

| Name and exemption   | Issuance type | BofA role      |
|--|---------------|----------------|
| Banc of America Comm. Mtge. 2007-1, 93-31                    | C             | U, S, SER.     |
| Banc of America Large Loan 2006-BIX1, 93-31                  | C             | U, S, SER.     |
| Banc of America Large Loan 2004-BBA4, 93-31                  | C             | U, S, SER.     |
| Banc of America Large Loan 2005-BBA6, 93-31                  | C             | U, S.          |
| Bank of America Struct. Notes 2002-X1, 93-31                 | C             | U, S, SC, SER. |
| Bear Stearns Series 2004-BBA3, 93-31                         | C             | U, S, SER.     |
| Bear Stearns Series 2007-BBA8, 93-31                         | C             | U, S, SER.     |
| Citigroup Commercial Mtg. 2006-FL2, 89-89 (Citigroup Global) | C             | S, SER.        |
| COMM Series 2006-FL12, 97-03E (Deutsche Bank)                | C             | S, SER.        |
| COMM Series 2007-FL14, 97-03E (Deutsche Bank)                | C             | S, SER.        |
| COMM Series 2001-J2, 93-31                                   | C             | U, S, SC, SER. |
| COMM 2006-C8, 97-03E (Deutsche Bank)                         | C             | U, S, SER.     |
| GE Capital Comm Mtge. Corp. 2002-2, 93-31                    | C             | U, S, SER.     |
| GE Capital Comm Mtge. Corp. 2003-C2, 93-31                   | C             | U, S, SER.     |
| GE Capital Comm Mtge. Corp. 2004-C2, 93-31                   | C             | U, S, SER.     |
| GE Capital Comm Mtge. Corp. 2005-C1, 93-31                   | C             | U, S, SER.     |
| GE Capital Comm Mtge. Corp. 2005-C3, 93-31                   | C             | U, S, SER.     |
| GE Capital Comm Mtge. Corp. 2006-C1, 93-31                   | C             | U, S, SER.     |
| GS Mortgage Sec. 2004-GG2, 89-88 (Goldman, Sachs)            | C             | U, S.          |
| Merrill Lynch Series 2004-BPC1, 93-31                        | C             | U, S, SER.     |
| Merrill Lynch Series 2005-MKB2, 93-31                        | C             | U, S, SER.     |
| Mortgage Cap. Funding 1996-MC2, 93-31                        | C             | U, S.          |
| Mortgage Cap. Funding 1997-MC2, 93-31                        | C             | U, S.          |
| NationsLink Funding Corp. 1999-LTL-1, 93-31                  | C             | U, S, SER.     |
| NationsLink Funding Corp. 1999-SL, 93-31                     | C             | U, S, SER.     |
| Asset Backed Funding Corp. 2002-SB1, 93-31                   | R             | U, S.          |
| C-BASS 2007-CBS, 93-31                                       | R             | U, S.          |

**Legend:** C = Commercial mortgage-backed securitizations.

R = Residential mortgage-backed securitizations.

U = Underwriter.

S = Sponsor.

SC = Swap Counterparty.

SER = Servicer.

The availability of this amendment, if granted, is subject to the express condition that the material facts and representations contained in the Application are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the Application change, the amendment will cease to apply as of the date of such change. In the event of any such change, an application for a new amendment must be made to the Department.

Signed at Washington, DC this 7th day of March, 2008.

