

electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on August 19, 2010, based on a complaint filed by Vizio, Inc. of Irvine, California. 75 FR 51285-86 (August 19, 2010). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flat panel digital televisions and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,703,887 ("the '887 patent"); 5,233,629 ("the '629 patent"); 5,511,096; 5,621,761; 5,745,522; 5,511,082; and 5,396,518. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents: LG Electronics, Inc. of South Korea and LG Electronics, Inc. of Englewood Cliffs, New Jersey.

On November 24, 2010, the Commission issued notice of its determination not to review the ALJ's ID terminating the investigation as to claims 15-21 of the '887 patent, and all asserted claims of the '629 patent, based on withdrawal of these '887 patent claims and the '629 patent.

On January 18, 2011, complainant and respondents jointly moved to terminate the investigation on the basis of a settlement agreement. The Commission investigative attorney filed a response in support of the motion.

The ALJ issued the subject ID on January 26, 2011, granting the motion for termination. He found that the motion for termination satisfies Commission rule 210.21(b). He further found, pursuant to Commission rule 210.50(b)(2), that termination of this investigation by settlement agreement is in the public interest. No party petitioned for review of the ID. The Commission has determined not to review the ID, and the investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

By order of the Commission.

Issued: February 11, 2011.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. 2011-3538 Filed 2-16-11; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Public Availability of Department of Justice FY 2010 Service Contract Inventory

**AGENCY:** Justice Management Division, Department of Justice.

**ACTION:** Notice of Public Availability of FY 2010 Service Contract Inventories.

**SUMMARY:** In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111-117), the Department of Justice is publishing this notice to advise the public of the availability of the FY 2010 Service Contract inventory. This inventory provides information on service contract actions over \$25,000 that were made in FY 2010. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf>. The Department of Justice has posted its inventory and a summary of the inventory on the Department of Justice Senior Procurement Executive homepage at the following link: <http://www.justice.gov/jmd/pe/service-contract-inventory.html>.

#### FOR FURTHER INFORMATION CONTACT:

Questions regarding the service contract inventory should be directed to Dennis R. McCraw in the Justice Management Division, Management and Planning Staff, Procurement Policy and Review Group at (202) 616-3754 or [dennis.mccraw@usdoj.gov](mailto:dennis.mccraw@usdoj.gov).

**Michael H. Allen,**

*Deputy Assistant Attorney General, Policy Management and Planning, U.S. Department of Justice, Justice Management Division.*

[FR Doc. 2011-3561 Filed 2-16-11; 8:45 am]

**BILLING CODE 4410-DB-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Exemptions From Certain Prohibited Transaction Restrictions

**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). This notice includes the following: D-11591, Citigroup Inc. and its affiliates (Citigroup), the Citigroup 401(k) Plan, the Citibuilder 401(k) Plan for Puerto Rico (the Citibuilder Plan and collectively with the Citigroup 401(k) Plan, the Participant Directed Plans), the Citigroup Pension Plan (and collectively with the Participant Directed Plans, the Plans) (the Applicants), PTE 2011-04; and D-11592, TD Ameritrade, Inc. (TD Ameritrade), 2011-05.

**SUPPLEMENTARY INFORMATION:** 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.

**Citigroup Inc. and Its Affiliates (Citigroup), the Citigroup 401(k) Plan, the Citibuilder 401(k) Plan for Puerto Rico (the Citibuilder Plan and Collectively With the Citigroup 401(k) Plan, the Participant Directed Plans), the Citigroup Pension Plan (and Collectively With the Participant Directed Plans, the Plans) (the Applicants), Located in Greenwich, CT**

*[Prohibited Transaction Exemption 2011-04; Exemption Application No. D-11591]*

## Exemption

### Section I: Transactions

(a) The restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act<sup>1</sup> shall not apply, effective June 22, 2009 (the Record Date) and until June 10, 2012, to:

