

certify compliance with the eligibility requirements of VOCA, and to provide a summary of proposed activities. This information will be aggregated and serve as supporting documentation for the Director's biennial report to the President and to the Congress on the effectiveness of the activities supported by these grants. This request is for an extension of a currently approved reporting instrument, with no revisions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The number of VOCA-funded victim assistance programs varies widely from State to State. A review of information currently available to this Office on the number of active victim assistance programs in 15 states selected for variance in size and population revealed that a State would be responsible for entering subgrant data for as many as 436 programs (California) to as few as 12 programs (District of Columbia).

The estimated time to enter a record via the Grants Management System is three minutes (.05 hour). Therefore, the estimated clerical time can range from 36 minutes to 22 hours, based on the number of records that are entered. It would take 295 hours to enter 5,900 responses electronically [ $5,900 \times .05$  hour].

(6) *An estimate of the total public burden (in hours) associated with the collection:* The current estimated burden is 295 (5,900 responses  $\times$  .05 hour per response = 295 hours). There is no increase in the annual recordkeeping and reporting burden.

If additional information is required contact: Lynn Bryant, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 17, 2008.

**Lynn Bryant,**

*Department Clearance Officer, PRA U.S. Department of Justice.*

[FR Doc. E8-27634 Filed 11-19-08; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review: Comment Request

November 17, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of

Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Amy Hobby on 202-693-4553 (this is not a toll-free number)/e-mail: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Departmental Management (DM), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not toll-free numbers), e-mail:

[OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* International Labor Affairs Bureau.

*Type of Review:* New collection (Request for a new OMB Control Number).

*Title of Collection:* Data Collection for OCFT Program Evaluation.

*OMB Control Number:* 1290-0NEW.

*Affected Public:* Federal Government, Individuals or Households, Businesses or other for-profits, Not-for-profit institutions.

*Total Estimated Number of Respondents:* 490.

*Total Estimated Annual Burden Hours:* 520.

*Description:* This collection will provide critical information to the Office of Child Labor, Forced Labor and Human Trafficking (OCFT) on the impact of its technical cooperation program to combat exploitive child labor. For additional information, see related notice published at 73 FR 19529 on April 10, 2008.

**Darrin A. King,**

*Departmental Clearance Officer.*

[FR Doc. E8-27592 Filed 11-19-08; 8:45 am]

**BILLING CODE 4510-28-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Application Nos. and Proposed Exemptions; Heico Holding Inc. Pension Plan, D-11428; D-11450, Brewster Dairy, Inc. 401(k) Profit Sharing Plan (the Plan); and Starrett Corporation Pension Plan (the Plan), D-11473, et al.]**

#### Notice of Proposed Exemptions

**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 (ERISA or 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.

Heico Holding Inc. Pension Plan (the Plan), Located in Downers Grove, Illinois [Exemption Application Number: D-11428]

#### 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). If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D), and section 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), (D), and (E) of the Code, shall not apply to the proposed sale by the Plan of a non-marketable limited partnership interest (the Interest) in Trident Equity Fund, II, L.P. (the Partnership) to Heico Holding Inc. (the Applicant), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) The Plan pays no commissions, fees or other expenses in connection with the sale;

(c) The terms and conditions of the sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party;

(d) As a result of the sale, the Plan receives the greater of: (i) \$1,050,000; (ii) The value of the Interest as determined by the General Partner of the Partnership and reported on the most recent quarterly account statements of the Partnership available at the time of the sale; (iii) The fair market value of the Interest as determined on the date of the sale by a qualified, independent appraiser; or (iv) The total amount of the Plan's contributions to the Partnership made on or after January 21, 2005 (i.e., the Plan's investment cost basis in the Interest); and

(e) Upon Plan termination, it is determined that the Plan is overfunded.

