Dated: April 10, 2015.

Brette Steele,

Designated Federal Officer, National Commission on Forensic Science.

[FR Doc. 2015–08680 Filed 4–14–15; 8:45 am]

BILLING CODE 4410–18–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–11726, Rock Wool Manufacturing Company; L–11784, Eli Lilly and Company and Elco Insurance Company Limited; D–11798, Robert A. Handelman Roth IRA No. 2; and, D–11809 and L–11810, Roofers Local 195 Pension Fund and Roofers Local 195 Joint Apprenticeship Training Fund.

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 email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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 (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Rock Wool Manufacturing Company Salaried Retirement Plan (the Plan) Located in Leeds, AL

[Application No. D–11726]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011).[2] If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (E) of the Code, shall not apply to the proposed in-kind contribution (the Contribution) to the Plan of a parcel of unimproved real property (the Property) by Rock Wool Manufacturing Company (Rock Wool or the Company), the Plan sponsor and a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) A qualified independent fiduciary (the Independent Fiduciary), acting on behalf of the Plan:

(1) Determines that the Contribution is in the interests of the Plan and protective of the Plan's participants and beneficiaries; and

(2) Determines that the Property is valued for purposes of the Contribution at the Property's fair market value as of the date of the Contribution, as determined by a qualified independent appraiser (the Independent Appraiser);

(b) The Independent Fiduciary performs the following steps in order to make the determinations described above in paragraph (a):

(1) Reviews, negotiates, and approves the specific terms of the Contribution; and

(2) Ensures, for the purposes of the Contribution, that the appraisal report (the Appraisal Report) is consistent with sound principles of valuation;

(c) As of the date of the Contribution, the Independent Fiduciary monitors compliance by Rock Wool with respect to the terms of the Contribution and with the conditions of this exemption, if granted, to ensure that such terms and conditions are satisfied at all times;

(d) The Plan does not pay any commissions, costs or other expenses, including any fees that are currently charged or accrued in the future by the Independent Fiduciary and the

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

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

Independent Appraiser, in connection with the Contribution; and

(e) The terms and conditions of the Contribution are no less favorable to the Plan than the terms that would be negotiated at arm's length between unrelated third parties under similar circumstances.

(f) The contributed value of the Property is equal to the Property's fair market value, as determined by the Independent Appraiser on the transaction date, less a 35 percent discount to account for certain marketability limitations.

Summary of Facts and Represenations

1. Rock Wool, headquartered in Leeds, Alabama, was founded in 1943. The current Chairman and CEO of Rock Wool is Sylvester Miniter III and the current Vice President of Operations is Gerald Miller. Rock Wool operates as a manufacturer of residential blowing wool insulation and high temperature pipe insulation fabrication. During the 1970's, Rock Wool began to incorporate into its product line certain materials containing asbestos. When the harmful effects of asbestos were later discovered, Rock Wool was named as the defendant in numerous lawsuits. Following the exhaustion of its insurance coverage, Rock Wool filed for Chapter 11 bankruptcy protection. Subsequent to Rockwool's bankruptcy filing, plaintiff attorneys reached a settlement agreement under which Rockwool's owners relinquished ownership rights and contributed Company stock to an asbestos settlement fund (the Settlement Fund). Pursuant to the terms of the settlement agreement, any profits earned by Rock Wool are to be deposited into the settlement fund to pay claimants on a periodic basis. As of September 30, 2014, Rock Wool had total assets of $5,706,884.62 and total liabilities of 3,108,653.82.

2. The Plan, which was adopted by Rock Wool on May 1, 1974, is structured as a defined benefit plan. The Plan's trustees are Sylvester Miniter III and Gerald Miller (the Trustees), and the Plan's investment manager is Lee Robertson of Legg Mason Investment Counsel. As the Plan's investment manager, Mr. Robertson exercises discretion over the Plan's assets, and as such, qualifies as a fiduciary under section 3(38) of the Act.[3]

As of January 28, 2015, the Plan covered 27 participants and held assets valued at approximately $2,537,114. The Plan has been frozen to new participants since December 31, 2001, and to benefit accruals since August 31, 2008.

3. Rock Wool contributed $26,675 to the Plan during the year ending December 31, 2012, and $134,428 for the year ending December 31, 2013. As of September 1, 2012 and September 1, 2013, the adjusted funding target attainment percentage (AFTAP) for the Plan was 80.82% and 81.09%, respectively. Pursuant to section 302 of the Act, Rock Wool is obligated to make a required minimum cash contribution to the Plan of $134,000 on or before May 15, 2015 for the 2014 Plan year (the Required Contribution).

4. Rock Wool proposes to make an in-kind contribution to the Plan of certain unimproved real property, in lieu of cash, due to its current cash flow restrictions. Currently, Rock Wool is experiencing restricted cash flow problems due to, among other things, its inability to obtain third party financing and its funding obligations with respect to the Settlement Fund.

In effect, the in-kind contribution of the Property to the Plan will offset the minimum funding amount due to the Plan under section 302 of the Act, as the contribution value of the Property (the fair market value of the Property minus the marketability discount) will exceed the $134,000 Required Contribution. Thus, the contribution of the Property will allow Rock Wool to forego making a $134,000 cash payment to the Plan.[4] Accordingly, Rock Wool requests an administrative exemption from the Department because the proposed Contribution would otherwise violate several provisions of the Act.

5. Section 406(a)(1)(A) of the Act provides that a fiduciary with respect to a plan shall not cause a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property between a plan and a party in interest. Section 3(14)(A) of the Act defines the term ''party in interest'' to include a fiduciary. Section 3(14)(C) of the Act also defines the term party in interest to include an employer, any of whose employees are covered by such plan. The Trustees, who are principals of Rock Wool, together with Mr. Robertson, are parties in interest with respect to the Plan, as fiduciaries. In addition, Rock Wool is a party in interest with respect to the Plan as an employer whose employees are covered by the Plan.

With respect to a defined benefit plan, such as the Plan, an employer assumes an obligation to make cash contributions to the plan in order to fund promised benefits. Rock Wool's proposed Contribution of the Property to the Plan would thus constitute a discharge of Rock Wool's legal obligation with respect to the Required Contribution, as noted above, as well as, depending on the Plan's funding status in future years, Rock Wool's obligation to make cash contributions to the Plan in the future. As such, the Plan would, in effect, be exchanging its legal right to receive a cash contribution for the receipt of real property. Thus, Rock Wool's proposed Contribution of the Property to the Plan constitutes a prohibited sale or exchange in violation of section 406(a)(1)(A) of the Act.

The Contribution would also violate section 406(b)(1) and (b)(2) of the Act. Section 406(b)(1) prohibits a fiduciary from dealing with the assets of the plan in such fiduciary's own interests or for such fiduciary's personal account. In determining that it would be appropriate for the Plan to receive the Contribution of the Property from Rock Wool instead of cash, the Trustees would effectively be releasing Rock Wool from, at minimum, its $134,000 cash obligation to the Plan. Due to the fact that the Trustees hold executive positions at Rock Wool, each Trustee would be dealing with the assets of the Plan for his own interest or personal account.

In addition, section 406(b)(2) of the Act prohibits a fiduciary from acting in such fiduciary's individual or other capacity in any transaction involving the plan on behalf of a party (or from representing a party) whose interests are adverse to the interests of the plan, or the interests of the Plan participants and beneficiaries. As Trustees and Rock Wool principals, Messrs. Miniter and Miller may have divided loyalties in representing both the interests of the Plan and Rock Wool with respect to the Contribution of the Property.

6. The Property that is the subject of the Contribution was purchased for $36,175 in 1947 by the Cusick Family, the original owners of Rock Wool. The Cusicks incorporated Rock Wool in July of 1958, at which time the Property became the Company's primary manufacturing and warehouse facility.

The Property is located at 8200 Thorton Avenue, Leeds, Alabama, and

[3] Section 3(38) of the Act provides, in relevant part, that the term ''investment manager'' means any fiduciary (other than a trustee or named fiduciary, as defined in section 1102(a)(2) of this title)—(A) who has the power to manage, acquire, or dispose of any asset of a plan; (B) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940, and (ii) is a bank, as defined in that Act; and (C) has acknowledged in writing that he is a fiduciary with respect to the plan.

[4] It is within the Plan's investment policy to allow in-kind contributions that are made by Rock Wool.

currently consists of 2.67 acres of unimproved vacant land that is not encumbered by a mortgage. The Property is located approximately 1.3 miles from Rock Wool's manufacturing plant. The land is not presently used by Rock Wool, nor will it be used in the future by Rock Wool, its affiliates, or members of the Cusick Family. The only ongoing expenses associated with the Property are real estate taxes, which amount to approximately $1,800 per year.

7. The Property was appraised on August 4, 2014, by James P. Sumners, a State Certified Real Property Appraiser in the State of Alabama (License # G00037) (the Independent Appraiser). Mr. Sumners is employed by the real estate appraisal firm of Providence Company (Providence), located in Birmingham, Alabama. Mr. Sumners has certified that he ''has no present or prospective interest in the [P]roperty that is the subject of this report, and has no personal interest or bias with respect to the parties involved.'' Further, Mr. Sumners represents that his fees derived from Rock Wool are equal to less than 1% of Providence's revenues, from all sources.