(1) The acquisition of stock rights (the Rights) by certain plans, described below in Section I(a)(1)(A) through (C) of this exemption, in connection with holding shares of common stock of Citigroup Inc. (Citigroup Stock) on the Record Date established pursuant to an offering of such Rights (the Offering) in accordance with the Tax Benefits Preservation Plan (the Rights Plan) by Citigroup Inc. (Citigroup), a party in interest with respect to the following plans, and/or the acquisition of Citigroup Stock and the attached Rights by the plans in the future pursuant to the Offering:

(A) The Citigroup 401(k) Plan (the Citigroup 401(k) Plan);

(B) The Citibuilder 401(k) Plan for Puerto Rico (the Citibuilder Plan and collectively with the Citigroup 401(k) Plan, the Participant Directed Plans); and

(C) The Citigroup Pension Plan (the Citigroup Pension Plan and collectively

with the Participant Directed Plans, the Plans);

(2) The holding of the Rights by the Plans until the date the Plans exercise or otherwise dispose of the Rights or the expiration of such Rights in accordance with the terms and conditions of the Rights Plan, whichever is earlier; and

(3) The exercise or other disposition of the Rights by the Plans; provided that the conditions in Section II of this exemption, as set forth below, are satisfied.<sup>2</sup>

(b) The sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(A) through (E) shall not apply, effective June 22, 2009, to the acquisition of the Rights by the Plans, described above in Section I(a)(1)(A), and Section I(a)(1)(C) of this exemption;<sup>3</sup> provided that the conditions in Section II of this exemption, as set forth below, are satisfied.

### Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described herein and as set forth in the application file and upon compliance with the conditions, as set forth in this exemption.

(a) The acquisition by each of the Plans of the Rights occurred or will occur in connection with the June 22, 2009 Offering made available by Citigroup on the same terms to all shareholders of the common stock of Citigroup (the Citigroup Stock), including the acquisition of the Rights at no cost to the Plans;

(b) The acquisition of the Rights by the Participant Directed Plans on the Record Date resulted from an independent act of Citigroup as a corporate entity. The acquisition of the

<sup>2</sup> The Department's determination to grant relief for these transactions should not be viewed as an endorsement of the Rights Plan, nor is it offering any views as to whether such transactions satisfy any other requirements of ERISA, the Code or other relevant statutory provisions. Rather, this exemption is designed to place the Plans and their participants and beneficiaries in the same position as other holders of Citigroup Stock with respect to the acquisition of the Rights and to prevent the possible dilution of the Plans' investment in the Citigroup Stock.

<sup>3</sup> The Applicants represent that, because the fiduciaries for the Citibuilder 401(k) Plan for Puerto Rico have not made an election under section 1022(i)(2) of the Act, whereby such plan would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the U.S. Code, jurisdiction under Title II of the Act does not apply. Accordingly, the Applicant is not seeking any relief for the prohibitions, as set forth in Title II of the Act, for the acquisition of the Rights by the Citibuilder Plan.

Citigroup Stock and the attached Rights by the Plans in the future will occur either at the direction of individual participants (in the case of the Participant Directed Plans), at the direction of an Independent Fiduciary (in the case of the Citigroup Pension Plan), or in connection with in-kind contributions to the Citigroup Pension Plan by Citigroup of Citigroup Stock and the attached Rights (a Stock/Right Contribution), in each case incidental to, and as a direct consequence of, the purchase or other acquisition of Citigroup Stock. All holders of Citigroup Stock, which include the Rights (other than an Acquiring Person, as defined in the Rights Plan), including the Plans, were, and will continue to be, treated in the same manner with respect to the acquisition of the Rights;

(c) All shareholders of Citigroup Stock, including the Plans acquired, or will acquire, the same proportionate number of Rights based on the number of shares of Citigroup Stock held by such shareholders, including the Plans;

(d) The acquisition of the Rights by the Participant Directed Plans was made, or will be made, pursuant to provisions of each such plan for individually-directed investment of participant accounts;