#### Summary of Facts and Representations

1. The Plan is a defined benefit pension plan sponsored by Heico Holding Inc. (the Applicant), which is headquartered at 2626 Warrenville Road, Downers Grove, Illinois. The Applicant is a company that specializes in purchasing interests in distressed and under-performing businesses from a variety of industries (including heavy equipment, telecommunications, plastics, food production, and commercial construction) with the purpose of improving their financial condition. As of December 31, 2006, the Plan had a combined total of

approximately 2,848 participants and beneficiaries, and total net assets of approximately \$84,664,677. The Applicant represents that the Plan was overfunded by approximately \$2,000,000 as of June 1, 2007. The administrator of the Plan is Daniel M. Schramm (Schramm), and an Investment Committee (the Committee) comprised of five members (Mr. Schramm, Michael E. Heisley, E.A. Roskovensky, Stanley H. Meadows, and Larry G. Wolski) possesses discretionary authority under the Plan to select and manage the Plan's investments.

2. The Applicant represents that one of the current assets of the Plan is a partnership interest (the Interest), which was acquired on January 21, 2005 in accordance with the terms of both a subscription agreement (Deed of Adherence) and a partnership agreement (Partnership Agreement) between the Plan and Trident Equity Fund, II, L.P. (the Partnership). The Applicant states that the Partnership is domiciled in the Cayman Islands. The Applicant further represents that the limited partnership interests offered to investors by the Partnership are not publicly traded. According to the Applicant, the investment objective of the Partnership is to generate high absolute returns by investing the limited partners' capital in a portfolio consisting primarily of private and listed investments in small and medium sized companies in the United Kingdom and to distribute realized gains to the limited partners. Specifically, the intended underlying investments of the Partnership are concentrated on leveraged buyouts, expansion capital, consolidation, public-to-private and pre-IPO investments in a range of non-technology sectors in the United Kingdom. The Applicant further represents that the General Partner of the Partnership, North Atlantic Value, Ltd., of Hamilton, Bermuda, does not provide investment advice to the Plan or otherwise act as a fiduciary with respect to the Plan, and that the General Partner and the Partnership itself are independent of both the Plan and the Applicant.

3. The Applicant represents that pension plan assets from the United States do not comprise 20% or more of the assets of the Partnership, and that the underlying assets of the Partnership do not constitute plan assets within the meaning of 29 CFR 2510.3-101. The Applicant states that, pursuant to Section 1.5 of the Partnership Agreement, the ordinary term of the Plan's investment as a limited partner in the Partnership is ten (10) years from January 21, 2005. The Applicant also

represents that the Plan's investment in the Partnership as of December 31, 2007 amounted to approximately 1.2% of the Plan's total assets.

4. The Applicant represents that the Plan became a limited partner of the Partnership as of January 21, 2005, the effective date of the Partnership Agreement. The Applicant states that the terms and conditions of the Plan's entry into the Partnership were the same as those required of other limited partners.<sup>1</sup>

The Applicant represents that, pursuant to the terms of the Partnership Agreement, the Plan made three separate installments of capital contributions totaling \$447,427.51 to the Partnership after January 21, 2005: (1) On May 16, 2005, the Plan contributed \$185,530 to the Partnership; (2) On November 5, 2005, the Plan contributed \$173,915.01 to the Partnership; and (3) On December 21, 2005, the Plan contributed \$87,982.50 to the Partnership. The Applicant states that no further capital contributions were made by the Plan to the Partnership after December 21, 2005, and that no distributions were made by the Partnership to the Plan.

5. The Applicant represents that, prior to June 1, 2007, the benefits under the plan were "frozen", with different freeze dates applying to different groups of employees. According to the Applicant, the effective date of the termination of the Plan is June 1, 2007. In connection with the termination, the Applicant represents that the Company has submitted information relating to the termination to the Pension Benefit Guaranty Corporation (PBGC), and has also sought a favorable determination letter from the Internal Revenue Service (IRS). After the IRS and PBGC approvals are received and all assets of the Plan have been liquidated, the Applicant states, final distribution of pension benefits to participants and beneficiaries will ensue.