Due to the fact that the Property is a parcel of vacant land, Mr. Sumners based his valuation solely on the Market Approach. Mr. Sumners reported his conclusion in a summary appraisal report, dated August 6, 2014, and formulated his opinion and conclusion in accordance with Standard Rule 1 of the Uniform Standards of Professional Appraisal Practice (USPAP). The Appraisal Report was written in compliance with USPAP and Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) guidelines. After inspecting the Property and analyzing all relevant data, Mr. Sumners determined the ''AS–IS'' Fee Simple Market Value of the Property to be $325,000.00, as of August 4, 2014.

8. On August 21, 2013, the Trustees hired Layton Engineering of Birmingham, Alabama (Layton), an unrelated party, to conduct an environmental engineering report (the Environmental Report) on the Property. In its Environmental Report, Layton tested soil at the Property for heightened levels of chromium. The tests were compared with a previous soil assessment conducted at the Property by Layton in 2002, as well as against four background samples that were obtained from a nearby property. Each nearby property was reasonably expected to be unaffected by current or historical processes and within depositional environments similar to those at the Property. Based on the tests, Layton concluded that the results of the analysis demonstrated that the levels of chromium at the Property site were well within the range of natural background concentrations of chromium in the unaffected adjacent soils. Thus, Layton has confirmed that the Property is environmentally clean.

9. The Trustees have selected Lubbock National Bank (LNB) to serve on behalf of the Plan as the Independent Fiduciary with respect to the proposed Contribution. Specifically, LNB has designated Christopher L. Robinson, Senior Vice President and Senior Trust Officer of LNB, to prepare the Independent Fiduciary Report and to assume the duties and responsibilities of the Independent Fiduciary for the Plan. Mr. Robinson's qualifications include thirteen years of experience as an ERISA attorney and graduate and undergraduate degrees in Finance. Mr. Robinson represents that he is knowledgeable as to the duties and responsibilities of an ERISA fiduciary by virtue of his educational background and his experience as an official with LNB. Mr. Robinson has also served as a fiduciary for other qualified plans.

10. Mr. Robinson represents that the only revenue received by LNB from any party in interest to the Plan are those fees derived from Rock Wool in connection with Mr. Robinson's duties as the Plan's Independent Fiduciary, and that these fees are equal to less than 1% of LNB's revenues from all sources, for both 2013 and 2014. In addition, Mr. Robinson states that neither he nor any officer, board member, or shareholder of LNB is related in any way to Rock Wool, or its principals, through ownership, common officers or directors, debt relationships, business dealings, or family relationships. Mr. Robinson further represents that neither Rock Wool nor any of its principals have deposited any funds in checking accounts, savings accounts, or certificates of deposit maintained by LNB.

11. In his role as Independent Fiduciary, Mr. Robinson represents that he will confirm that the Property has been properly titled in the name of the Plan by reviewing the title records and by ensuring that the Contribution to the Plan has in fact been made. Further, Mr. Robinson will ensure that the Plan does not pay any fees or commissions with respect to the Contribution.

12. Mr. Robinson has expressed his views in support of the Contribution, stating that the Contribution is favorable to the Plan. In determining whether the in-kind contribution would be in the interests of the Plan, Mr. Robinson reviewed and considered: (a) Representations made by Rock Wool regarding the Plan and the Property; (b) the value conclusions and related analysis presented by the Independent Appraiser; (c) discussions with certain members of Rock Wool's senior management regarding the Plan and the related investment policy, the nature of the Property, and future prospects for the usefulness and marketability of such Property [5]; (d) the Plan's investment objectives, policies, and related Plan documents; (e) whether the terms and conditions of the Contribution are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties; and (f) other analyses and investigations.

13. Based on his review, Mr. Robinson determined that the Contribution of the Property is appropriate and in the interest of the Plan's participants and beneficiaries. In this regard, Mr. Robinson concluded that the Contribution will substantially increase the funded status of the Plan, and will place the Plan in a more secure actuarial and financial position, with both a higher funding percentage and a larger funding standard account balance. Additionally, Mr. Robinson concluded that the Plan's acquisition of the Property will improve the diversification of Plan investments and further Plan investment policies and objectives. Further, Mr. Robinson stated that the Contribution presents the Plan with the added benefit of a potential future stream of cash flow, in the event that the Property is leased to third parties.

14. With regard to potential alternatives to the proposed Contribution, Mr. Robinson considered a sale of the Property to an unrelated third party. Mr. Robinson asserted that such a sale would be beneficial to neither the Plan nor Rock Wool, due to the fact that: (a) The Property likely would have to be sold at a discounted amount, approximately 25% to 35% below fair market value; and (b) the sale would likely take between 36 and 48 months to complete.

Based upon Mr. Robinson's representations, the Applicant subsequently determined that a 35%

[5] Mr. Robinson represents that during the course of his due diligence, he had conversations with the Plan Trustees and Rock Wool management as to the potential benefit of the Property to the Plan. During such conversations, Rock Wool management expressed its belief that the Property could generate revenue in the future, either from a sale or through leasing. On the basis of his conversations with Rock Wool management, Mr. Robinson concluded that the Property should serve the Plan well in terms of growth of asset value and, potentially, as a current income stream through a leasing strategy.

discount should be applied to the Property's fair market value to account for marketability limitations. Accordingly, the Applicant has agreed that the Property's contribution value, after applying the 35% discount, is $211,250, subject to any fair market value adjustments made by the Appraiser on the transaction date. Thus, the contributed value of the Property would represent 7.69% of the Plan' assets.

15. Rock Wool represents that the Contribution is administratively feasible because the transaction would require a simple re-deeding of the Property to the Plan and would not require the Plan to pay any fees or commissions. Further, Rock Wool believes the Contribution would be in the interests of the Plan and its participants and beneficiaries and protective of their rights because the Contribution would increase the value of the Plan's assets.

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

(a) The Independent Fiduciary, acting on behalf of the Plan:

(1) Has determined that the Contribution is in the interests of the Plan and protective of the Plan's participants and beneficiaries; and

(2) Will determine that the Property is valued for purposes of the Contribution at the Property's fair market value as of the date of the Contribution, as determined by the Independent Appraiser;

(b) The Independent Fiduciary has performed the following steps in order to make his determinations, described above in paragraph (a):

(1) Reviewed, negotiated, and approved the specific terms of the Contribution; and

(2) Ensured, for purposes of the Contribution, that the Appraisal Report is consistent with sound principles of valuation;

(c) As of the date of the Contribution, the Independent Fiduciary will monitor compliance by Rock Wool with respect to the terms of the Contribution and with the conditions of this exemption, if granted, to ensure that such terms and conditions are satisfied at all times;

(d) The Plan will not pay any commissions, costs or other expenses, including any fees that are currently charged or accrued in the future by the Independent Fiduciary and the Independent Appraiser, in connection with the Contribution; and

(e) The terms and conditions of the Contribution will not be less favorable to the Plan than the terms that would be negotiated at arm's length between unrelated third parties under similar circumstances.

(f) The contributed value of the Property will be equal to the Property's fair market value, as determined by the Independent Appraiser on the transaction date, less a 35 percent discount to account for certain marketability limitations.

Notice to Interested Parties

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all individuals who are participants in the Plan. It is represented that such interested persons will be notified of the publication of the Notice by first class mail to such interested person's last known address within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment on and/or to request a hearing. All written comments or hearing requests must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

Eli Lilly and Company (Lilly) and Elco Insurance Company Limited (Elco) (Together, the Applicants) Located in Indianapolis, IN and North Charleston, SC, Respectively

[Application No. L–11784]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I. Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Elco, an affiliate of Lilly, as the term ''affiliate'' is defined in Section III(a)(1) below, in connection with insurance contracts sold by American United Life Insurance Company (AUL) or any successor insurance company (a Fronting Insurer) to provide optional group term life insurance benefits (Optional Group Life) to participants in the Eli Lilly and Company Life Insurance and Death Benefit Plan (the Life Insurance Plan), a component of the Eli Lilly and Company Employee Welfare Plan (the Plan), provided the conditions set forth in Section II, below, are satisfied.

