compliance with part 4 of title I of the Act.

NMHCrx receives a fee which is paid by the Plan.³ The applicant represents that all Plan fiduciaries are aware of fees and compensation to be paid by the Plan. NMHCrx's performance and competitiveness are monitored by the Plan's third party administrator, Zenith, and the Consultants.

8. Plan participants who utilize the Custom Network of employer pharmacies pay a co-payment and the pharmacies then submit their charges, based on an agreed schedule, to NMHCrx. These charges are paid by NMHCrx. NMHCrx, in turn, receives reimbursement from the Plan. The payments and reimbursements are completed electronically. The applicant represents that the cost of the prescription drugs through the Custom Network is deeply discounted. The Consultants and NMHCrx have advised that the discounts are greater than those for the PPN pharmacies and also greater than for other pharmacy networks with which they are familiar. The applicant represents that the difference in savings, when comparing aggregate costs for the Plan from participants using the Custom Network pharmacies and the NMHCrx's PPN pharmacies have been and are expected to continue at approximately one percentage point. For instance, during the period from September 1, 2003 through May 30, 2005, pricing of claims through the PPN network pharmacies would have produced a discount of approximately 22% off retail prices, while pricing through the Custom Network pharmacies resulted in a discount of 23% off retail prices. Actual Plan costs through the Custom Network for this period were \$45,348,737.97. The applicant further represents that the retail price for drugs dispensed for Plan participants during

³ The provisions of services to a plan by a party in interest with respect to the plan is a separate prohibited transaction under section 406(a)(1)(C) of the Act. However, the provision of services to a plan by a party in interest, which are necessary for the operation of the plan, are statutorily exempt under section 408(b)(2) of the Act, if the conditions required therein are met. The regulation, which defines the scope of the statutory exemption contained in section 408(b)(2) of the Act, states that no relief is provided for any arrangement for services which would violate section 406(b) of the Act (see 29 CFR section 2550.408b-2).

Therefore, it should be noted that in this proposed exemption, the Department is providing no relief beyond that provided by section 408(b)(2) of the Act with respect to the provision of PBM services to the Plan by NMHCrx or some other entity. In addition, the Department is providing no opinion herein as to whether any service arrangements between NMHCrx or some other entity and the Plan would meet the conditions of section 408(b)(2) of the Act and the regulations thereunder. However, interested persons should review DOL Adv. Op. 99-09A (May 21, 1999) for a discussion of issues relating to such service arrangements.

this period would have totaled \$59,121,641.71 for 633,064 paid prescription claims. NMHCrx estimates that had these claims been adjudicated through its PPN, the Plan cost would have been approximately \$45,722,245.73. Thus, the applicant represents that not only is the Custom Network more convenient for participants, and administratively more efficient for the Plan, but it also results in savings for the Plan and its participants when compared to the NMHCrx PPN. NMHCrx calculated cost savings using actual Plan prescription utilization and comparing retail prices with charges through NMHCrx's PPN network pharmacies and the Custom Network pharmacies. Pharmacies eligible to do so were presented with the opportunity to participate in both NMHCrx's PPN and the Custom Network.

9. The Department, following a routine investigation, raised concerns as to whether the employer pharmacy arrangements satisfy the requirements of section 406 of the Act. After discussions between Plan representatives and the Department, the Plan filed a request for the exemption proposed herein. Subsequently, the Department issued a closing letter, dated August 1, 2003, stating that no enforcement action would be taken with respect to the past transactions described herein.