The Applicant has contracted to purchase a group annuity contract with Transamerica Life Insurance Company (Transamerica) of Los Angeles,

<sup>1</sup> The Applicant further represents that Heico Holding Inc., the Plan sponsor, also holds an interest in Trident Equity Fund, II, L.P. In this connection, section 404 of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making decisions on behalf of a plan. Accordingly, the Department is not expressing an opinion herein as to whether any investment decisions or other actions taken by the Committee regarding the acquisition and subsequent holding of the Interest in the Partnership by the Plan would be consistent with, or in violation of, its fiduciary obligations under Part 4 of Title I of the Act.

California to assume the liability for benefit payments to participants; The effective date of this contract was May 2, 2007. To fund the purchase of the group annuity contract, to pay associated administrative expenses, and to allow the winding up of the Plan and trust, the Applicant represents that all of the remaining assets of the Plan (including the Interest) must be converted to cash; such a liquidation would necessarily entail a transfer of the Interest from the Plan.

6. The Applicant represents that, pursuant to Section 14.2.1 of the Partnership Agreement, a limited partner cannot assign or transfer its Interest in the Partnership without the prior written consent of the General Partner of the Partnership.

The Applicant states that, pursuant to section 14.2.1 of the Partnership Agreement, the General Partner possesses sole and absolute discretion regarding transfers of Interests by limited partners. The Applicant represents that this same provision of the Partnership Agreement allows a transfer of a limited partner's interest in the Partnership only to the General Partner or to an associate of the transferring limited partner. The Applicant represents that the General Partner considers Heico Holding Inc., the sponsor of the Plan, as an associate to whom a transfer of the Plan's Interest in the Partnership may be made under the foregoing provision of the Partnership Agreement. The Applicant also maintains that a sale of the Interest to the General Partner, rather than to Heico Holding Inc., could only occur at a price that would represent a significant discount. The Applicant represents that Mr. Schramm has been informed by the General Partner that it will only permit the Plan to sell its Interest in the Partnership to Heico Holding Inc.

7. The Applicant represents that the General Partner has stated that there is no requirement that the transfer from one limited partner to another be at fair market value.<sup>2</sup> The Applicant also represents that the General Partner has confirmed that the proportionate share of an investor's interests in the Partnership as shown in the unaudited financial statements furnished quarterly

<sup>2</sup> Under section 5.3(c) of the Partnership Agreement, the General Partner is authorized generally to take any action the General Partner considers appropriate for the protection of the assets of the Partnership. Section 8.5.6 of the Partnership Agreement also provides that, in the event the Partnership purchases the Interest of any limited partner, the valuation of such Interest shall be made by the General Partner in good faith in consultation with the auditors of the Partnership, Ernst & Young.

to limited partners is, in the opinion of the General Partner, an accurate representation of the value of the Interest as of the dates of the financial statements. The Applicant further states that this value is used by the General Partner for all transactions relating to the value and the Interest for purchases, sales and calculation of the investment management fee, and was applied consistently to all limited partners. The Applicant also represents that, according to the Plan's most recent statement of account prepared by Northern Trust Company (Northern Trust) of Chicago, Illinois, the Plan's custodial trustee, the value of the Plan's Interest in the Partnership as of December 31, 2007 was \$715,146.93. The same statement from Northern Trust also indicated that, as of December 31, 2007, the Plan's cumulative return on the Interest since the inception of its investment in the Partnership was \$267,719.42.