Section II. Conditions

(a) Elco—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Lilly that is described in section 3(14)(G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one state as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Director of the Department of Insurance of its domiciliary state (South Carolina), which has neither been revoked nor suspended;

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction covered by this proposed exemption, if granted; or

(B) Has undergone a financial examination (within the meaning of the law of South Carolina) by the Director of the South Carolina Department of Insurance (SCDI) within five (5) years prior to the end of the year preceding the year in which such reinsurance transaction has occurred; and

(5) Is licensed to conduct reinsurance transactions by South Carolina, whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Life Insurance Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Life Insurance Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) Effective January 1, 2012, there was an immediate and objectively determined benefit to Plan participants and beneficiaries in the form of increased benefits. Any modification to such benefits will at least approximate the increase in benefits that are effective January 1, 2012, as described in the Notice of Proposed Exemption (the Notice) and will continue in all subsequent years of each contract of reinsurance involving Elco and a Fronting Insurer and in every renewal of each contract of reinsurance involving Elco and a Fronting Insurer;

(e) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formulae used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable optional life insurance coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formulae will be reasonable and will be comparable to the premiums charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Fronting Insurer has a financial strength rating of ''A'' or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the Fronting Insurer and Elco will be indemnity insurance only (*i.e.,* the Fronting Insurer will not be relieved of liability to the Life Insurance Plan should Elco be unable or unwilling to cover any liability arising from the reinsurance arrangement);

(g) The Life Insurance Plan retains an independent, qualified fiduciary, as defined in Section III(c) (the Independent Fiduciary) to analyze the transactions and to render an opinion that the requirements of Section II(a) through (f) and (h) of this proposed exemption have been satisfied;

(h) Participants and beneficiaries in the Plan will receive in subsequent years of every contract of reinsurance involving Elco and the Fronting Insurer the benefit increases effective January 1, 2012, as described in the Notice, or benefit increases no less in value, as determined by the Independent Fiduciary, than the objectively determined increased benefits such participants and beneficiaries received effective January 1, 2012;

(i) The Independent Fiduciary will monitor the transactions proposed herein on behalf of the Plan on a continuing basis to ensure such transactions remain in the interest of the Plan; take all appropriate actions to safeguard the interests of the Plan; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plan; and

(j) In connection with the provision to participants in the Life Insurance Plan of the Optional Group Life which is reinsured by Elco, the Independent Fiduciary will review all contracts (and any renewal of such contracts) of the reinsurance of risks and the receipt of premiums therefrom by Elco and must determine that the requirements of this proposed exemption, if granted, and the terms of the benefit enhancements continue to be satisfied.

Section III. Definitions

(a) The term ''affiliate'' includes:

(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.

(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 ''Independent Fiduciary'' means a person who:

(1) Is not an affiliate of Lilly or Elco and does not hold an ownership interest in Lilly, Elco, or affiliate of Lilly or Elco;

(2) is not a fiduciary with respect to the Plan prior to its appointment to serve as the Independent Fiduciary;

(3) has acknowledged in writing that:

(i) It is a fiduciary and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) it has appropriate technical training or experience to perform the services contemplated by the exemption, if granted;

(4) For purposes of this definition, no organization or individual may serve as Independent Fiduciary for any fiscal year in which the gross income received by such organization or individual (or partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder) from Lilly, Elco, or affiliates of Lilly or Elco, (including amounts received for services as an independent fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds two percent (2%) of such organization's or individual's gross income from all sources for the prior fiscal year;

(5) No organization or individual which is an Independent Fiduciary and no partnership or corporation of which such organization or individual is an officer, director or ten percent (10%) or more partner or shareholder may acquire any property from, sell any property to, or borrow any funds from Lilly, Elco, or affiliates of Lilly or Elco during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary or negotiates any such transaction during the period that such organization or individual serves as an Independent Fiduciary; and

(6) In the event a successor Independent Fiduciary is appointed to represent the interests of the Plan with respect to the subject transaction, there should be no lapse in time between the resignation or termination of the former Independent Fiduciary and the appointment of the successor Independent Fiduciary.

Summary of Facts and Representations [6]

Background

1. Eli Lilly and Company (Lilly), headquartered in Indianapolis, IN, is one of the world's largest manufacturers and distributors of pharmaceuticals. Lilly also engages in research and development. Lilly employs over 17,000 employees in the United States and over 38,000 employees worldwide. In 2012, Lilly had net income of approximately $4.1 billion and revenue of $22.6 billion.

2. Elco Insurance Company Limited (Elco) is a captive insurance and reinsurance corporation and a wholly-owned subsidiary of Eli Lilly International Corporation, which itself is a wholly-owned subsidiary of Lilly. Elco was incorporated in Bermuda on July 10, 1975, to provide direct coverage to Lilly for various exposures. On June 15, 2011, the State of South Carolina Department of Banking, Insurance, Securities and Health Care Administration issued a Certificate of Authority permitting a branch of Elco to transact the business of a captive insurance company. JLT Insurance Management (Bermuda) Ltd. performs the accounting functions, records retention, and other management and administrative services for Elco. Wilmington Trust performs the same services for the Elco branch. Elco is

[6] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

subject to regulation by the South Carolina Department of Insurance and is required to maintain $500,000 of capital and surplus at all times. Elco currently provides the following insurance coverage to Lilly and its subsidiaries: Property, Transit, Workers' Compensation, Auto, General Liability, and Product Liability. As of December 31, 2012, Elco had total assets of $141,923,761 and the gross written premium was $18,303,690.

3. Lilly sponsors the Eli Lilly and Company Employee Welfare Plan (the Plan), which provides eligible employees with medical, life insurance, dental, disability, death benefits, and other welfare benefits. As of December 31, 2011, the Plan provided benefits to approximately 25,334 active and retired participants. The total gross assets of the Plan as of December 31, 2011, were $1,372,933,491.

4. The Applicants represent that Lilly currently provides life insurance and death benefits to eligible employees through the Eli Lilly and Company Life Insurance and Death Benefits Plan (the Life Insurance Plan), which is a component of the Plan. Benefits under the Life Insurance Plan include basic life insurance, for which Lilly pays 100 percent of the cost, and optional group term life insurance benefits (Optional Group Life), for which employee participants pay 100 percent of the cost. According to the Applicants, participants in the Life Insurance Plan may elect, at their own discretion, Optional Group Life that includes Supplemental and Dependent Coverage.[7] Supplemental Coverage is equal to one, two, three, four, or five times a participant's base salary. The maximum Supplemental Coverage amount is $3 million. Dependent Coverage is equal to $10,000 per child ($2,000 for children under 6 months of age) and $10,000, $20,000, or $50,000 for a spouse or domestic partner. The Applicants represent that policy premiums are determined by American United Life Insurance Company (AUL), which insures the Optional Group Life. The Applicants state that participants who elect dependent spouse or domestic partner coverage pay premiums based on age and amount of coverage; participants pay child coverage premiums at a fixed rate (currently, $0.375 per month).

5. The Applicants represent that the Supplemental and Dependent coverages include an Accelerated Benefit Option which allows part of a participant's or dependent's Optional Group Life benefit to be paid while the participant or dependent is still living if the participant or dependent is terminally ill and has a limited life expectancy. The Applicants represent that ''terminally ill'' or ''a limited life expectancy'' means an injury or sickness that, despite appropriate medical care, is reasonably expected to result in the person's death within twelve months from the date of payment of the Accelerated Life Benefit, as determined by AUL. The Applicants represent that AUL may require that the person be examined at AUL's expense by AUL's choice of physician. The Applicants further explain that utilizing the Accelerated Benefit Option reduces the benefit that would otherwise be payable upon the participant's or dependent's death.

6. The Applicants represent that Lilly reached an agreement with AUL,[8] a party unrelated to Lilly and its affiliates, for AUL to serve prospectively as the direct insurer for the Optional Group Life coverage of the Life Insurance Plan and then contract with Elco to reinsure a portion of such coverage.

Past Reinsurance Arrangement With Elco

7. According to the Applicants, the Department recently investigated the Plan with respect to a prior reinsurance transaction that began in 1993 in which Elco had been reinsuring certain Optional Group Life coverage for Lilly that were provided under the Plan. According to the Applicants, after counsel advised Lilly and Elco that, absent an individual exemption, the Department might take the position that the reinsurance arrangement could involve one or more prohibited transactions, reinsurance payments to Elco ceased and Lilly and Elco began a process of correcting the prior transactions. According to the Applicants, Lilly paid correction expenses and took a number of steps to correct the transactions, as described below.

8. The Applicants represent that, as part of Lilly's corrective actions, Keith A. Dall, a principal with Milliman Actuarial Services (Milliman) reviewed the transactions. In a written report, Mr. Dall determined that the premiums paid by the Life Insurance Plan for the optional dependent and life insurance coverages during the period from March 14, 2005, through October 2010,[9] were within the range of premiums that would have been charged for comparable coverage by insurers comparable to AUL.

9. In addition to the review by Mr. Dall, the Applicants represent that Elco made restorative payments for the Life Insurance Plan's benefit, which represented Elco's profits during the relevant period.[10] The Applicants state that Elco used the Department's Voluntary Fiduciary Correction Program Online Calculator (the Online Calculator) to determine the appropriate amount. The Applicants further represent that in order to ensure that Elco's restorative payments could only be used for the benefit of participants and beneficiaries in the Life Insurance Plan, the payments were made to AUL to be credited to a Premium Pre-Payment Account (the Account) established for the Plan's benefit. According to the Applicants, the Account will pay 25 percent of each premium payment due under the Optional Group Life policies until the Account is exhausted, and during such time, participants electing Optional Group Life will have their premiums reduced by a corresponding 25 percent.[11] The Applicants represent that AUL agreed to credit interest on the Account monthly at a rate equal to the two-year U.S. Treasury Bond rate as of July 27, 2011. The Applicants further represent that, under a written agreement, Elco, AUL, and the Employee Benefits Committee of Eli Lilly and Company (the Committee), acting as plan administrator, recognize that the amounts credited to the Account and any earnings credited thereto are the assets of the Plan, which may not be used for any purposes other than to provide benefits and pay reasonable expenses in accordance with the terms of the Plan. Thus, according to the Applicants, Elco's total restorative payment to the Account was $3,929,834.64.[12] The Applicants

[7] The Applicant represents that approximately 68% of employees who are eligible for Optional Group Life purchase such coverage.