10. To address concerns raised by the Department, the applicant represents that on July 1, 2005, the Plan retained as an independent fiduciary Nicholas Saakvitne, Esq. (the I/F), an employee benefits attorney and professional ERISA fiduciary in Marina del Rey, California. The I/F has 26 years of experience in benefits law, and most of his current practice consists of serving as trustee, plan administrator, or other plan fiduciary in plan terminations and in other special ERISA plan situations, to assist in managing plan assets and overseeing the operation of on-going plans. The cumulative total of plan assets for which the I/F has had fiduciary responsibility exceeds \$500 million. The I/F represents that the gross income he will receive from the Plan for his fiduciary services for each calendar year will not exceed 5% of his expected annual gross income from all sources for such year. Mr. Saakvitne does not receive any payment in connection with his I/F duties from any contributing employer to the Plan, and further represents that he is independent from any employer pharmacy or affiliate thereof. The I/F will establish minimum standards and objective criteria for selection of employer pharmacies and, based on

these standards and criteria, determine which pharmacies can participate in the Custom Network. The I/F will then have an on-going role for the Plan to periodically monitor the Custom Network pharmacies to confirm continued compliance with those minimum standards and objective criteria and the conditions of this proposed prohibited transaction exemption. The Plan's trustees would have no involvement or influence in the selection of pharmacies eligible to participate in the Custom Network. The I/F represents that he will receive and consider advice from the Plan's Consultants, as well as information from NMHCrx, the Plan's PBM.

11. The I/F represents that he confirms the findings of NMHCrx that the Plan fees in the aggregate (taking into account discounts) using the NMHCrx PPN are less than total Plan fees in the aggregate would be at standard retail prices. In addition, the Custom Network used by the Plan creates a better overall discount than the PPN alone, providing the Plan with improved cost management. In its December 2005 report to the Trustees, NMHCrx advised that actual experience under the Custom Network for the 12-month period ending August 31, 2005 (the most recent period for which data was then available) produced an approximate 29% overall discount for prescription drugs from "usual and customary" pricing—mail (20.99% for brand and 49.01% for generic) and retail (15.32% for brand and 57.15% for generic). The estimated retail price for the 320,877 prescriptions dispensed for Plan participants was \$32,529,495.97. Actual Plan costs through the Custom Network pharmacies were \$23,116,008.57. These findings are based on the average reimbursement rates achieved through the negotiated discounts with the represented pharmacies in these networks.

12. Minimum standards and objective criteria for the selection of the employer pharmacies in the Custom Network would be developed by the I/F, working with NMHCrx and the Plan's independent Consultants. The minimum standards and objective criteria would be set forth in writing, and would include: (a) The maximum average price of the prescription drugs (considering both brand and generic options) and cost comparisons with the PPN network pharmacies; (b) The quality and availability of the prescription drugs (e.g., is there a choice between generic and brand name drugs); (c) Geographic proximity of the pharmacy (e.g., pharmacies that are located closer to participants should be

selected over pharmacies that are further away, all else being equal); and (d) Administrative efficiency (e.g., the length of time and the cost for the Plan to process claims with the particular pharmacy).

13. There would be no restrictions, other than the minimum standards and objective criteria, on the pharmacies that could be selected for the Custom Network. Any such pharmacies would be, or would be owned by, the Plan's participating employers or their affiliates (*see rep. 5, above*). NMHCrx would screen applicant pharmacies for compliance with the established standards and criteria and send the qualifiers to the I/F. The I/F would not be required to select any of the pharmacies currently participating in the Custom Network, but could select the same participating employer pharmacies as long as they satisfy the minimum standards and objective criteria. Eligible employer pharmacies, as selected by the I/F, would negotiate Custom Network contracts with NMHCrx. While all pharmacies in the Custom Network have been asked to participate at specific rates and fees, some of these pharmacies have chosen at their own discretion to participate at rates and fees that are lower than the minimum pricing requirement.

14. Plan participants were provided a summary of material modifications which explained the Custom Network pharmacy arrangement at the time the benefit was introduced. The participants have also received information about how to purchase their prescriptions through both NMHCrx's PPN and the Custom Network pharmacies in various news and "how to" articles published in the Plan's newsletter, *Benefits Update*. The applicant represents that all future updated summary plan descriptions will inform participants that the purchase price of a particular prescription drug at Custom Network pharmacies may be less than the purchase price that is available either through the PPN network pharmacies or through retail non-participating pharmacies, and that the cost of prescription drugs in the aggregate over the course of a 12-month plan year will be lower at Custom Network pharmacies than at PPN pharmacies and significantly lower when compared to non-participating retail pharmacies.