8. In July of 2008, the Committee retained Comstock Valuation Advisors, Inc. (Comstock Advisors) of Wheaton, Illinois, to determine the fair market value of the Interest. On August 15, 2008, Comstock Advisors, on behalf of the Plan, prepared an appraisal report concerning the value of the Interest for the Committee. Comstock Advisors represents that it is a national valuation firm that specializes in customized business appraisals, including the valuation of limited partnership interests for which no readily-ascertainable price is available. In the July 26, 2008 engagement letter accompanying its appraisal report, Comstock Advisors represents that it is independent of, and unrelated to, the Applicant, and acknowledges that the appraisal report was prepared as part of the Applicant's exemption application. Comstock Advisors also represents in the engagement letter that it derives less than 1% of its annual income from the Applicant. The administrator of the Plan, Mr. Dan Schramm, represents that all of the fees and costs associated with appraising the value of the Interest shall be borne by the Applicant rather than the Plan.

A supplement to the appraisal report further states that the Comstock Advisors managing director who personally conducted the appraisal of the Interest, Mr. James E. Ahern, has been employed full-time as a valuation professional since 1986. The supplement states that Mr. Ahern has prior experience in valuing the securities of investment vehicles such as limited liability companies and limited partnerships, as well as experience in valuing certain investment interests

lacking readily ascertainable market values that are held by employee benefit plans. The supplement also represents that Mr. Ahern is an accredited senior appraiser with the American Society of Appraisers.

9. In its engagement letter, Comstock Advisors advised that the fair market measurement utilized in the appraisal would assume an exit price in an orderly, hypothetical transaction by market participants in the Interest's principal or most advantageous market. In this connection, Comstock Advisors stated that, because the Partnership's equity interests are not publicly traded, it would utilize the applicable fair value measurement described in Statement No. 157 issued by the Financial Accounting Standards Board (FASB) concerning the valuation of an asset for which (i) there is little, if any, market activity as of the valuation date, (ii) there are no independent, observable pricing data inputs available, and (iii) there are restrictions placed by management on its sale or use.

In an appraisal report issued on August 15, 2008, Comstock Advisors determined that the Interest had a fair market value of \$1,050,000 as of December 31, 2007, representing approximately 1.42% of the outstanding partnership interests of the Partnership. In arriving at this valuation, Comstock Advisors did not use the income valuation approach because the future income of the Partnership could not be reasonably estimated. The market approach to valuation (which examines actual sales of similar assets to estimate value) also was not used because, according to the appraiser, there are no publicly traded companies comparable to the Partnership. Comstock Advisors determined that the net asset valuation of the Interest (which was discounted for the lack of marketability and lack of investor control associated with the Interest) was the appropriate valuation methodology, given the Partnership's character as an investment holding company. A net asset valuation reflects the amount that can be realized if the company's assets are sold at their individual fair market values. Because Comstock Advisors noted that the Partnership has generated very high returns, it applied a 10% discount factor to the adjusted net asset value of the Interest, which produced a higher value for the Interest than the value reported as of December 31, 2007 by Northern Trust.

10. The Applicant requests an administrative exemption from the Department to purchase the Interest from the Plan. The Applicant states that the proposed sale of the Interest by the

Plan to the Applicant would be a one-time transaction for cash, and that no commissions or other expenses would be charged to the Plan in connection with the sale. The Applicant represents that the proposed transaction is administratively feasible because, under the Partnership Agreement, the sale of the Interest from the Plan to the Applicant is the only permissible transfer that can be accomplished without a significant discounting of the value of the Interest. The Applicant also represents that the proposed transaction is in the interests of the Plan and its participants and beneficiaries because, in the absence of the proposed sale, the necessary liquidation of the Plan's remaining assets incident to the termination of the Plan will be delayed. The Applicant further represents that the proposed transaction is protective of the interests of the Plan's participants and beneficiaries because the Plan will receive an amount greater than the Plan's cumulative capital contributions to the Partnership. If the Department grants the proposed exemption, an updated appraisal of the Interest will be performed as of the date of the sale by a qualified, independent appraiser.