**Ivan L. Strasfeld,**

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

[FR Doc. E8-4980 Filed 3-12-08; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Prohibited Transaction Exemptions; 2008-03, 2008-04, and 2008-05 Grant of Individual Exemptions Involving; D-11343, Wellington Management Company, LLP (Wellington Management), PTE 2008-03; D-11389, GE Asset Management Incorporated, PTE 2008-04; and D-11421, Toeruna Wide IRA (the IRA), PTE 2008-05

**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.

**Wellington Management Company, LLP (Wellington Management) and Its Subsidiaries (together, Wellington) Located in Boston, MA**

[Prohibited Transaction Exemption 2008-03; Exemption Application No. D-11343]

*Exemption*

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A) and (D) of the Act (or ERISA) and the sanctions resulting from the application of section 4975(c)(1)(A) and (D) of the Code,<sup>1</sup> shall not apply (1) retroactively, from January 1, 2001 through December 31, 2003, and (2) prospectively, from the date the notice granting the final exemption is published in the **Federal Register**, to—

(A) The acquisition, from an offshore corporation (the Offshore Corporation) of certain non-voting equity securities (Shares), which represents interests in the economic value of the Offshore Corporation, by an ERISA-covered client plan (the Client Plan), where the Offshore is a party in interest with respect to the Client Plan, due to the ownership of all of the voting equity shares (Manager Shares) of the Offshore Corporation by Wellington Global Administrator, Ltd. (Wellington Global Administrator), a subsidiary of Wellington Management, which is (or may become) a fiduciary and a service provider with respect to the Client Plan; and

(B) The redemption of the Client Plan's Shares by the Offshore Corporation either in cash or in kind.

Section II. Conditions

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following conditions, which apply both retroactively and prospectively, unless otherwise excepted:

(a) All decisions to acquire or redeem Shares have been made or are made on

behalf of the Client Plan by an authorized fiduciary, which is independent of Wellington and the applicable Offshore Corporation.

(b) At the time of acquisition of Shares from an Offshore Corporation, each Client Plan either had or has assets at least equal to \$100 million.

(1) In the case of a master trust that holds assets of multiple related Client Plans maintained by a single employer or a controlled group of employers, as defined in section 407(d)(7) of the Act, this requirement is satisfied if the master trust has aggregate assets at least equal to \$100 million (assuming the fiduciary responsible for making the investment decision is the Client Plan sponsor or an affiliate of the Client Plan sponsor).

(2) In the case of a pooled fund (e.g., a group trust) whose assets are "plan assets" subject to the Act, this requirement is satisfied as long as either (i) the pooled fund has at least \$100 million in aggregate assets and the fiduciary making the investment decision is unrelated to Wellington and manages at least \$200 million in assets (exclusive of the aggregate assets invested in the Offshore Corporations); or (ii) at least 50 percent of the units of beneficial interest in the pooled fund are held by Client Plans, each of which has total net assets of at least \$100 million.

(c) Wellington has not provided and does not provide investment advice (within the meaning of 29 CFR 2510.3-21(c)), nor is it a fiduciary with respect to any Client Plan's investment in an Offshore Fund.

(d) All acquisitions and redemptions of Shares by a Client Plan have been made or are made for fair market value, determined as follows:

(1) Equity securities have been valued or are valued at their last sale price or official closing price on the market on which such securities primarily trade using sources independent of Wellington and the issuer. If no sales occurred on such day, equity securities are valued at the last reported independent "bid" price or, if sold short, at the last reported independent "asked" price.

(2) Fixed income securities have been valued or are valued on either the basis of "firm quotes" obtained at the time of the acquisition or redemption of Shares from U.S.-registered or foreign broker-dealers, which are registered and subject to the laws of their respective jurisdiction, which quotes reflect the share volume involved in the transaction, or on the basis of prices provided by independent pricing services that determine valuations based

on market transactions for comparable securities and various relationships between such securities that are generally recognized by institutional traders.

(3) Options have been valued or are valued at the mean between the current independent "bid" price and the current independent "asked" price or, where such prices are not available are valued at their fair value in accordance with Fair Value Pricing Practices by Wellington Management's pricing committee, which utilizes a set of defined rules and an independent review process.

(4) If current market quotations are not readily available for any investments, such investments have been valued or will be valued at their fair value by Wellington Management's pricing committee in accordance with Fair Value Pricing Practices.