15. The applicant represents that Plan participants benefit from the transactions described herein because: (a) Employees and their family members who participate in the Plan benefit from the discounts and convenience of the Custom Network through use of both their own employers' pharmacies and

the pharmacies of all the other contributing employers with pharmacies in the network; and (b) Substantially more than 50% of the pharmacies in the Custom Network are pharmacies not affiliated with any particular participant's employer—that is, participants or beneficiaries have an ample choice to use a pharmacy unaffiliated with their employer to obtain the Custom Network benefits.

16. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The terms of the transactions are at least as favorable to the Plan as those the Plan could obtain in similar arm's-length transactions with an unrelated party; (b) All determinations regarding which party in interest pharmacies, if any, may participate in the Custom Network, will be made, by the Plan's independent fiduciary based on objective standards developed by the independent fiduciary in reliance on information provided by the Plan's Pharmacy Benefits Manager, an entity which is independent of any contributing employer to the Plan, and the Plan's independent actuarial consultants; (c) At least 50% of the providers participating in the Custom Network are pharmacies of contributing employers other than the employer of any individual Plan participant, so that a participant is assured of having an ample choice of pharmacies without loss of Custom Network benefits; (d) In the aggregate, costs during each plan year for the Plan from participants using the Custom Network pharmacies will be at least one percent less than costs through the use of NMHCrx's PPN pharmacies, which will in turn in the aggregate be significantly less than costs for the retail purchase of such prescription drugs; (e) The Plan's independent fiduciary will monitor the subject transactions to determine that all conditions of the exemption, including conditions (d) and (e) regarding pricing, continue to be satisfied; and (f) All future updated summary plan descriptions furnished to participants will state that the purchase price of a particular prescription drug at Custom Network pharmacies may be less than the purchase price that is available either through the PPN network pharmacies or through retail non-participating pharmacies, and that the cost of prescription drugs in the aggregate over the course of a 12-month plan year will be lower at Custom Network pharmacies than at PPN pharmacies and significantly lower when compared to non-participating retail pharmacies.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

The Revlon Employees Savings, Investment and Profit Sharing Plan (the Plan) Located in New York, New York

[Application No. D-11355]

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, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective February 17, 2006, to (1) the acquisition of certain stock rights (Stock Right(s)) by the Plan in connection with a Stock Rights offering by Revlon, Inc. (Revlon), a holding company that wholly owns Revlon Consumer Products Corporation (RCPC), a party in interest with respect to the Plan; (2) the holding of the Stock Rights by the Plan during the subscription period of the Stock Rights offering; and (3) the disposition or exercise of the Stock Rights by the Plan, provided that the following conditions were met:

(a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering made available on the same terms to all shareholders of common stock of Revlon;

(c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the Stock Rights offering;

(d) The Plan's acquisition of the Stock Rights resulted from an independent act of Revlon as a corporate entity, and all holders of the Stock Rights, including the Plan, were treated in the same manner with respect to the acquisition; and

(e) The price received by the Plan for the Stock Rights was no less than the fair market value of the Stock Rights on the date of the Stock Rights offering.

Effective Date: This exemption, if granted, will be effective as of February 17, 2006.