11. In summary, it is represented that the proposed transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) The Plan pays no commissions, fees or other expenses in connection with the sale; (c) The terms and conditions of the sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party; (d) As a result of the sale, the Plan receives the greater of: (i) \$1,050,000; (ii) The value of the Interest as determined by the General Partner of the Partnership and reported on the most recent quarterly account statements of the Partnership available at the time of the sale; (iii) The fair market value of the Interest as determined on the date of the sale by a qualified, independent appraiser; or (iv) The total amount of the Plan's contributions to the Partnership made on or after January 21, 2005 (i.e., the Plan's investment cost basis in the Interest); and (e) Upon Plan termination, it is determined that the Plan is overfunded.

*Notice to Interested Persons:* A copy of this notice of the proposed exemption (the Notice) shall be given to all interested persons in the manner agreed upon by the Applicant and the Department within fifteen (15) days of the date of its publication in the **Federal Register**. The Department must receive all written comments and requests for a

hearing no later than forty-five (45) days after publication of the Notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Judge of the Department, telephone (202) 693-8339. (This is not a toll-free number).

Brewster Dairy, Inc. 401(k) Profit Sharing Plan (the Plan)  
Located in Brewster, Ohio  
[Application No. D-11450]

#### **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 sections 406(a)(1)(A) and (D), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the sale (the Sale) by the Plan of 2.5 limited partnership units (the Units) in the Heartland California Clayton Limited Partnership (the Partnership) to Brewster Dairy, Inc. (Brewster), the Plan's sponsor and a party in interest with respect to the Plan, for the greater of: (1) \$57,000; (2) the net proceeds for the Units in the event the Partnership sells its real estate (the Property) to a third party; or (3) the net proceeds from foreclosure for the Units in the event the Property is foreclosed to pay back real estate taxes, provided the following conditions are satisfied:

(a) The Sale of the Units is a one-time transaction for cash;

(b) The Plan pays no commissions, fees or other expenses in connection with the Sale;

(c) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party;

(d) The fair market value of the Units on the date of the Sale is determined by a qualified independent appraiser;

(e) The Plan fiduciaries will determine whether it is in the best interest of the Plan to go forward with the Sale, will review and approve the methodology used in the appraisal that is being relied upon, and will ensure that the methodology is applied by a qualified, independent appraiser in determining the fair market value of the Units as of the date of the Sale; and

(f) The proceeds from the Sale of the Units to Brewster will be allocated only to the participants who are defined in the Consent Order and Judgment (the COJ, File No. 5:98CV744, July 1, 1999)

entered by the United States District Court for the Northern District of Ohio Eastern Division (the Court).

### Summary of Facts and Representations

1. The Brewster Dairy, Inc. 401(k) Profit Sharing Plan (the Plan) is an individual account plan established by Brewster Dairy, Inc. (Brewster) on April 1, 1965. As of June 30, 2007, the Plan had 259 participants, and had total assets of \$15,013,748. Brewster, headquartered in Brewster, Ohio, is the largest manufacturer of all natural Swiss cheese in the United States.

2. In December 1990, the Plan purchased 2.5 limited partnership units (the Units) in the Heartland California Clayton Limited Partnership (the Partnership), a predevelopment real estate limited partnership originally consisting of 139 acres of land (the Property). The Plan made an initial capital contribution of \$243,952 to the Partnership in 1990, and made additional contributions during the years through 1996. In all, the Plan made payments to the Partnership totaling approximately \$749,000, which would represent less than 5% of the Plan's current assets. The applicant represents that the Plan has not paid any of the costs related to the Units since they were acquired. The costs of appraisals, reports, etc. have all been paid by Brewster.