(e) A Client Plan's Shares have been redeemed or may be redeemed, in whole or in part, without the payment of any redemption fee or other penalty, on a pre-specified, periodic (not longer than semi-annual) basis, upon no more than 45 days' advance notice, except for a one-year lock-up period imposed on new investors.

(f) Redemptions of Shares in an Offshore Corporation by a Client Plan have been made or are made in cash unless:

(1) A Client Plan consents to such in kind redemption; or

(2) Wellington requires that such redemption be made in kind on a pro rata basis to protect the best interests of the Offshore Fund and the remaining investors, including other Client Plan investors.

(g) In advance of the initial investment by a Client Plan in an Offshore Corporation's Shares, the independent fiduciary of a Client Plan has received or receives—

(1) A copy of the proposed exemption and the final exemption, following the publication of these documents in the **Federal Register**. (This disclosure provision applies to the prospective exemptive relief described herein.)

(2) An offering memorandum describing the relevant Offshore Fund(s), as well as the relevant investment objectives, fees and expenses and redemption and valuation procedures; and

(3) All reasonably available relevant information as such independent fiduciary may request.

(h) On an ongoing basis, Wellington has provided or provides a Client Plan with the following information:

(1) Unaudited performance reports at the end of each month;

<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.

(2) Audited annual financial statements and access to a protected internet site; and

(3) Client services group assistance for any investor inquiries.

(i) No commission or sales charge has been assessed or is assessed against the Client Plan in connection with its acquisition of an Offshore Corporation's Shares.

(j) Not more than 10% of the assets of the Client Plan has been invested or is invested, in the aggregate, in Shares of all Offshore Corporations (determined at the time of any acquisition of such Shares) and not more than 5% of the assets of the Client Plan has been indirectly invested or is invested, in the aggregate, in any one offshore fund (the Offshore Fund), a separate collective investment vehicle underlying an Offshore Corporation, (also determined at the time of any acquisition of an interest in such Offshore Fund by such Client Plan).

(k) For prospective transactions only (and following the publication of the proposed exemption and the final exemption in the **Federal Register**), each Offshore Corporation, each Offshore Fund, Wellington Management Investment, Inc., Wellington Global Holdings, Ltd., Wellington Hedge Management, LLC, and Wellington Global Administrator—

(1) Has agreed to submit to the jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts;

(2) Has agreed to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Has consented to service of process on the Process Agent; and

(4) Has agreed that any enforcement by a Plan of its rights pursuant to this exemption will, at the option of the Plan, occur exclusively in the United States courts.

(l) For prospective transactions only (and following the publication of the proposed exemption and the final exemption in the **Federal Register**), Wellington maintains in the United States for a period of six years from the date of the covered transactions, such records as are necessary to enable the persons described in paragraph (m) of this section II to determine whether the conditions of this exemption were met, except that:

(1) If the records necessary to enable the persons described in paragraph (m) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of Wellington, then no prohibited transaction will be

considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest other than Wellington shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records have not been maintained or are not available for examination as required by paragraph (m) below.

(m)(1) Except as provided in paragraph (m)(2) of this section II and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (l) of this section II are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(ii) Any fiduciary of a Client Plan; or

(iii) Any participant or beneficiary of a Client Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (ii) and (iii) of this paragraph (m)(1)(ii) and (iii) of this Section II shall be authorized to examine trade secrets of Wellington, or any commercial or financial information, which is privileged or confidential.

### Section III. Definitions

(a) The term "Wellington" means Wellington Management Company, LLP and its subsidiaries.

(b) An "affiliate" of Wellington means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Offshore Corporation" means —

(1) WMIB;

(2) Any future expansion of WMIB that includes an additional class of securities or an additional Offshore Fund that is organized as a Bermuda limited partnership, which corresponds

to the new WMIB class that is established by Wellington pursuant to the WMIB structure, and conforms to the same conditions, rules and regulations described in this exemption;

(3) Archipelago; or

(4) Any future "fund of funds" investment vehicle that is formed by Wellington under Bermuda law and is set up in substantially the same manner as Archipelago, with the same management structure, and conforms to the same conditions, rules and regulations described in this exemption.