Summary of Facts and Representations

RCPC is the sponsor of the Plan. The Plan is a tax-qualified, defined contribution profit sharing plan that incorporates a cash or deferred (*i.e.*, 401(k)) arrangement. The trustee of the trust established under the Plan is Fidelity Management Trust Company (the Trustee).⁴

Revlon is a world leader in cosmetics, skin care, fragrance and personal care. MacAndrews & Forbes Holdings Inc. (together with its affiliates, MacAndrews & Forbes), which is wholly owned by Ronald O. Perelman, beneficially owns 190,160,641 shares of the Class A Common Stock (including 32,599,374 shares of the Class A Common Stock beneficially owned by a family member, with respect to which shares MacAndrews & Forbes holds a voting proxy). Mr. Perelman, through MacAndrews & Forbes, also beneficially owns all of the outstanding 31,250,000 shares of the Class B Common Stock, which, together with the Class A Common Stock referenced above, represents approximately 60% of the total outstanding shares of Revlon's outstanding Common Stock. Based on the shares referenced above, Mr. Perelman, as of December 31, 2005, had approximately 77% of the combined voting power of the outstanding shares of the Class A and the Class B Common Stock.⁵

Class A common stock and Class B common stock are in all respects identical except that (i) each share of Class A common stock entitles the holder to one vote and each share of Class B common stock entitles the holder to ten votes on all matters being voted on by Revlon's stockholders, (ii) Class A common stock is publicly traded and held in the Plan whereas Class B common stock is not publicly traded and not held in the Plan, and (iii) certain transfer restrictions apply to Class B common stock that do not apply to Class A common stock. These restrictions provide that the Class B common stock (all of which is currently held by MacAndrews & Forbes) can only be transferred to affiliates of the current holder of Class B common stock.

⁴ Fidelity Management Trust Company became the trustee effective January 3, 2006, at which time it replaced Putnam Fiduciary Trust Company as trustee.

⁵ The 221,410,641 shares of Revlon's combined Class A common stock and Class B common stock beneficially owned by Mr. Perelman represented approximately 60% of the total 371,720,324 shares of Revlon's combined Class A and Class B common stock that was issued and outstanding.

The Plan provides for a variety of contributions in addition to 401(k) contributions, including after-tax employee contributions, company-matching contributions, rollover contributions and profit-sharing contributions. The Plan permits individual participants to direct the investment of their entire account balance under the Plan to the extent described below and is intended to satisfy the requirements of section 404(c) of ERISA with respect to all such participant investment directions.

One of the investments available under the Plan is Class A Common Stock (the Common Stock Fund).⁶ Participants may allocate all contributions made on their behalf (and any earnings thereon) among the Common Stock Fund and all of the other investments available under the Plan.⁷

As of January 3, 2006, there were approximately 3,598 participants in the Plan. The Plan's assets totaled approximately \$136,435,045.12. Approximately 1,560 Plan participants and beneficiaries held shares of Class A Common Stock. The Plan holds approximately 940,004 shares of Class A Common Stock, or approximately 0.28% of the then outstanding shares of Class A Common Stock, with a value of approximately \$2,914,291.40 (based on the \$3.10 opening price on the New York Stock Exchange of Class A Common Stock on January 3, 2006), or approximately 2.1% of Plan assets.

Because the Plan holds Class A Common Stock, Stock Rights will be allocated to Plan participants in proportion to their holdings of Class A Common Stock under the Plan, and Plan participants will be entitled to dispose of those Stock Rights on the terms and conditions described more fully below. Participants in the Plan will receive the same information regarding the Stock Rights offering as is provided to all stockholders. In addition, participants will be provided a special notice that describes some features of the Stock Rights offering in easily understood language, together with additional information that is peculiar to their status as holders of Class A Common Stock under the Plan (for example, special rules relating to the payment of the purchase price for shares under the Stock Rights offering).

If the Plan were denied participation in the Stock Rights offering, Plan

⁶ No other "employer security," within the meaning of section 407 of ERISA, is presently available as an investment under the Plan.