[8] The Applicants represent that AUL's overall financial strength is rated A+ by A. M. Best.

[9] According to the Applicants, Lilly and Elco became aware of the prohibited transactions in October 2010, at which time they put the reinsurance arrangement on hold pending the issuance of an individual exemption.

[10] The Applicants explain that profits were measured as the sum of all payments received by Elco from AUL in connection with Elco's reinsurance of the relevant coverages, plus the total interest earned on the premiums received by Elco.

[11] Under the Life Insurance Plan, all premiums for Optional Group Life are paid by participants who elect such coverage.

[12] The Applicants state that the total amount received by Elco from AUL in premiums for reinsurance during the period was $3,073,906.00. The Applicants explain that total interest earned on the premiums was determined using the Online Calculator, and as of August 1, 2011, lost earnings totaled $854,878.11. According to the Applicants, on August 1, 2011, Elco made a payment to AUL

Continued

represent that the restorative payment did not involve any transaction that could be prohibited within the meaning of section 406(a) or (b) of the Act. In this regard, according to the Applicants, (i) Elco made the restorative payment to AUL for the Plan's benefit and there was no transfer of assets from the Life Insurance Plan or the Plan, or use of assets of the Life Insurance Plan or other Plan assets for the benefit of Elco or Lilly or another party in interest, and (ii) neither the Committee nor any other person made a waiver of remedies that might be available to the Life Insurance Plan or the Plan with respect to the prohibited reinsurance transaction. Furthermore, the Applicant states that, to the extent that AUL's administration of the Account may be deemed to constitute a provision of services to the Life Insurance Plan or the Plan by AUL, such services should be exempted by virtue of the statutory exemption under section 408(b)(2) of the Act.[13]

10. The Applicants represent that the past prohibited reinsurance transactions were reported on the Plan's 2009 Form 5500, filed with the Department in October 2010, and the correction was disclosed on the Plan's 2010 Form 5500. According to the Applicants, the Department examined the prohibited reinsurance transactions as a part of an investigation and determined that it would take no further actions with respect to the matter because Lilly had made the corrective payments described above. The Department issued a final closing letter on December 12, 2012.

Proposed Reinsurance Arrangement With Elco

11. The Applicants explain that if this proposed exemption is granted, AUL will serve as the direct insurer for the Optional Group Life part of the Life Insurance Plan and then contract with Elco to provide reinsurance coverage for 75 percent of Optional Group Life risks within the $250,000 to $600,000 band of exposure.[14] The Applicants state that the reinsurance agreement with AUL does not have a set term, but either Elco or AUL can terminate the agreement no sooner than 60 days after mailing notice to the other party. AUL may also terminate the agreement: (1) If annual premiums payable for the Optional Group Life drop below $800,000 or if Lilly ceases to own more than 50 percent of Elco; (2) upon insolvency, bankruptcy, receivership, rehabilitation, or liquidation of Elco; or (3) if Elco is unable or unwilling to meet one or more of its obligations under the agreement and fails to cure the default within 30 days of notification from AUL. The Applicants represent that the benefits to Lilly and Elco of this reinsurance arrangement include eliminating the insurer's margins (in this case AUL), more control over the life insurance program, access to data about the Life Insurance Plan, and the possibility that it could write other employer-specific coverages in the captive.

12. The Applicants state that AUL's reinsurance agreement with Elco (the Reinsurance Agreement) will be ''indemnity only''—that is, AUL will not be relieved of its liability for benefits under the Life Insurance Plan if Elco is unable or unwilling to satisfy the liabilities arising from the reinsurance arrangement. The Applicants further represent that the reinsurance arrangement is a ''quota share'' arrangement, meaning that Elco will receive 75 percent of the premium applicable to the reinsured risk less ceding commission and risk charges.[15] The Applicants represent that although Elco is entitled to a share of the premium, Elco has no discretion with respect to denying a claim made by Lilly's Life Insurance Plan participants and beneficiaries. Finally, the Applicants note that AUL does not insure, and Elco does not reinsure, the basic life insurance benefits under the Life Insurance Plan.

13. The Applicants represent that Elco is a party in interest with respect to the Plan pursuant to section 3(14)(G) of the Act. Therefore, the reinsurance transaction would result in the indirect transfer of Life Insurance Plan premium payments, which are plan assets, to Elco, in violation of ERISA section 406(a)(1)(D), which prohibits the transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. Additionally, the Applicants represent that the transactions could constitute violations of section 406(b)(1) of the Act, which prohibits a fiduciary from dealing with the assets of a plan in his interest or for his own account, and section 406(b)(3) of the Act, which prohibits a fiduciary from receiving any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving plan assets. In this regard, the Applicants suggest that the Benefits Committee could be found to have used plan assets for the benefit of Lilly's affiliate, Elco, by causing the Life Insurance Plan to pay premiums to AUL under insurance contracts they know will be reinsured by Elco. The Applicants also indicate that the proposed reinsurance transaction could violate section 406(b)(2) of the Act, which prohibits a fiduciary from acting in any transaction involving a plan on behalf of a party whose interests are adverse to the interests of the Plan. In this regard, the Applicants note that, in connection with the subject reinsurance transactions, Elco has an interest that is adverse to the interests of the Plan. Therefore, Lilly could be found to have acted in a transaction involving the Life Insurance Plan on behalf of a party whose interests are adverse to the interests of the Life Insurance Plan by causing Elco to reinsure the Plan's contract with AUL for Optional Group Life. Accordingly, this proposed exemption, if granted, will provide relief from the prohibitions set forth in sections 406(a)(1)(D) and 406(b) of the Act for the reinsurance transactions and the corresponding premiums that Elco will receive.

Enhancements

14. The Applicants note that, since January 1, 2012, in anticipation of the proposed exemptive relief described herein, certain enhancements (the Enhancements) have been provided to participants in the Eli Lilly Health Plan (the Health Plan), which is a component of the Plan. In this regard, the Applicants state that the Enhancements described below would not have been added to the Health Plan but for the proposed arrangement that is the subject of this notice. The Applicants state that Lilly is bearing the entire cost of such Enhancements. The Applicants explain that all programs are voluntary and consist of the following:

(a) Enhanced Coaching Program—provides additional coaching for health conditions not previously covered. The

for credit to the Account in the amount of $3,928,784.11. However, because AUL did not receive this payment until August 2, 2011, a supplementary interest payment was made on August 3, 2011, in the amount of $1,050.53.

[13] The Department is expressing no view herein as to the Applicants' assertions regarding the absence of prohibited transactions in connection with payment of the restorative payment to AUL for the benefit of the Life Insurance Plan and the Plan. Furthermore, the Department is expressing no view herein as to whether AUL's administration of the Account may be deemed to constitute a provision of services or whether section 408(b)(2) would be applicable to such transaction.

[14] For example, the Applicants explain that if there is a claim on the Optional Group Life policy for $450,000, AUL will be responsible for 100% of the first $250,000. Elco would cover 75% of the remaining $200,000 ($150,000) with AUL remaining responsible for 25% of that $200,000 ($50,000). So in this scenario, AUL's total exposure is $300,000 and Elco's total exposure is $150,000. Additionally, the Applicants represent that in the event Elco becomes insolvent, AUL would be responsible for the entire $450,000.

[15] The Applicants note that in Fiscal Year 2012, Lilly would have received 51.4% of the total premium. However all premiums to which Elco is entitled continue to be paid to AUL until an individual exemption is issued.

program also provides a new predictive model to identify participants who would most likely benefit from coaching;

(b) Biometric Screenings—participants have multiple options in which to participate in the voluntary screenings. The screenings include data on height, weight, waist circumference, full lipid panel, and glucose testing. Each participant can obtain a well-being report through a web portal and then share it with his or her personal physician, health coach, or employee health services practitioner to help detect health risks earlier. If a participant receives a result that is critically abnormal, the participant receives a follow-up call to explain the results and any available Plan or wellness program resources for that particular condition or risk factor; and

(c) Enhanced Health Risk Assessment/Well-Being Assessment—a more comprehensive voluntary health and wellness assessment will combine questions on physical and emotional health, productivity, work environment, and healthy behaviors. This assessment is intended to help employees better understand their health risks and areas where behaviors may hinder their health. It will be used in connection with the biometric screenings to communicate with individuals about voluntary coaching programs that would be medically beneficial to such individuals based on their particular condition or risk factors.[16]

15. The Applicants represents that Lilly has incurred substantial costs related to the enhanced wellness program. The Applicants represent that, although it is difficult to break down in its entirety, the following costs are associated with the enhanced wellness program: On-site health coach for Indianapolis sites ($200,000 per year); Web site portal ($250,000 per year); On-site biometric screenings for all U.S. employees (approx. $50/employee); and Counseling, support groups, one-on-one coaching, and smoking cessation products (approx. $12,000 per year).

16. The Applicants represent that if the Enhancements are modified, alternative enhancements of at least the same approximate value, as determined by an independent, qualified fiduciary will continue in all subsequent years of the reinsurance arrangement.