(e) All decisions regarding the Rights that will be made by the Participant Directed Plans will be made in accordance with the provisions of such Participant Directed Plans for individually-directed investment of participant accounts by the individual participants whose accounts in each such Participant Directed Plan acquired the Rights in connection with the Offering, and if no instructions are received, the Rights will expire in accordance with the terms and conditions of the Rights Plan;

(f) All decisions regarding the Citigroup Stock and the attached Rights will be made on behalf of the Citigroup Pension Plan by an Independent Fiduciary acting as an investment manager. Such Independent Fiduciary will have sole discretionary responsibility relating to the acquisition, holding, ongoing management and disposition of the Citigroup Stock and the attached Rights. The Independent Fiduciary will determine, before taking any action regarding the Citigroup Stock and the attached Rights, that each such action is in the interest of the Citigroup Pension Plan.

(g) To the extent the Citigroup board of directors exercises its rights under the Offering to redeem the Rights at the redemption price set forth in the Offering, all shareholders of Citigroup

<sup>1</sup> For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Stock will be treated the same, including the Plans; and

(h) The acquisition of the Rights as a result of a Stock/Right Contribution by Citigroup to the Citigroup Pension Plan shall result from a determination by Citigroup as a corporate entity.

(i) Neither the Participant Directed Plan participants nor the Citigroup Pension Plan will pay any fees or commissions in connection with the exercise of the Rights other than the aggregate Purchase Price with respect to the Rights then being exercised and an amount equal to any applicable transfer tax or other governmental charge.

### Section III: Definition

The term "Independent Fiduciary" means an investment manager, as described in section 3(38) of the Act, that is:

(a) Independent of, and unrelated to, Citigroup Inc. and its affiliates (Citigroup), and

(b) Appointed to act on behalf of the Citigroup Pension Plan for the purposes described in Section II.(f) above.

For purposes of this exemption, a fiduciary will not be deemed to be independent of, and unrelated to, Citigroup if: (i) Such fiduciary directly or indirectly, controls, is controlled by, or is under common control with Citigroup; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that it may receive compensation for acting as an independent fiduciary from Citigroup in connection with the transactions described herein, if the amount or payment of such compensation is not contingent upon, or in any way affected by such fiduciary's decision; and (iii) more than 5 percent of such fiduciary's annual gross revenue in its prior tax year will be paid by Citigroup in the fiduciary's current tax year.

**DATES: Effective Date:** This exemption is effective as of June 22, 2009, the date of the announcement of the Offering and will expire on June 10, 2012.

### Written Comments

The Notice of Proposed Exemption, published in the October 6, 2010 issue of the **Federal Register** (75 FR 61947), invited all interested persons to submit comments on the Proposed Exemption and/or to request that a public hearing be held. In response to the solicitation of comments from interested persons, the Department received a December 6, 2010 comment letter on behalf of Citigroup (the Citigroup Comment) and comments from several other interested persons. None of the comments

requested that a public hearing be held on the Proposed Exemption. The Citigroup Comment responded to the comments received from the other interested persons, provided further information on the exemption transactions and requested modification of the definition of Independent Fiduciary in the Proposed Exemption.

The Citigroup Comment notes that several participants in the Plans provided comments to the Department and that two of these participants simply voiced a general objection to the Proposed Exemption, one without providing any rationale and the other appearing to question Citigroup's treatment of its employees generally. The Applicants stated that these comments are not relevant to whether the proposed exemption is in the interests of the Plans and their participants and beneficiaries and whether it should be granted. The Applicants believe that granting the proposed exemption is in the interests of the Plans and their participants and beneficiaries. The Applicants note that another participant objected on the basis that the participant believed that the Proposed Exemption was unclear as to its scope and purpose and that Citigroup Stock was an inappropriate investment for a pension fund. Two participants shared the sentiment that granting the exemption would represent a further loosening of regulatory restrictions. The last participant objected on the grounds that the Proposed Exemption would permit Citigroup to make future contributions to the Citigroup Pension Plan in Citigroup Stock rather than cash and believed that the Independent Fiduciaries should have the right to sell the shares of Citigroup Stock.