3. In 1997, the Department, in a routine audit of the Plan, determined that the purchase of the 2.5 Units of the Partnership was a violation of the fiduciary responsibility provisions of the Act. The Department filed suit in this matter on May 29, 1998. The parties agreed to settle the case, and a Consent Order and Judgment (the COJ) was entered by the Court on July 1, 1999. On December 4, 1999, Brewster complied with the COJ and allocated the agreed amount, \$333,333, to the individual accounts of such persons (other than defendants Fritz Leeman, Walter Leeman and Tom Riegler)<sup>3</sup> who were Plan participants on March 31, 1999 and held a portion of the Plan's investment in the Units as an asset in their individual accounts.

4. The applicant represents that due to zoning restrictions and the discovery of landslides on the Property, the value of the Units has dropped significantly since the Plan purchase date.<sup>4</sup> Timothy McDaniel, CPA and ASA, an accountant experienced in business valuations and

a co-director of Rea Strategic Solutions, stated on June 23, 2008 that the Units had a fair market value of \$57,000. Mr. McDaniel based his valuation of the Units on an appraisal of the fair market value of the Property performed by Ms. Marian Huntoon, SRA, a California Certified General Appraiser in Berkeley, California. Ms. Huntoon determined that the Property had a fair market value of \$780,000 as of May 10, 2008. The applicant represents that the Plan fiduciaries will determine whether it is in the best interest of the Plan to go forward with the Sale, will review and approve the methodology used in the appraisal that is being relied upon, and will ensure that the methodology is applied by a qualified, independent appraiser in determining the fair market value of the Units as of the date of the Sale.

5. By letter dated August 25, 2008, the Partnership notified the fiduciaries of the Plan that due to delinquent real estate taxes, the Partnership anticipated receiving a foreclosure notice in December 2008. The Partnership further notified the Plan that an unrelated adjacent property owner, Clayton Estates, LLC has contacted the Partnership and offered to purchase the Property for \$65,000. In its August 25, 2008 letter, the Partnership sought approval from the Plan to negotiate and close on a sale of the Property at a price not less than \$65,000.

6. The applicant has requested a prohibited transaction exemption for the Sale of the Units by the Plan to Brewster, in a cash Sale, for a price not less than \$57,000, the appraised value of the Units as determined by Mr. McDaniel. The applicant represents that in the event the Partnership sells its real estate to a third party, if the net proceeds for the Units exceeds \$57,000, that will be the Sale price for the subject transaction. Similarly, the applicant represents that in the event the Property is foreclosed to pay back real estate taxes, if the net proceeds from that foreclosure for the Units exceeds \$57,000, that will be the Sale price for the subject transaction. In the calculation of net proceeds, the Plan will be treated the same as all other limited partners in the Partnership.

7. The applicant represents that when Brewster complied with the COJ in 1999 and allocated the agreed amount, \$333,333, to the individual accounts of such persons (other than defendants Fritz Leeman, Walter Leeman and Tom Riegler) who were Plan participants on March 31, 1999 and held a portion of the Plan's investment in the Units as an asset in their individual accounts, Brewster also filed with the Court a

schedule showing how the allocation was calculated. A separate trust was established to hold the Units and the trustees have kept track of those participants who received an allocation. In fact, a majority of those participants are still employed by Brewster. The applicant represents that if the exemption proposed herein is granted, the proceeds of the Sale will be allocated on a pro rata basis in accordance with the terms of the COJ, to the same participants and in the same manner as was the 1999 payment. The three Plan fiduciaries will not receive any allocation. If for some reason Brewster is unable to locate a participant or a deceased participant's beneficiary, Brewster would use one of the Federal Government Locator services. If, after a reasonable amount of time, Brewster is still unable to locate a participant or beneficiaries, Brewster would then reallocate the missing participant's allocation to the other participants set forth above, using each participant's percentage ownership calculated excluding the missing participant's percentage.

8. The applicant represents that the transaction would be in the best interests of the Plan because the Plan would be relieved of an illiquid asset that is difficult and expensive to value. After the Sale, the annual valuation would no longer be required, and the cash proceeds resulting from the Sale will be added to the appropriate participant accounts per the COJ. After the Sale, the Plan would be relieved of keeping track of such participants, which is both time-consuming and expensive. The fiduciary responsibility of monitoring the Units and the Partnership would also be removed.