(e) The term "Offshore Fund" means a collective investment vehicle that is organized as a Bermuda limited partnership, which corresponds to each class of WMIB securities. Each Offshore Fund invests primarily in publicly-traded securities, although up to 15% of each Offshore Fund may be invested in securities that are not readily marketable.

(f) The term "U.S. broker-dealer" means a broker-dealer registered in the United States under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted government securities (as defined in section 3(a)(12) of the 1934 Act).

(g) The term "foreign broker-dealer" means a broker that has, as of the last day of its most recent fiscal year, equity capital that is the equivalent of not less than \$200 million and is registered and regulated, under the relevant securities laws of a governmental entity of a country other than the United States, where such regulation and oversight by the governmental entities is comparable to regulatory regimes within the United States.

(h) "Manager Shares" refer to the equity securities of an Offshore Corporation that have voting rights and control the election of the Board of Directors of an Offshore Corporation. Manager Shares do not participate in the economic performance of the Offshore Corporation and are owned 100% by Wellington Global Administrator.

(i) "Shares" refer to the equity securities of an Offshore Corporation that do not have voting rights. Such shares represent substantially all of the economic value of the Offshore Corporation and are or will be directly linked either (i) by class to a corresponding Offshore Fund (in the case of WMIB) or (ii) to a mix of various WMIB classes (in the case of Archipelago or any other fund of funds entity).

*Effective Date:* This exemption is effective retroactively for the transactions involving Wellington and

two Client Plans that occurred from January 1, 2001 until December 31, 2003. For prospective transactions involving Wellington and a Client Plan, this exemption is effective on the date the notice granting the final exemption is published in the **Federal Register**.

#### *Written Comments*

The Department invited all interested persons to submit written comments with respect to the notice of proposed exemption (the Notice) within 45 days of the date of the publication of such notice in the **Federal Register** on October 26, 2007. All comments were due by December 10, 2007.

During the comment period, the Department received one written comment concerning the Notice. The comment was submitted by Wellington and it requests certain modifications or clarifications to the Notice in the areas discussed below.

1. *Footnote 3.* In Footnote 3 of the Summary of Representations, the last sentence states that, “[b]ecause these two WMIB classes are not Offshore Funds, as defined in this proposed exemption, no plans will be permitted to invest in these WMIB classes.” Wellington represents that this statement is overly-broad in that ERISA-covered plans can invest in these classes as long as such investment does not constitute a prohibited transaction either because the Offshore Fund is not a party in interest or because there is an alternative exemption available. Accordingly, Wellington requests that the last sentence in Footnote 3 be limited to situations in which the investment is made “pursuant to this exemption.” In addition, Wellington requests that the Department clarify by adding the words “pursuant to this exemption” to such footnote so that the sentence will only apply when this exemption is being utilized.

In response to this comment, the Department has noted Wellington’s clarification to Footnote 3 of the Summary of Facts and Representations.

2. *Representation 5.* Representation 5 of the Summary of Facts and Representations contains a detailed discussion of the fact that the Offshore Corporations are not “highly leveraged” relative to the universe of hedge funds. Although Wellington agrees with this factual statement, as a general matter, Wellington states that certain of the details included in Representation 5 and accompanying Footnote 6 are not entirely accurate because they are based on historical facts rather than future events. For example, Wellington explains that Footnote 6 states that the long exposure number for the WMIB

and Archipelago class funds “never exceeds 150%.” While this statement was historically true at the time Wellington submitted the information, it was intended to be factual evidence supporting the general proposition that these funds are not highly leveraged, not a representation that this percentage would never exceed 150%. Accordingly, Wellington states that the details of Representation 6 are intended to reflect the specific historical information submitted by Wellington and are subject to change over time as long as the Offshore Corporations remain not highly leveraged on a relative basis. Also, on a related point, to be consistent with its submissions, Wellington indicates that the word “generally” should be inserted immediately before the word “subject” in the third line, and immediately before the word “limited” in the eighth line, of the second paragraph of Representation 5.