The Applicants assert that the Proposed Exemption permits the Plans to acquire the Rights as opposed to the underlying Citigroup Stock and that the purpose of the Proposed Exemption is not to determine whether acquisition of Citigroup Stock (including an acquisition as a result of a contribution in-kind to one or more of the Plans by Citigroup) is in the interests of the Plans, nor is the purpose to authorize or approve any such acquisition of Citigroup Stock. The Applicants, in the Citigroup Comment state:

While the Plans would not be permitted to acquire, hold or dispose of Citigroup Stock if the requested exemption were not granted, this is merely because the Rights, while they technically may be a separate 'security' under Section 3(20) of ERISA, are not severable from Citigroup Stock until they become exercisable. The analysis as to whether the acquisition, holding or disposition of Citigroup Stock, as opposed to the Rights, is

appropriate in any given circumstance would necessarily involve a separate analysis under ERISA and is not the subject of the proposed exemption. Rather, the purpose of the proposed exemption is to allow the Plans to acquire, hold and, if applicable, dispose of the Rights that are attached to the Citigroup Stock once the decision has already been made to acquire Citigroup Stock.

The Department notes that, to the extent that the Citigroup Stock is not a qualifying employer security as defined in section 407(d)(5) of ERISA, an administrative exemption would be necessary for the acquisition and holding of such stock. Accordingly, the final exemption has been clarified to provide that the Independent Fiduciary of the Citigroup Pension Plan will have sole discretionary responsibility to determine whether the Citigroup Pension Plan should acquire Citigroup Stock and the attached Rights whether by purchase or contribution by Citigroup. As a result, the Department believes that the condition requiring the appointment of an independent fiduciary to represent the interests of the Citigroup Pension Plan with respect to the acquisition, holding and the exercise or other disposition of the Rights that are the subject of the exemption request should be clarified.

The Department, however, is not making a determination as to whether the Citigroup Stock combined with the attached Rights is a qualifying employer security, as defined in section 407(d)(5) of ERISA. Since the Citigroup Stock, without the attached Rights, would be a qualifying employer security, the percentage limitations for qualifying employer securities, as set forth in sections 407(a) and 407(f) of ERISA (the Percentage Limitations), may still be applicable. In light of this uncertainty, the Applicants have agreed to abide by the Percentage Limitations.

The Citigroup Comment asserts that the Proposed Exemption is in the interests of the Plans and their participants and beneficiaries because allowing the Plans to acquire the Rights will place the Plans and their participants and beneficiaries in the same position as other holders of Citigroup Stock with respect to the acquisition of the Rights and to prevent the possible dilution of the Plans' investments in Citigroup Stock. The Applicants note that Citigroup Stock itself is a qualifying employer security and that the acquisition, holding and disposition of Citigroup Stock in appropriate instances is contemplated by the statutory scheme of ERISA. The requirement to dispose of the Citigroup Stock on a retroactive basis would conflict with participants' rights under

the terms of the Participant Directed Plans during this period to hold Citigroup Stock. Additionally, if the Plans held Citigroup Stock but were not able to exercise the Rights in the event they became exercisable, the value of their shares would be diluted significantly, resulting in harm to the Plans.

With respect to the participant's statement that the scope and purpose of the Proposed Exemption was unclear, the Applicants note that the Proposed Exemption relates to a complicated tax preservation vehicle and a technical provision of ERISA. The Applicants, however, believe that the Proposed Exemption published by the Department, as well as the Citigroup Comment, provide a clear explanation of why the Proposed Exemption is in the interests of the Plans and their participants and beneficiaries.