9. In summary, the applicant represents that the subject transaction satisfies the criteria contained in section 408(a) of the Act because: (a) The Sale of the Units is a one-time transaction for cash; (b) The Plan will pay no commissions, fees or other expenses in connection with the Sale; (c) The terms of the transaction will be at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (d) The fair market value of the Units on the date of the Sale will be determined by a qualified independent appraiser who is unrelated to Brewster and the Plan's current fiduciaries; (e) The Plan fiduciaries will determine whether it is in the best interest of the Plan to go forward with the Sale, will review and approve the methodology used in the appraisal that is being relied upon, and will ensure that the methodology is applied by a qualified, independent

<sup>3</sup> These three individuals were the Plan fiduciaries responsible for the acquisition of the Units by the Plan.

<sup>4</sup> The Department in this proposed exemption is not opining on the prudence of the Plan's continued holding of the Units after the date of the COJ.

appraiser in determining the fair market value of the Units as of the date of the Sale; (f) The Sale price for the Units will be the greater of: (1) \$57,000; (2) the net proceeds for the Units in the event the Partnership sells its real estate to a third party; or (3) the net proceeds from foreclosure for the Units in the event the Property is foreclosed to pay back real estate taxes; and (g) The proceeds from the Sale will be allocated only to the Plan participants who are defined in the COJ.

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

Starrett Corporation Pension Plan (the Plan), Located in New York, NY [Exemption Application Number: D-11473]

### 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). 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 the proposed cash sale (the Sale) by the Plan to the Starrett Corporation (the Applicant), a party in interest with respect to the Plan, of a \$25,000 face amount 7.797% secured senior note (the Security) issued by the Osprey Trust (the Trust), an Enron related entity, provided that the following conditions are satisfied:

(a) The Sale is a one-time transaction for cash;

(b) The Plan pays no commissions, fees or other expenses in connection with the Sale;

(c) The terms and conditions of the Sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party;

(d) The value of the Security is determined by Interactive Data Systems, a qualified, unrelated entity; and

(e) The Plan is a defined benefit plan which has been terminated and all benefits have been paid out to Plan participants and beneficiaries.

### Summary of Facts and Representations

1. The Plan is a defined benefit pension plan sponsored by the Applicant, which is headquartered at 70 East 55th Street New York, NY 10022-3222. The Applicant represents that the

Plan was terminated in 2006, and that all benefits have been paid to participants and beneficiaries; therefore the Plan currently has no remaining participants or beneficiaries. The Plan holds residual assets totaling \$17,348.25. These residual assets are comprised of two components: (1) Cash equivalents totaling \$12,098.25; and (2) the Security, whose value as of April 11, 2008, was stated as \$5,250.00 by the Plan's broker-dealer, UBS Financial Services, Inc., (UBS).

2. The Applicant is a construction manager or general contractor of buildings, mainly in the metropolitan New York City area. Its services also include initial planning and development; property acquisition, financing, and management; consulting; and related services. Through its subsidiary, Levitt Corporation, the company constructs single-family homes and garden apartments in the United States and Puerto Rico. Through its HRH subsidiary, the company supplies construction services and acts as a manager for major construction projects.

3. The Plan acquired the Security on September 28, 2000, for \$25,000 pursuant to an Eligible Rule 144A Offering.<sup>5</sup> The Applicant proposes that the Plan sell the Security, which matured on January 15, 2003, to the Applicant for a one time payment of \$5,250 in cash. The Plan will pay no commissions, fees or other expenses in connection with the Sale. The Security has been in default for a number of years in connection with the Enron bankruptcy. The cash price to be paid will be the value of the Security as set forth on a monthly statement issued to the Plan by UBS. UBS determined the value of the Security based on information from an independent pricing service, Interactive Data Systems Inc.