Independent Fiduciary

17. In connection with this exemption request, the Applicants represent that they have retained Keith A. Dall, from Milliman, to act as the Independent Fiduciary (the Independent Fiduciary) on behalf of the Plan for the purpose of evaluating, and if appropriate, approving the subject transactions.[17] In this regard, Mr. Dall is responsible for conducting a due diligence review and analysis of the proposed transactions and for providing a written opinion explaining why he believes the arrangement meets the Department's requirements for an administrative exemption. The Applicants represent that Mr. Dall will also determine whether the conditions of the proposed exemption and the terms of the benefits enhancements continue to be satisfied.

18. Mr. Dall certifies that he is qualified to serve as the Independent Fiduciary in that, among other things, he has appropriate training, experience, and facilities to act on behalf of the Plan in accordance with the fiduciary duties and responsibilities prescribed by the Act. Mr. Dall represents that he and Milliman are independent of the parties to the covered transactions because Milliman's gross income from Lilly for the prior fiscal year does not exceed two percent of Milliman's gross annual income. Mr. Dall also represents that neither he nor Milliman was a fiduciary with respect to the Plan prior to this appointment. Moreover, Mr. Dall represents that neither he nor Milliman is an affiliate, officer, director, employee, or partner of Elco, Lilly, or AUL. Furthermore, the Applicants state that Milliman is not a corporation or partnership in which Lilly or Elco has an ownership interest or is a partner and that Milliman does not, on its own account, own any shares or otherwise have an ownership interest in Lilly, Elco, or any of their affiliates. Finally, the Applicants represent that Milliman will acknowledge in writing its acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary. Moreover, neither Milliman, nor any partnership or corporation of which Milliman is an officer, director, or ten percent or more partner or shareholder, intends to acquire any property from, sell any property to, or borrow funds from Lilly, Elco, or their affiliates while serving as the Independent Fiduciary or for six months after serving as the Independent Fiduciary. If it becomes necessary in the future to appoint a successor Independent Fiduciary to replace Milliman, the Applicants represent that they will notify the Department sixty (60) days in advance of such appointment. Any successor will have the same, or substantially similar, responsibilities, experience, and independence as Milliman. If such a successor is appointed, the Applicants represent there will be no lapse in time between the resignation or termination of the former Independent Fiduciary and the appointment of the successor Independent Fiduciary.

19. The Applicants represent that in connection with the reinsurance transactions, Mr. Dall reviewed, among other things: A draft of Eli Lilly and Elco's request to the Department for an administrative exemption; Elco's audited financial statements for the year ending December 31, 2012; the insurance rates between Lilly and AUL; the reinsurance agreement between AUL and Elco; and documentation summarizing the Enhancements. Furthermore, Mr. Dall produced an Independent Fiduciary Report (the Independent Fiduciary Report) wherein he considered the covered transactions and made the following determinations:

Mr. Dall represents that Milliman compared the insurance rates between Lilly and AUL to rates for similar group supplemental life and dependent life benefits and found them to be competitive and within normal ranges. In addition to this, Mr. Dall represents that Milliman reviewed the premium rate history with the claims and expense history on this block of business and found the loss ratios to be reasonable relative to the industry and consistent with the intended loss ratio stated in the AUL actuarial memorandum provided by AUL. Mr. Dall represents that Milliman believes that other insurance carriers would offer similar rates given the experience on this block of business. Additionally, Mr. Dall confirmed that he received a copy of the reinsurance agreement between AUL and Elco and the Plan pays no commissions with respect to the reinsurance with Elco.

Mr. Dall also confirmed that Elco is licensed to conduct insurance transactions, including reinsurance transactions, in the State of South Carolina, which requires captive reinsurers to file an annual actuarial opinion prepared by an independent actuary. Additionally, Mr. Dall confirmed that AUL, the Fronting Insurer, received a rating of A+ from A.M. Best, as of May 8, 2013.

Finally, Mr. Dall determined that the Enhancements described above will result in an immediate and objectively determined benefit to the Plan's participants and beneficiaries through,

[16] The Applicants note that the Plan may offer more incentives to encourage participants to undergo biometric screenings and complete the Well-Being Assessment.

[17] The Applicants state that Mr. Dall, or such other Independent Fiduciary as shall be retained, shall be paid by Lilly.

among other things, the offer of coaching, biometric screenings, and a well-being assessment.

Statutory Findings

20. The Applicants represent that the proposed exemption is administratively feasible. The reinsurance of the Optional Group Life contracts is governed by a reinsurance agreement between AUL and Elco that is subject to review by the Independent Fiduciary and can be audited to determine compliance with the conditions of this proposed exemption, if granted. Furthermore, the proposed exemption will not require continued monitoring or other involvement by the Department.

21. The Applicants also represent that the proposed exemption is in the interest of the Plan because it will include a material increase in Plan benefits for participants and beneficiaries through the Enhancements, described above. Specifically, Lilly amended the Plan effective January 1, 2012, to, among other things: (a) Enhance the Coaching Program offered under the Health Plan's wellness programs; (b) provide new biometric screenings under the wellness programs; and (c) enhance the Health Risk Assessment offered under the wellness programs. Additionally, the Applicants represent that captive reinsurance results in lower premiums because the captive does not charge ''margin.'' According to the Applicants, this, in turn, allows Lilly to create additional value in the Plan or lower its costs and those of its employees in contributory arrangements.

22. The Applicants represent that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plan because this proposed exemption, if granted, will require an Independent Fiduciary to review and approve the reinsurance transaction and the Enhancements. Moreover, the Applicants state that the Independent Fiduciary will monitor the covered transactions on a continuing basis to ensure such transactions remain in the interests of the Plan, take all appropriate actions to safeguard the interests of the Plan, and enforce compliance with all conditions and obligations imposed on any party dealing with the Plan. Specifically, this proposed exemption will require that the Independent Fiduciary analyze the subject transactions and render an opinion regarding whether certain conditions in this proposed exemption were satisfied, including that: The Life Insurance Plan pays no more than adequate consideration for the Optional Group Life contracts; the Plan pays no commissions with respect to the direct sale or reinsurance of such contracts; as of January 1, 2012, there is an immediate and objectively determined benefit to participants and beneficiaries of the Plan in the form of increased benefits, and if the benefits are materially modified, benefits of the same approximate value will continue in all future years of reinsurance and in every renewal of reinsurance; the reinsurance arrangement is indemnity insurance only; any Fronting Insurer will have a financial strength rating of ''A'' or better from A.M. Best; the Fronting Insurer calculates premiums according to formulae that are similar to formulae used by other insurers who provide comparable Optional Group Life coverage under similar programs; the premiums charged by the Fronting Insurer are reasonable and comparable to the premiums charged for the same coverage, under similar programs by the Fronting Insurer or its competitors who have the same or better rating from A.M. Best. Finally, the Independent Fiduciary will render an opinion about whether participants and beneficiaries in the Plan received, as of January 1, 2012, an immediate and objectively determined benefit through the Enhancements, and if the Enhancements are materially modified, Enhancements of the same approximate value in all future years of reinsurance and in every renewal of reinsurance.

Summary

23. In summary, the Applicants represent that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act since, among other things:

(a) Elco meets the affiliation, licensure, certification, and examination requirements specified in Section II(a)(1)–(5) of this proposed exemption;

(b) The Life Insurance Plan will pay no more than adequate consideration for the insurance contracts;

(c) No commissions will be paid by the Life Insurance Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) Effective January 1, 2012, there was an immediate and objectively determined benefit to Plan participants and beneficiaries in the form of increased benefits. If the benefits are materially modified, benefit increases of the same approximate value, as determined by the Independent Fiduciary, will continue in all subsequent years and in every renewal of each contract of reinsurance involving Elco and a Fronting Insurer. Any such modification in benefits will approximate the increase in benefits that are effective January 1, 2012;

(e) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formulae used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formulae will be reasonable and will be comparable to the premiums charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Fronting Insurer has a financial strength rating of ''A'' or better from A.M. Best, and the reinsurance arrangement between the Fronting Insurer and Elco will be indemnity insurance only;

(g) The Life Insurance Plan retains an Independent Fiduciary or successor to such fiduciary to analyze the transactions and to render an opinion that certain requirements of the proposed exemption, if granted, have been satisfied;

(h) Participants and beneficiaries in the Plan will receive in subsequent years of every contract of reinsurance involving Elco and the Fronting Insurer the benefit increases effective January 1, 2012, or benefit increases no less in value, as determined by the Independent Fiduciary, than the objectively determined increased benefits such participants and beneficiaries received effective January 1, 2012;

(i) The Independent Fiduciary will monitor the transactions proposed herein on behalf of the Plan on a continuing basis to ensure such transactions remain in the interest of the Plan; take all appropriate actions to safeguard the interests of the Plan; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plan; and

(j) The Independent Fiduciary will review any contract for, and any renewal of, the reinsurance of risks and the receipt of premiums therefrom by Elco and will determine whether the requirements of this proposed exemption and the terms of the Enhancements, as described herein, continue to be satisfied.

Notice to Interested Persons

Lilly will provide notice of the proposed exemption to all employees eligible to participate in the Plan within fourteen (14) calendar days of publication of the proposed exemption in the **Federal Register**. Lilly will provide the notice to all employees eligible to participate in the Plan via first-class mail. In addition to the proposed exemption, as published in the **Federal Register,** Lilly will provide all employees eligible to participate in the Plan with a supplemental statement, as required, under 29 CFR 2570.43(a)(2). The supplemental statement will inform the employees eligible to participate in the Plan of their right to comment on and to request a hearing with respect to this proposed exemption. The Department must receive all written comments and/or requests for a hearing within 44 days of the publication of this proposed exemption in the **Federal Register**. The Department will make all comments available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Brown of the Department, telephone (202) 693–8352 (This is not a toll-free number.)