The Citigroup Comment notes that, under the definition of an "Independent Fiduciary" in the Proposed Exemption, the Independent Fiduciary's compensation cannot be affected in any way by any decision it makes in connection with the Rights. The Applicants state that typically an Independent Fiduciary's compensation is a fixed percentage (or otherwise a function) of the value of the Citigroup Pension Plan's assets under its management. In the unlikely event that the Rights Plan is triggered and the Rights become exercisable, the Applicants believe that the Independent Fiduciary's compensation would be affected by the Independent Fiduciary's decision in connection with the exercise of the Rights. By way of example, if the Independent Fiduciary decided not to exercise the Rights and other stockholders (as would be expected to avoid dilution of their own stock) did, the value of the Citigroup Stock that the Citigroup Pension Plan holds would be significantly diluted and, thus, the value of the assets managed by the Independent Fiduciary would decrease, resulting in a lower management fee than if it elected to exercise the Rights.

Although the Independent Fiduciary's compensation would be affected by its decision regarding the Rights, the Applicants note that the Independent Fiduciary's discretion is quite limited in these circumstances. First, any trigger of the Rights Plan would be a result of the actions of a party unrelated to the Independent Fiduciary. Second, given that any holder of Citigroup Stock that does not exercise the Rights would suffer significant dilution, it is difficult for the Applicant to imagine a situation in which an Independent Fiduciary, which is bound by fiduciary obligations

to the Citigroup Pension Plan, would elect not to exercise the Rights and allow the Citigroup Pension Plan to suffer harm in the form of significant dilution of its interest in Citigroup Stock and, therefore, a significant reduction in the value of that interest. Thus, the Applicants believe that the fact that the Independent Fiduciary's compensation may be affected by its decision to exercise the Rights does not create a conflict of interest and is fully consistent with the interests of the Citigroup Pension Plan and its participants and beneficiaries. The Independent Fiduciary's options would be extremely limited and, in any case, its interests would be fully aligned with those of the Citigroup Pension Plan. The Applicants request the Department to modify the definition of Independent Fiduciary accordingly.

The Department does not believe that any modification to this definition is necessary since the language of the definition does not preclude an Independent Fiduciary from receiving compensation that is a fixed percentage (or otherwise a function) of the value of the Citigroup Pension Plan's assets under its management. The language in section III that concerns compensation of the Independent Fiduciary was designed to preclude third party contingency payments to the Independent Fiduciary that are dependent on the Independent Fiduciary's decisions during the management of the plan assets. The language does not preclude the Independent Fiduciary from receiving ongoing management fees which are determined as a percentage of the value of the Citigroup Pension Plan's assets under its management. Rather, the provision expresses the Department's concern with additional payments that could influence or have an impact on the decisions of the Independent Fiduciary. Accordingly, the Department has not made the Applicant's requested change to the definition of Independent Fiduciary contained in section III of the Notice.

The Department has given full consideration to the entire record, including the comments received in response to the Proposed Exemption, and has determined to grant the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption that was published on October 6, 2010 in the **Federal Register** at 75 FR 61947.

*For Further Information Contact:*  
Brian Shiker of the Department,

telephone (202) 693-8540. (This is not a toll-free number.)

**TD Ameritrade, Inc. (TD Ameritrade),  
Located in Omaha, NE**

*[Prohibited Transaction Exemption  
2011-05; Exemption Application No. D-  
11592]*

#### **Exemption**

*Section I. Sales of Auction Rate Securities From Plans to TD Ameritrade: Unrelated to a Settlement Agreement*

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (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, effective July 20, 2009, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to TD Ameritrade, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.<sup>4</sup>

#### *Section II. Conditions Applicable to Transactions Described in Section I*

(a) The Plan acquired the Auction Rate Security in connection with brokerage services provided by TD Ameritrade to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) The Unrelated Sale is made pursuant to a written offer by TD Ameritrade (the Unrelated Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due with respect to the Auction Rate Security; and (3) the most recent information for the Auction Rate Security (if reliable information is available).