In response to this comment, the Department acknowledges Wellington’s clarifications to Representation 5 of the Summary of Facts and Representations.

3. *Representation 6.* The last sentence of the first paragraph of Representation 6 of the Summary of Facts and Representations states that no Client Plans are currently invested in Shares. Wellington represents that this statement is not entirely accurate because a Client Plan may have acquired shares in reliance on PTE 96–23 (61 FR 15975, April 10, 1996), the class exemption for In-House Asset Managers or another exemption. In any event, Wellington explains that this statement is not material. Accordingly, Wellington requests that the words “but not by any Client Plans” be deleted from Representation 6.

In response to this comment, the Department notes this clarification to Representation 6 of the Summary of Facts and Representations.

4. *Representation 8.* The last sentence of Representation 8 of the Summary of Facts and Representations states that various offshore Wellington affiliates will consent to the jurisdiction of certain U.S. courts and appoint Wellington as their agent for service of process. Wellington wishes to clarify that this will occur when a Client Plan invests in an Offshore Corporation pursuant to this exemption.

In response to this comment, the Department notes Wellington’s clarification to Representation 8 of the Summary of Facts and Representations.

5. *Representation 11.* In the Summary of Facts and Representations, the fourth sentence of the first paragraph of Representation 11 (and a similar reference in the third paragraph of this

representation) states that Wellington Global Administrator provides services to Client Plans. Wellington points out that this entity provides services to the Offshore Funds and the Offshore Corporations, which are not plan asset vehicles. Accordingly, Wellington explains that Wellington Management would not be considered a party in the interest by reason of its ownership of Wellington Global Administrator. However, Wellington explains that Wellington Management is (or may become) a party in the interest with respect to the Client Plans by reason of its being a service provider to such plans. In this regard, Wellington states that Wellington Global Administrator would be a party in interest because it is a corporation that is more than fifty percent owned by Wellington Management, itself a fiduciary and service provider.

In response to this comment, the Department acknowledges Wellington’s modification to Representation 11 of the Summary of Facts and Representations.

6. *Representation 13.* The last sentence of Representation 13 of the Summary of Facts and Representations, states that no more than five percent of the securities that are not readily marketable will be subject to Wellington’s fair value pricing practices. Wellington explains that this statement is incorrect in several respects. First, Wellington indicates in its submission that not more than five percent of the aggregate securities held by the Offshore Fund had been subject to its fair value pricing practices. Second, Wellington explains that this statement had been submitted as a historical fact rather than a representation as to future events. Wellington further explains that the first paragraph of Representation 2 of the Summary of Facts and Representations correctly states that not more than 15% of the assets of any Offshore Fund may be invested in securities that are not readily marketable.

In response to this comment, the Department notes Wellington’s clarification to Representation 13 of the Summary of Facts and Representations.

Accordingly, after giving full consideration to the entire record, including the comment, the Department has determined to grant the exemption as modified or clarified above. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11343) the Department is maintaining in this case. The complete application file, as well as the comment and all supplemental

submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on October 26, 2007 at 72 FR 60891.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 693-8556. (This is not a toll-free number.)