Robert A. Handelman Roth IRA No. 2 (the New IRA) Located in Akron, Ohio

[Application No. D–11798]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the proposed purchase by the New IRA of a 100% ownership interest (the Interest) in RAH Properties Mill Street, Ltd. (the Company) from Robert A. Handelman (Mr. Handelman), the New IRA owner and a disqualified person with respect to the New IRA,[18] provided the following conditions are met:

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

(b) At the time of the purchase, the price paid by the New IRA for the Interest is equal to the fair market value of such Interest, as established by a qualified independent appraiser in an updated appraisal report as of the date of the purchase;

(c) The terms and conditions of the purchase are at least as favorable to the New IRA as those available in a comparable arm's length transaction with an unrelated third party;

(d) The New IRA does not pay any commissions or other expenses in connection with the purchase, including the rollover of the cash distribution from the Robert A. Handelman Roth IRA No. 1 (the Existing IRA) to the New IRA;

(e) Mr. Handelman pays all appropriate taxes that are associated with the rollover of the cash distribution from the Existing IRA to the New IRA in connection with the purchase; and

(f) Mr. Handelman receives no compensation from the New IRA or the Existing IRA for his role as manager of the Company.

Summary of Facts and Representations

1. The Existing IRA is a Roth individual retirement account established under section 408(a) of the Code on May 1, 2012, by Robert A. Handelman, the IRA's sole participant. Beneficiaries of the Existing IRA are Mr. Handelman's children: Julie Wesel, Susan Masturzo, Sheryl Loudon, Lisa Handelman Jones, and Leslie Lopes. Fidelity Investments (Fidelity) is the Existing IRA's custodian. As of December 31, 2013, the Existing IRA had total assets of $760,282.63.

2. The New IRA is also a Roth individual retirement account that was established under section 408(a) of the Code on May 1, 2012, by Robert A. Handelman, the New IRA's sole participant. Beneficiaries of the New IRA are Mr. Handelman's children. PENSCO Trust Company, a non-depository trust company, is the New IRA's custodian. Although the New IRA currently holds no assets, it will be funded within 60 days after the exemption is granted.

3. Mr. Handelman has a 100% ownership interest (the Interest) in the Company, a limited liability company formed on July 14, 1998, and located in Akron, Ohio. The Company's operations consist exclusively of leasing commercial office real estate in a building located at 55 East Mill Street, Akron, Ohio (the Property). The Property, which is the Company's sole asset, is improved by a two-story brick office building that contains 11,448 square feet of space. The building also includes a partially-finished basement. The Property is not subject to a mortgage.

As of December 31, 2013, the Company had total assets of $431,984.25, as reported in the Company's unaudited financial statements.[19] The Property is carried on the Company's balance sheet at $247,314. Mr. Handelman manages the Company but he receives no compensation from the Company.

4. Mr. Handelman purchased the Property in 1984 for $375,000 from Community Federal Savings Loan Association, an unrelated party. On December 28, 1984, Mr. Handelman, as lessor, and Chemstress Consultant Company, a company owned by Mr. Handelman, as lessee, entered into a lease of the Property (the Chemstress Lease) commencing on January 1, 1985. The Chemstress Lease provided for an initial five-year term, with two five-year renewal options. On July 31, 1998, Mr. Handelman contributed the Property to the Company. At the expiration of the second lease renewal period, the Chemstress Lease was extended on a month-to-month basis from January 1, 2000 until May 31, 2005. The Property was vacant from June 1, 2005 until July 14, 2005.

5. Since July 14, 2005, the Company has leased the Property to the Akron Summit County Community Action, Inc. (ASCCA), an unrelated party.[20] The current lease is a three-year lease, which runs from May 1, 2013 through April 30, 2016. The current monthly rent is $14,052.90. The lease is also subject to two three-year renewal options.

6. An individual exemption is requested from the Department to allow the New IRA to purchase the Interest from Mr. Handelman. The Interest consists of the Property and the Company's rights as lessor under the ASCCA lease. To enable the IRA to purchase the Interest, Mr. Handelman will take a distribution in cash from the Existing IRA in the amount of the purchase price and will roll over the full cash distribution into the New IRA. Mr. Handelman represents that he cannot use the Existing IRA for the purchase because Fidelity, the custodian, cannot hold real estate.

It is represented that Mr. Handelman hopes that the New IRA will continue for many years to provide for his children, whom he has designated as the beneficiaries of such IRA. Given

[18] Pursuant to 29 CFR 2510.3–2(d), the New 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.

[19] It is represented that the Company does not have audited financial statements.

[20] The first lease between the Company and ASCCA expired on April 30, 2013.

these intentions, Mr. Handelman would like the New IRA to invest in an asset that will continue to generate income and appreciation for the benefit of his family for the long term. Thus, he believes the New IRA's ownership of the Interest will fulfill this goal. Further, Mr. Handelman notes that the stock market is very volatile and fixed income securities currently have very low yields with the potential for substantial principal depreciation as interest rates rise. Therefore, Mr. Handelman does not believe other assets such as these will provide the New IRA with the long-term stability and growth in value that he seeks for such IRA.

7. The New IRA will acquire the Interest for the fair market value of such Interest, as determined by a qualified independent appraiser in an appraisal that is updated on the date of the purchase. The New IRA will pay cash for the Interest and it will not pay any commissions or other expenses in connection with the purchase, or in connection with the rollover of the cash distribution from the Existing IRA to the New IRA. The terms and conditions of the purchase will be at least as favorable to the New IRA as those available in a comparable arm's length transaction with an unrelated third party. Finally, Mr. Handelman will pay all appropriate taxes that are associated with the transfer of any assets from the Existing IRA to the New IRA.

8. Section 4975(c)(1)(A) of the Code prohibits, in part, any direct or indirect sale of any property between a plan and a disqualified person. Section 4975(c)(1)(D) of the Code prohibits any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan. The term ''disqualified person'' is defined under section 4975(e)(2)(A) of the Code to include a person who is a fiduciary. Section 4975(e)(3) of the Code defines the term ''fiduciary'' to include, in pertinent part, any person who exercises any discretionary authority or control respecting management or disposition of its assets. In addition, section 4975(c)(1)(E) of the Code prohibits a fiduciary from dealing with the income or assets of a plan in the fiduciary's own interest or for his or her own account. Finally, section 4975(e)(1)(B) of the Code defines the term ''plan'' to include an individual retirement account described in section 408(a) of the Code.

As a fiduciary with respect to the New IRA, Mr. Handelman is a disqualified person with respect to such IRA under section 4975(e)(2)(A) of the Code. Accordingly, because Mr. Handelman is a disqualified person with respect to the New IRA, the proposed purchase by the New IRA of Mr. Handelman's 100% Interest in the Company would be a transaction prohibited by section 4975(c)(1)(A) of the Code, and constitute a direct transfer to Mr. Handelman of the assets of the New IRA in violation of section 4975(c)(1)(D) of the Code. In addition, the proposed purchase would violate section 4975(c)(1)(E) of the Code because, as a fiduciary, Mr. Handelman would be engaged in a prohibited act of self-dealing by dealing with the assets of the New IRA for his own interest or his own account in connection with the purchase. Accordingly, in the absence of an administrative exemption, the proposed transaction would violate the foregoing Code provisions.

9. The Property underlying the Interest has been appraised by Russell L. Kitzberger, GAA, RAA, Certified General Appraiser of Pointer Appraisal Services, LLC (Pointer), which is located in Akron, Ohio. Mr. Kitzberger represents that he has no familial or personal relationship with Mr. Handelman or the Company, and that Pointer derived less than 1% of its 2013 annual income and less than 1% of its 2014 annual income from Mr. Handelman.

In an independent appraisal report dated July 19, 2013 (the Property Appraisal), Mr. Kitzberger stated that he considered the Sales Comparison Approach, Income Approach and Cost Approach to valuation. Based on the sales data in the Property Appraisal, Mr. Kitzberger characterized the real estate market as a ''buyer's market,'' with few properties trading due to poor economic and general real estate market conditions. Therefore, he gave the most weight in his valuation of the Property to the Income Approach, stating that the most probable price the Plan would receive on the Property would be determined by the purchasing party weighing the income production of the Property under the current market conditions for sale of leased fee estates. Based on this valuation, Mr. Kitzberger determined that, as of July 10, 2013, the Property had a leased fee value of $610,000. As of the same date, Mr. Kitzberger also determined that the Property had a projected lease rate of $13.00 per square foot for the first and second floor, and $7.00 per square foot for the basement area, bringing the potential gross annual rental income to $99,580 or $8,298 per month.

In a letter addendum dated November 11, 2014, Mr. Kitzberger updated the Property Appraisal. Mr. Kitzberger represents that he completed the update to the Property Appraisal in a manner similar to the prior report by updating the prior information with more recent sales, lease and cost data. Based on this more recent data, Mr. Kitzberger concluded that, as of November 10, 2014, the fair market value of the Property remained at $610,000 and that the projected lease rates and rental income for the Property remained unchanged.