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

<sup>4</sup> For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(g) The decision to accept the Unrelated Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in Section V(d)) of TD Ameritrade.<sup>5</sup>

(h) Neither TD Ameritrade nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Unrelated Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) TD Ameritrade and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that:

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than TD Ameritrade and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of TD Ameritrade or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(l)(1) Except as provided below in paragraph (l)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by:

<sup>5</sup> The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to TD Ameritrade for the par value of the Auction Rate Security, plus unpaid interest and dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by TD Ameritrade of all relevant information.

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission;

(B) Any fiduciary of any Plan, including any IRA owner, that engages in an Unrelated Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraphs (l)(1)(B)–(C) shall be authorized to examine trade secrets of TD Ameritrade, or commercial or financial information which is privileged or confidential; and

(3) Should TD Ameritrade refuse to disclose information on the basis that such information is exempt from disclosure, TD Ameritrade shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

#### *Section III. Sales of Auction Rate Securities From Plans to TD Ameritrade: Related to a Settlement Agreement*

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (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, effective July 20, 2009, to the sale by a Plan of an Auction Rate Security to TD Ameritrade, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

#### *Section IV. Conditions Applicable to Transactions Described in Section III*

(a) The terms and delivery of the offer (the Purchase Offer) are consistent with the requirements set forth in the Settlement Agreement;

(b) The Purchase Offer or other documents available to the Plan specifically describe, among other things:

(1) How a Plan may determine: the Auction Rate Securities held by the Plan with TD Ameritrade; the number of shares and par value of the Auction Rate Securities; the interest or dividend amounts that are due with respect to the Auction Rate Securities; purchase dates for the Auction Rate Securities; and (if

reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The background of the Purchase Offer;

(3) That neither the tender of Auction Rate Securities nor the purchase of any Auction Rate Securities pursuant to the Purchase Offer will constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which Plans may accept the Purchase Offer;

(5) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Purchase Offer;

(6) The timing for acceptance by TD Ameritrade of tendered Auction Rate Securities;

(7) The timing of payment for Auction Rate Securities accepted by TD Ameritrade for payment;

(8) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Purchase Offer;

(9) The expiration date of the Purchase Offer;

(10) The fact that TD Ameritrade may make purchases of Auction Rate Securities outside of the Purchase Offer following the termination or expiration of the Purchase Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(11) A description of the risk factors relating to the Purchase Offer as TD Ameritrade deems appropriate;

(12) How to obtain additional information concerning the Purchase Offer; and

(13) The manner in which information concerning material amendments or changes to the Purchase Offer will be communicated to the Plan.

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All the conditions of Section II have been met.

#### *Section V. Definitions*

For purposes of this proposed exemption:

(a) The term “affiliate” means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term “Auction Rate Security” means a security: (1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred

stock; and (2) with an interest rate or dividend that is reset at specific intervals through a Dutch Auction process;

(d) A person is "independent" of TD Ameritrade if the person is (1) not TD Ameritrade or an affiliate; and

(2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(e) The term "Plan" means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of the Act; or an entity holding plan assets within the meaning of 29 CFR 2510.3-101, as modified by section 3(42) of the Act; and

(f) The term "Settlement Agreement" means a legal settlement involving TD Ameritrade and a U.S. state or federal authority that provides for the purchase of an Auction Rate Security by TD Ameritrade from a Plan.

*Effective Date:* This exemption is effective as of July 20, 2009.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 16, 2009 at 75 FR 78768.

*For Further Information Contact:* Ms. Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (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 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) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of February, 2011.

**Ivan Straszfeld,**

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

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**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Proposed Exemptions From Certain Prohibited Transaction Restrictions

**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). This notice includes the following proposed exemptions: D-11528, Wachovia Corporation and Its Current and Future Affiliates or Successors (collectively, Wachovia or the Applicant; and D-11635, The Parvin Nahvi, M.D., Inc. 401(k) Profit Sharing Trust (the Plan); *et al.*]

**DATES:** 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.

**ADDRESSES:** 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.

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](mailto: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.

*Warning:* If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

#### SUPPLEMENTARY INFORMATION:

##### 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).

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.