⁷ Plan participants are effectively free to designate the extent to which their Plan accounts will be invested in Class A Common Stock.

participants would not receive the benefit of the Stock Rights which other stockholders will receive, including the ability to realize value by selling Stock Rights. Revlon is requesting this exemption so that Plan participants may be eligible to participate in the Stock Rights offering on the same basis as other stockholders.⁸

Revlon launched the Stock Rights offering on February 17, 2006. The Stock Rights will expire at 5 p.m., New York, New York local time on the date that is approximately 30 days later (on/ or about March 20, 2006). The amount of the Stock Rights offering will be \$110 million (the Maximum Amount). Each Stock Right entitles its holder to purchase a number of shares of Class A Common Stock such that the aggregate number of shares of Class A Common Stock to be offered in the Stock Rights offering, multiplied by the Subscription Price, will equal the Maximum Amount.⁹

Revlon will pay all of the fees and expenses attributable to the Stock Rights offering (other than any fees that may be charged by brokers or nominees). For any Stock Rights sold by the Plan, a commission of 2.9 cents per Stock Right is being charged to the Plan account from which the Stock Right was sold. The commission was disclosed to participants in the materials provided explaining the Stock Rights Offering. The commission was not paid to Revlon but to the broker-dealer, National Financial Services (NFS) of New York City, New York, for the sale transaction. NFS is an affiliate of the Trustee and is wholly owned by Fidelity Global Brokerage Group, Inc.

The Plan's investment committee established under the Plan (the Investment Committee) considered whether it was appropriate and in the best interests of the Plan to permit Fidelity to effect sales of Rights under the Plan through NFS. The Investment

Committee took the following considerations into account, among others: (a) Brokerage services required to effect the sales transactions are necessary services for the operation of the Plan; (b) the reputation of NFS as a reputable broker; (c) the already established procedures between Fidelity and NFS for the prompt execution of sales transactions under the Plan; (d) the ability of NFS to accept the engagement upon very short notice (*i.e.*, the short notice provided by Revlon); (e) the reasonable price charged for the brokerage services when compared with other unrelated brokers; and (f) the short-term nature of the arrangement. Following discussion, the Investment Committee authorized the use of NFS as broker for effecting sales of Stock Rights under the Plan, subject to an attempt being made to negotiate a more favorable commission rate. Although Fidelity is affiliated with NFS, Fidelity did not use any discretion to select NFS as broker for the Rights. Plan participants paid commissions on the sale of their Stock Rights in the same manner as any other similarly situated shareholder paid commissions on the sale of their Rights.¹⁰

Each Stock Right carries with it a basic subscription privilege and an over-subscription privilege. The basic subscription privilege entitles a Stock Rights holder to subscribe for its *pro rata* share of Class A Common Stock offered in the Stock Rights offering. MacAndrews & Forbes has agreed, upon the consummation of the Stock Rights offering and at the Subscription Price, to acquire the number of shares of Class A Common Stock as equals the number of shares of Class A Common Stock that MacAndrews & Forbes would otherwise have been entitled to purchase in the Stock Rights offering pursuant to its basic subscription privilege. Except for MacAndrews & Forbes, all holders of Common Stock who elect to exercise their Stock Rights in full may also subscribe for the remaining shares at the same Subscription Price per share, to the extent that other shareholders do not exercise all of their Stock Rights in full. Although MacAndrews & Forbes, as a holder of Common Stock, would otherwise be entitled to such over-subscription privilege, MacAndrews & Forbes has agreed to subordinate such Stock Rights in order to enhance the over-subscription privilege of other stockholders.

¹⁰ The Department provides no opinion as to whether the selection of the broker dealer meets the conditions set forth under section 408(b)(2) of the Act.

If an insufficient number of shares is available to fully satisfy the over-subscription privilege requests, the available shares will be sold *pro rata* among Stock Rights holders who exercised their over-subscription privilege based on the number of shares each Stock Rights holder subscribed for under the basic subscription privilege. Any excess subscription payments will be returned without interest or deduction promptly after the expiration of the Stock Rights offering.