10. In addition to the Property valuation, the Interest has been appraised by Jason R. Bogniard, MBA, ASA, AVA, EA of Apple Growth Partners (Apple Growth), a regional business advisory firm of certified public accountants and industry experts, having expertise in business valuation, forensic accounting and litigation support services, and employee benefit planning. Apple Growth has offices in Akron and Independence, Ohio.

Mr. Bogniard certifies that he is independent of Mr. Handelman and the Company, and that the only services he has provided to either are the valuation services related to the appraisal of the Company. Further, Mr. Bogniard states that invoices and/or payment for services rendered to Mr. Handelman or the Company by Apple Growth represented less than 1% of Apple Growth's 2013 gross revenues and less than 1% of Apple Growth's 2014 gross revenues.

In rendering this valuation, Mr. Bogniard represents that he considered, among other things, the following relevant factors, which are specified in Revenue Ruling 59–60: (a) The history and nature of the business; (b) the economic outlook of the United States and that of the specific industry in particular; (c) the book value of the subject entity and the financial condition of the business; (d) the earning capacity of the entity; (e) the dividend-paying capacity of the entity; (f) whether or not the firm has goodwill or other intangible value; (g) sales of the stock and size of the ownership block to be valued; and (h) the market price of publicly-traded stocks of corporations engaged in similar industries or lines of business. In addition, Mr. Bogniard states that he examined the following documents in preparing the valuation of the Interest: (a) Federal income tax returns for Mr. Handelman and his wife for the years 2008 through 2012; (b) tax asset detail reports for 2012 and 2013; (c) the Property Appraisal; (d) the ASCCA lease; and (e) the real estate tax assessment for the Property.

11. In an appraisal report dated September 12, 2013 (the Company Appraisal), Mr. Bogniard took into consideration the Property Appraisal, among the other factors listed above, to

value the Interest. Using the Cost (*i.e.,* the Net Asset Value) Approach to valuation,[21] Mr. Bogniard concluded that the Interest had an equity value of $610,000 as of July 31, 2013. Adjusting the value for lack of marketability, Mr. Bogniard determined that the fair market value of the Interest was $580,000 ($610,000 less a five percent discount for lack of marketability, rounded), as of the same date.

In a letter dated November 17, 2014, Mr. Bogniard updated the Company Appraisal. Based on his review of Company financial statements through October 31, 2014, Summit County Auditor tax appraised values for the Property, the most recent Property valuation by Pointer, regional economic indicators, and cost of capital rates of return as of November 17, 2014, Mr. Bogniard concluded that the fair market value of the Interest remained at $580,000. Mr. Bogniard will again update the Company Appraisal on the date of the purchase.

12. It is represented that the proposed transaction is administratively feasible because it will be easy to implement and will not require oversight by the Department. Additionally, all distributions by the Company will be made to the New IRA which will have control of the distributed funds.

It is represented that the New IRA's purchase of the Interest is in the interest of such IRA, primarily because the acquisition would occur in a time of historically low commercial real estate values that are related to the current economic downturn. It is also represented that the rent owing to the Company under the ASCCA lease is favorable when compared to rents being collected on similar commercial properties.[22] Moreover, it is represented that the Property's location in downtown Akron should provide the New IRA assurance that either the current lessee or another lessee will lease the Property when the ASCCA lease expires on April 30, 2016 because market rent for commercial real estate has returned to the levels prevalent prior to the onset of the global economic crisis in late 2008.

Finally, it is represented that the proposed transaction is protective of the rights of the participants and beneficiaries of the New IRA because this is a permissible investment that has been properly valued through a recent valuation. Further, Mr. Handelman has agreed to pay the appropriate taxes in connection with the distribution of assets from the Existing IRA to the New IRA.

13. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The purchase will be a one-time transaction for cash;

(b) At the time of the purchase, the price paid by the New IRA for the Interest will be equal to the fair market value of such Interest, as established by a qualified, independent appraiser in an updated appraisal report as of the date of the purchase;

(c) The terms and conditions of the purchase will be at least as favorable to the New IRA as those available in a comparable arm's length transaction with an unrelated third party;

(d) The New IRA will not pay any commissions or other expenses in connection with the purchase, including the rollover of the cash distribution from the Existing IRA to the New IRA;

(e) Mr. Handelman will pay all appropriate taxes that are associated with the rollover of the cash distribution from the Existing IRA to the New IRA in connection with the purchase; and

(f) Mr. Handelman will receive no compensation from the New IRA or the Existing IRA for his role as manager of the Company.

Notice to Interested Persons

As Mr. Handelman is the sole participant of the New IRA, it has been determined that there is no need to distribute the Notice of Proposed Exemption (the Notice) to interested persons. Therefore, comments and requests for a hearing must be received by the Department within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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

Roofers Local 195 Pension Fund (the Pension Fund) and Roofers Local 195 Joint Apprenticeship Training Fund (the Training Fund) Located in Cicero, NY

Exemption Application Nos. D–11809 and L–11810

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2)of the Internal Revenue Code of 1986, as amended, (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[23] If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act, shall not apply to the sale (the Sale) of a building located at 6200 NYS Route 31, Cicero, New York (the Building) by the Pension Fund to the Training Fund, provided that the following conditions have been met:

(a) At the time of the Sale, the Pension Fund receives a one-time cash payment in exchange for the Building, equal to the fair market value of the Building as established in an appraisal (the Appraisal) by a qualified, independent appraiser, updated on the date of the Sale, and provided to the Department no later than 60 days from the date of the Sale;

(b) The Training Fund does not finance more than 80% of the cost of its purchase of the Building, and any financing must be with an independent, third-party bank (the Bank);

(c) The Training Fund pays no fees, commissions or other expenses associated with the Sale, and no brokerage commissions associated with the Sale may be paid by either the Training Fund or the Pension Fund;

(d) A qualified, independent fiduciary (the Independent Fiduciary), acting on behalf of the Training Fund, represents the Training Fund's interests for all purposes with respect to the Sale, including the financing of the Building, and must: Determine that it is in the best interest of the Training Fund to proceed with the Sale; review and approve the methodology used in the Appraisal; and ensure that such methodology is properly applied by the qualified, independent appraiser in determining the fair market value of the Building on the date of the Sale;

[21] Mr. Bogniard represented that on a going concern basis, earnings power, whether expressed in an income or market approach, is normally given the predominant consideration of the major factors. However, because the Company is a real estate holding company holding only a single parcel of commercial property, Mr. Bogniard represented that he utilized the value derived from the Net Asset Value method.

[22] See Representation 9 regarding comparable rental payments in the Akron, Ohio area.

[23] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(e) The Board of Trustees of the Pension Fund (the Pension Trustees), prior to entering the Sale, must determine that the Sale is feasible, in the interest of the Pension Fund, and protective of the rights of participants and beneficiaries of the Pension Fund;

(f) The Pension Fund is not a party to the commercial mortgage between the Training Fund and the Bank;

(g) Under the terms of the loan agreement between the Bank and the Training Fund, in the event of a default by the Training Fund, the Bank has recourse only against the Training Fund's interest in the Building and not against the general assets of the Training Fund; and

(h) The terms and conditions of the Sale are at least as favorable to each Fund as those obtainable in an arms-length transaction with an unrelated third party.

Summary of Facts and Representations [24]

Background

1. The Roofers Local 195 Pension Fund (the Pension Fund) is a terminated qualified multiemployer defined benefit pension plan established by and between the Roofers Contractors' Association, Inc. and the United Union of Roofers, Waterproofers and Allied Workers, Local Union No. 195 (the Union). The Pension Fund previously held investments with Madoff Investments, Inc. whereby the Pension Fund lost most of its value. Subsequently, the Pension Plan terminated in accordance with section 4041A(a)(2) of ERISA after finalizing a resolution with the Pension Benefit Guaranty Corporation (the PBGC). As of July 9, 2014, the Pension Fund had no active participants, 96 retired participants and 160 terminated vested participants. There are currently 18 beneficiaries receiving benefits from the Pension Fund. As of June 26, 2014, the Pension Fund had approximately $857,049 in assets, and liabilities of $2,156,354.

2. The Roofers Local 195 Joint Apprenticeship Training Fund (the Training Fund) is a multiemployer apprenticeship plan established pursuant to a collective bargaining agreement between the Roofing Contractors Association of Central New York and the Union for the purpose of providing necessary construction equipment, qualified instructors, books, models, sites where instruction and practice on such equipment can be available to persons eligible under the Training Fund's program, and related benefits. As of July 9, 2014, the Training Fund had 223 participants and no beneficiaries, as it does not offer any kind of death benefits to participants. As of June 26, 2014, the Training Plan had $949,860 (in cash and investments) in assets, and liabilities of $5,212.

3. According to the Pension Fund and the Training Fund (together, the Funds), the current members of the boards of trustees (the Trustees, or the Applicant) of the Pension Fund and the Training Fund each include an equal number of employer-appointed trustees (Employer Trustees) and Union-appointed trustees (Union Trustees). Furthermore, the Applicant represents that five out of the six Trustees on the boards are common to each Fund. Finally, the Applicant represents that the Training Fund contributed to the Pension Fund on behalf of some of its employees.