**GE Asset Management Incorporated  
Located in Stamford, Connecticut**

[Prohibited Transaction Exemption 2008-04;  
Exemption Application No. D-11389]

*Exemption*

Section I—Exemption for In-Kind  
Redemption of Assets

The restrictions in sections 406(a)(1)(A) through (D) and 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,<sup>2</sup> effective March 1, 2006, to certain in-kind redemptions (the Redemption(s)), by plans sponsored by the General Electric Company (GE) or an affiliate (the Plan(s)), of shares (the Shares) of certain proprietary mutual funds for which GE Asset Management Incorporated (GEAM) provides investment advisory and other services (the Mutual Fund(s)), provided that the following conditions are satisfied:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than GEAM and any affiliates thereof (GEAM Affiliates));

(B) The assets transferred to the Plan pursuant to the Redemption consist entirely of cash and Transferable Securities, as such term is defined in section II, below;

(C) With certain exceptions described below, the Plan receives in any Redemption its pro rata portion of the securities that, when added to the cash received, is equal in value to the number of Shares redeemed, as determined in a single valuation performed in the same manner and as of 4 p.m. (local time for the New York

Stock Exchange) on the same day, in accordance with Rule 2a-4 under the Investment Company Act of 1940, as amended (the 1940 Act), and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of GEAM and GEAM Affiliates). Notwithstanding the foregoing, Transferable Securities that are odd lot securities, fractional shares, and accruals on such securities may be distributed in cash;

(D) Neither GEAM, nor any affiliate thereof, receives any direct or indirect compensation, or any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, GEAM provides in writing to an independent fiduciary, as such term is defined in section II (Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to GEAM, such authorization being terminable at any time prior to the date of Redemption without penalty to the Plan;

(G) Before authorizing a Redemption, based on the disclosures provided by GEAM to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the Plan, and comparable to, and no less favorable than, terms obtainable at arm's length between unaffiliated parties, and that the Redemption is in the best interests of the Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the Mutual Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The total number of Shares of the Mutual Fund and the percentage held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held);

(ii) The identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a-4 under the 1940 Act and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of GEAM and GEAM Affiliates);

(iii) The current market price of each security received by the Plan pursuant to the Redemption; and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the Plan for each redeemed Share, when added to the cash received, equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, within 180 days of the date of such Redemption, the Independent Fiduciary performs a post-transaction review that will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing;

(K) Each of the Plan's dealings with the Mutual Funds, the investment advisers to the Mutual Funds, the principal underwriter for the Mutual Funds, or any affiliated person thereof, are on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares;

(L) GEAM will maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) this record-keeping condition shall not be violated if, due to circumstances beyond the control of GEAM, the records are lost or destroyed prior to the end of the six year period, (ii) no party in interest with respect to the Plan other than GEAM shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained or are not available for examination as required by paragraph (M) below;

(M) (1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the Plan or any duly authorized representative of such fiduciary, (iii) any participant, beneficiary, or union employee covered by the Plan or duly authorized representative of such participant, beneficiary, or union

<sup>2</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

employee, (iv) any employer whose employees are covered by Plan and any employee organization whose members are covered by such Plan.

(2) None of the persons described in paragraphs (M)(1)(ii), (iii) and (iv) shall be authorized to examine trade secrets of GEAM or the Mutual Funds, or commercial or financial information that is privileged or confidential; and

(3) Should GEAM or the Mutual Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (2) above, GEAM 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 II—Definitions

(A) The term “affiliate” means:

(1) Any person (including a corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(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 “net asset value” means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Mutual Fund’s prospectus and statement of additional information, and other assets belonging to the Mutual Fund, less the liabilities charged to each such Mutual Fund, by the number of outstanding shares.

(D) The term “Independent Fiduciary” means a fiduciary who is: (i) Independent of and unrelated to GEAM and its affiliates, and (ii) appointed to act on behalf of the Plan with respect to the in-kind transfer of assets from one or more Mutual Funds to, or for the benefit of, the Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to GEAM if: (i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with GEAM, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction

described in this exemption (except that an independent fiduciary may receive compensation from GEAM in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary’s ultimate decision), and (iii) an amount equal to more than two percent (2%) of such fiduciary’s gross income, for federal income tax purposes, in its prior tax year, will be paid to such fiduciary by GEAM and its affiliates in such fiduciary’s current tax year.