MacAndrews & Forbes has agreed to "back-stop" the Stock Rights offering by purchasing, on the same terms as the Stock Rights offering, such number of shares of Class A Common Stock as equals all of the shares that are not otherwise subscribed for by the other holders of Stock Rights under either their basic subscription privilege or their over-subscription privilege. This will ensure that Revlon will receive the Maximum Amount in the Stock Rights offering.

Any election to exercise a Stock Right (whether made with respect to Stock Rights held under the Plan or otherwise) will be irrevocable once made. Plan participants who want to exercise some or all of their Stock Rights will be required to notify the Trustee on or before the date that is approximately seven (7) calendar days before the expiration of the Stock Rights offering (the Plan Election Date).¹¹ Participants will also be entitled to direct the Trustee to sell the Stock Rights allocated to them on the open market (to the extent a trading market develops) by notifying the Trustee of such election on or before the Plan Election Date; any such election will be irrevocable once made and will be executed as soon as practicable after it is received. To the extent that a participant does not elect to either exercise or sell the Stock Rights credited to his or her account on or before the Plan Election Date, the Investment Committee will instruct the Trustee to sell such Stock Rights on the open market in the same manner as if the participant had directed such a sale. The Investment Committee will instruct the Trustee not to exercise Stock Rights where the Subscription Price exceeds the per share public trading price of

¹¹ This date is before the expiration date of the Offering in order to enable the Trustee to review and implement participant directions (including the liquidation of individual account balances necessary to fund each participant's exercise price) and provide such aggregate instructions to the subscription agent under the Offering within the time constraints imposed generally with respect to the Offering. Because it is expected that the Offering will extend for at least thirty (30) calendar days, Revlon does not anticipate that this requirement will be unduly restrictive for Plan participants.

⁸ The distribution of the Rights will be accomplished as a dividend under Delaware corporate law. Accordingly, Revlon will be required to distribute the Rights to all stockholders on a *pro rata* basis. In exercising their fiduciary duties to all stockholders, the Board of Directors of Revlon is required to treat all stockholders (including the Plan) the same and cannot pay a dividend to some, but not all, stockholders.

⁹ Revlon is required under its credit agreement to use the proceeds of a \$110 million equity issuance by Revlon, to be completed on or before March 31, 2006, to promptly reduce its indebtedness. Revlon has determined that a rights offering such as the Stock Rights offering is the most appropriate way for it to fulfill the capital commitment while providing an opportunity for all stock holders of Revlon, including the Plan participants, to retain their *pro rata* ownership in Revlon. Revlon will not be able to timely fulfill its credit agreement commitment if the Stock Rights offering is delayed until prospective exemptive relief is provided.

Class A Common Stock at the time for exercise (in which case an attempt will be made to sell the Stock Rights instead, although the Stock Rights likely will have no value in such a case and thus would expire without value).

Approximately three (3) calendar days before the expiration of the Stock Rights offering, the Trustee will liquidate an amount sufficient to pay a Plan participant's exercise price by selling a pro-rata portion of the amounts held in such participant's various investment funds (other than the Common Stock Fund) and transfer such funds to the subscription agent in order to participate in the Stock Rights offering on behalf of Plan participants who elect to exercise some or all of their Stock Rights. No Stock Rights under the Plan will be exercised before this date. The shares of Class A Common Stock purchased upon the consummation of the Stock Rights offering will be allocated to the accounts of Plan participants as soon as practicable thereafter.

8. In summary, it is represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts; (b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering made available on the same terms available to all shareholders of common stock of Revlon; (c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the Stock Rights offering; (d) The Plan's acquisition of the Stock Rights resulted from an independent act of Revlon as a corporate entity; and (e) The price received by the Plan for the Stock Rights was no less than the fair market value of the Stock Rights on the date of the Stock Rights offering.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer 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:

Khalif 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.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

**Employee Benefits Security
Administration**

[Prohibited Transaction Exemption 2006-07; [Exemption Application No. D-11281] et al.]

**Grant of Individual Exemptions; Harris
Nesbitt Corporation (Harris Nesbitt)**

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

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

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;