4. The Applicant represents that UBS has stated that the Security is not traded, and the Applicant further

<sup>5</sup> SEC Rule 10f-3(a)(4), 17 CFR 270.10f-3(a)(4), states that the term "Eligible Rule 144A Offering" means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A thereunder [§ 230.144A of this chapter], or rules 501-508 thereunder [§§ 230.501-230-508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

represents that efforts to sell the Security to an unrelated third party have been unsuccessful. The Applicant represents that none of the Plan's residual assets will revert to the Applicant, and that subsequent to the Sale these assets will be used to pay the Plan's unrelated service providers amounts due in connection with the winding down and termination of the Plan.

In summary, it is represented that the proposed transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because: (a) The Sale is a one-time transaction for cash; (b) The Plan pays no commissions, fees or other expenses in connection with the Sale; (c) The terms and conditions of the Sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party; (d) The value of the Security was determined by Interactive Data Systems, a qualified and unrelated party; and (e) The Plan is a defined benefit plan which has been terminated and all benefits have been paid out to Plan participants and beneficiaries.

*Notice to Interested Persons:* The Applicant represents that the Plan has been terminated and that all participants and beneficiaries have been paid their benefits in full. Thus, the only practical means of notifying terminated plan participants is by publication of the proposed exemption in the **Federal Register**. Therefore, the Department must receive all written comments and requests for a hearing no later than forty-five (45) days after publication of the Notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Buyniski of the Department, telephone (202) 693-8545. (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 12th day of November 2008.

**Ivan Strasfeld,**

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

[FR Doc. E8-27616 Filed 11-19-08; 8:45 am]

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Prohibited Transaction Exemptions 2008-13 Through 2008-14; Grant of Individual Exemptions Involving: Banc One Investment Advisors Corporation and J.P. Morgan Investment Management Inc. (JPMIM) and Their Affiliates (collectively JPMorgan), PTE 2008-13; and Fidelity Brokerage Services, D-11424, LLC (FBS), PTE 2008-14

**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 (ERISA or 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;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Banc One Investment Advisors Corporation (BOIA) and J.P. Morgan Investment Management Inc. (JPMIM) and their Affiliates (collectively, JPMorgan). Located in New York, New York. [Prohibited Transaction Exemption 2008-13; Application No. D-11263]

#### Exemption

##### Section I—Retroactive Exemption for the Acquisition, Holding, and Disposition of JPMorgan Chase & Co. Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of January 14, 2004, until November 20, 2008, to the acquisition, holding, and disposition of the common stock of JPMorgan Chase & Co. (the JPM Stock) by Index and Model-Driven Funds managed by JPMorgan, provided that the following conditions and the general conditions in Section III are satisfied:

(a) The acquisition or disposition of the JPM Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based.

(b) The acquisition or disposition of the JPM Stock does not involve any agreement, arrangement, or understanding regarding the design or operation of the Fund acquiring the JPM Stock which is intended to benefit JPMorgan or any party in which JPMorgan may have an interest.

(c) All aggregate daily purchases of JPM Stock by the Funds do not exceed, on any particular day, the greater of:

(1) Fifteen (15) percent of the aggregate average daily trading volume for the JPM Stock occurring on the applicable exchange and automated trading system (as described in paragraph (d) below) for the previous five business days, or

(2) Fifteen (15) percent of the trading volume for the JPM Stock occurring on the applicable exchange and automated trading system on the date of the transaction, both as determined by the best available information for the trades occurring on that date or dates.

(d) All purchases and sales of JPM Stock are either (i) Entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of JPMorgan and is either registered under the Securities Exchange Act of 1934 (the 1934 Act), and thereby subject to regulation by the Securities and Exchange Commission (SEC), (ii) effected on an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of JPMorgan that is subject to regulation by the SEC, or an automated trading system operated by a recognized U.S.