(E) The term “Transferable Securities” means securities that are traded on public securities markets or for which quoted bid and asked prices are available from persons independent of GEAM and would not include the following types of securities or assets: (a) Securities that would have to be registered under the Securities Act of 1933, as amended; (b) securities issued by entities in countries that restrict the holdings of securities by non-nationals, including investment vehicles such as the Mutual Funds, or otherwise limit the ability to transfer the security other than through a local securities exchange transaction; and (c) certain portfolio assets (such as forward currency contracts, futures and option contracts, swap transactions, and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or may be traded only with the counterparty to the transactions in order to effect a change in beneficial ownership.

(F) The term “relative” means a “relative” as such term is defined in section 3(15) of the Act (or a “member of the family,” as such term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

*Effective Date:* This exemption is effective as of March 1, 2006.

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 October 26, 2007 at 72 FR 60899.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

#### Toeruna Widge IRA (the IRA)

Located in Mertztown, Pennsylvania Prohibited Transaction Exemption 2008–05; Exemption Application No. D–11421

#### Exemption

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 sale (the Sale) of approximately 59.99 acres of unimproved real property located at Fredericksville Road and Sweitzer Road, Rockland Township, Berks County, Pennsylvania (the Property) by the IRA to Dr. Toeruna Widge (the Applicant), a disqualified person with respect to the IRA,<sup>3</sup> provided that the following conditions are satisfied:

(A) All terms and conditions of the Sale are at least as favorable to the IRA as those which the IRA could obtain in an arm’s-length transaction with an unrelated party;

(B) The Sales price will be the greater of \$390,000 or the fair market value of the Property as of the date of the Sale;

(C) The fair market value of the Property has been determined by a qualified, independent appraiser;

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

(E) The IRA will not pay any commissions, costs or other expenses in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to notice of proposed exemption published on January 17, 2008 at 73 FR 3281.

#### FOR FURTHER INFORMATION CONTACT:

Anh-Viet Ly of the Department, telephone (202) 693–8648 (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

<sup>3</sup>Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

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 7th day of March 2008.

**Ivan Strasfeld,**

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

[FR Doc. E8-4982 Filed 3-12-08; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application No. D-11416, et al.]

#### Proposed Exemption Involving; Wholesale Electronic Supply Employees Profit Sharing Plan and Trust

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** This document contains a notice 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 exemption, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption

and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or Fax. Any such comments or requests should be sent either by e-mail to: [moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov), or by fax to (202) 219-0204 by the end of the scheduled comment period. The application 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 exemption 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 exemption was requested in an application 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, this notice of proposed exemption is issued solely by the Department.

The application contains representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Department for a complete

statement of the facts and representations.

#### Wholesale Electronic Supply Employees Profit Sharing Plan and Trust (the Plan) Located in Dallas, TX

[Application No. D-11416]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 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 proposed exemption is granted, the restrictions in sections 406(a)(1)(A), 406(a)(1)(D), and 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) and (c)(1)(D) through (E) of the Code, shall not apply to the sale of a note (the Note) by the Plan to Levco Enterprises, Inc., a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The Plan receives \$45,750.00, the outstanding principal balance of the Note;

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

(d) The Plan pays no commissions, costs, nor other expenses in connection with the sale.

#### Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan. As of June 30, 2006, the Plan had 21 participants and beneficiaries. As of the same date, the Plan had total assets of \$426,213, which are held by Merrill Lynch. Resolutions approving and authorizing the complete freeze and termination of the Plan, effective February 21, 2007, were adopted by the Board of Directors of Wholesale Electronic Supply, Inc., the Plan sponsor. In connection with the termination of the Plan, an application has been filed with the Internal Revenue Service (the Service) for a favorable determination regarding the Plan's status as a qualified plan under section 401(a) of the Code. Only after the Plan obtains such a determination from the Service and the requested exemption from the Department with respect to the Note is granted will the Plan's trust be liquidated and all account balances distributed.

2. On February 24, 1987, the Plan sold a 6,315 sq. ft. tract of unimproved land