4. The Applicant represents that the Pension Fund has been receiving funding for benefits from the PBGC since July 2009 in the form of loans. As of June 30, 2014, the outstanding loan amount, including principal and interest, totals $2,178,863.80. The PBGC's involvement also includes an ongoing review of plan benefits and expenses that are paid with PBGC advances.[25] On July 28, 2010, the Applicant notified the PBGC that a plan termination by mass withdrawal had occurred as of June 28, 2010, and that employers had been assessed withdrawal liability. The Applicant represents that it has since reached a global resolution of funding issues with the PBGC and has received approval from the PBGC for the proposed transactions described herein.

5. The Pension Fund and the Training Fund have also been the subject of two investigations by the Department. In this regard, on March 26, 2009, the Pension Fund was notified that it was the subject of an investigation under Title I of ERISA by the Department's Boston Regional Office concerning investments related to the fraud perpetrated on the Pension Fund by Bernard L. Madoff Investment Securities LLC. The Department found that the Trustees of the Pension Fund had breached their fiduciary obligations to the Plan and violated several provisions of ERISA. The Trustees restored approximately $34,712 to the Plan, representing certain administrative expenses, plus interest, associated with the violations. On June 10, 2011, the Department indicated that it had concluded its investigation of the Pension Fund and of the activities of its Trustees based on their corrective actions.

6. On August 22, 2011, the Applicant was notified that the Training Fund was the subject of another investigation by the Department. In this regard, the Applicant voluntarily submitted itself to investigation by the Department's Boston Regional Office. The Department found that the Training Fund reimbursed medical service providers for asbestos related physical examinations in excess of the maximum $125 limit provided in the Plan. By letter dated May 29, 2013, the Department indicated that it had concluded its investigation of the Training Fund and of its Trustees, and concluded further that based on the corrective actions taken by the Trustees, including restoration of $8,177.68 to the Training Fund, no further action would be taken.

The Sale

7. The Applicant represents that the Pension Fund purchased the real property located at 6200 NYS Route 31, Cicero, New York (the Building), in 1999, from unrelated third parties at a price of $230,000. The Applicant represents further that the Building was originally constructed as a State Police barracks in 1972. The Building sits on 1.28 acres of land and is comprised of 3,575 square feet of class B office space and meeting areas, a built-in garage and a class C finished basement. Other improvements to the property include an asphalt-paved parking lot, a chain-link fence enclosed storage area, and a one-story wood frame storage shed. According to the Applicant, the Building was renovated in 1999 by the Pension Fund for use as a union hall and administrative offices. As of July 29, 2013, the appraised value of the Building was $505,000.

8. The Applicant represents that, in connection with the Pension Fund's financial losses and termination, the PBGC has indicated a preference that the Pension Fund sell the Building, as a sale of the Building would improve the liquidity of the Pension Fund and allow it to pay benefits. The Trustees of the Pension Fund considered PBGC's recommendation and agreed that the Building should be sold.

9. The Applicant represents that the Training Fund wishes to purchase the Building from the Pension Fund (the Sale) in order to maintain the current training facilities and avoid any disruption in training. Furthermore, the

[24] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

[25] The Applicant states that, in the context of multiemployer plans, the PBGC permits the continued administration of the plan by its board of trustees.

Applicant states that, if the Pension Fund were forced to sell the Building to an unrelated third party, additional costs would be incurred by the Training Fund to construct or upgrade new property to meet the training needs of the roofing industry. Moreover, the Applicant states that the Pension Fund and other entities intend to lease office space in the Building from the Training Fund following the Sale, providing a stream of income to the Training Fund.[26] The Applicant represents that the proposed price for which the Training Fund will purchase the Building from the Pension Fund is equal to fair market value of the Building, as established in an appraisal conducted by a qualified independent appraiser and updated on the date of the Sale. An Independent Fiduciary, Syracuse Securities, Inc., is responsible for monitoring and approving the transaction on behalf of the Training Fund. The Independent Fiduciary recommends a down-payment of 20% of the purchase price with the remaining 80%, of an amount not to exceed $400,000, financed by a commercial mortgage.

10. Section 406(a)(1)(A) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property between a plan and a party in interest. Section 406(a)(1)(D) of the Act prohibits a fiduciary from causing a plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of a plan. The Applicant states that, because the Pension Fund is a party in interest to the Training Fund under section 3(14)(C) of the Act, the Sale would constitute a prohibited transaction under sections 406(a)(1)(A) and (D) of the Act. Furthermore, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary, in his individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Because certain officers of the Pension Fund are also Trustees of the Training Fund, and they may have an interest in causing the Training Fund to engage in the transaction with the Pension Fund, the Sale may also constitute a prohibited transaction under sections 406(b)(1) and 406(b)(2) of the Act. Therefore, the Applicant requests an administrative exemption from sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act for the Sale.

The Appraisal

11. The Applicant represents that, in connection with the proposed Sale, a qualified, independent appraiser conducted an appraisal of the Building (the Appraisal). In its July 19, 2013, appraisal report, Pomeroy Appraisal Associates, Inc. (Pomeroy) valued the Building at $505,000.

12. Pomeroy represents that Donald A. Fisher, the appraiser who signed its appraisal report, has worked as an appraiser for Pomeroy since 1974. Pomeroy represents that Fisher is a New York-certified General Appraiser, a Member of the Appraisal Institute (MAI), and an Accredited Rural Appraiser (ARA). Pomeroy represents that there is no relationship between Pomeroy and the Funds. Pomeroy represents and warrants that it meets the revenue test for a qualified independent appraiser for 2013, the year of the appraisal, as the fees received were less than 2% of its annual revenues for income tax year 2012.

13. Pomeroy represents that it utilized the Sales Comparison and Income Capitalization approaches, and arrived at a final estimate of value by calculating the weighted average of the two valuation methods. In using the Sales Comparison Approach, Pomeroy represents that it evaluated six recent sales similar in location, size, age and competitive class. Pomeroy adjusted those prices to account for the disparities in rights conveyed, financing terms, conditions of sale, market conditions, location, land area, building size, building condition and age, building utility and design, office space percentage, and other features. Based on its analysis, Pomeroy represents that it derived a value of $140 per square foot for the subject property, or $500,000.

14. In utilizing the Income Capitalization Approach, Pomeroy represents that it evaluated the leasing information from five tenant spaces within the North Syracuse marketplace which were negotiated within the previous five years. Based on its analysis, Pomeroy represents that it derived a total value of $512,000 for the subject property.

15. Pomeroy represents that based on the quality of the information provided by the two approaches, they assigned a weight of 60% to the Sales Comparison Approach and 40% to the Income Capitalization Approach, arriving at its valuation of the subject property at $505,000.

The Independent Fiduciary's Report

16. Syracuse Securities, Inc., was retained to serve as the Independent Fiduciary to the Training Fund, with Laurence Smith as the Lead Consultant, pursuant to the Independent Fiduciary Services Agreement. The Applicant represents that Syracuse Securities has acted as a commercial mortgage analyst, broker, and mortgage banker since the mid-1980s. Syracuse Securities has also acted as a residential mortgage banker since 1974. The Applicant represents that the Independent Fiduciary was initially engaged in 2010 when the parties first began considering the Sale of the Building in accordance with a prohibited transaction exemption, and when the initial application for the corresponding prohibited transaction exemption was filed. However, the Independent Fiduciary has served the Training Fund only on an ''as needed'' basis in connection with the Sale of the Building. The Training Fund is paying for the services of the Independent Fiduciary.

17. Syracuse Securities represents that it previously served as an Independent Fiduciary for other ERISA plans in connection with real estate transactions. Syracuse Securities represents that it consulted with ERISA counsel in connection with this transaction regarding its fiduciary duties.

18. The Independent Fiduciary represents that, prior to this application, it had no relationship with the Pension Fund or Training Fund. Further, the Applicant represents that the Independent Fiduciary is not related in any way to the Funds, the Union, or any employer that contributes to the Funds. Syracuse Securities represented and warranted that for each year it has been retained, from 2010 through 2014, the company earned less than 1% of its total corporate income from the Applicant and any related party.

19. The Independent Fiduciary's Lead Consultant, Laurence Smith, represents that he is a mortgage banker with 32 years of experience specializing in commercial and residential real estate mortgages. The Independent Fiduciary represents that he has no present or

[26] The Applicant represents that although the Pension Fund is terminated, it continues to provide administrative services, including making benefit payments. Therefore, if this exemption is granted, the Pension Fund intends to hereafter lease space in the Building from the Training Fund in compliance with the requirements of Prohibited Transaction Exemption (PTE) 76–1 (41 FR 12740, March 26, 1976, as corrected at 41 FR 16620, April 20, 1976) and PTE 77–10 (42 FR 33918, July 1, 1977).

contemplated future interest in, or bias with respect to, the Building.

20. The Independent Fiduciary represents that the Training Fund is a current tenant in the Building, which serves an important purpose in the successful operation and financial well-being of the Training Fund. Given the Appraiser's valuation of the Building, the Independent Fiduciary represents that the Sale for a price of $500,000 is fair, reasonable and beneficial to the Training Fund, its participants and beneficiaries.

21. The Independent Fiduciary represents that the Sale furthers the interest of the Training Fund and its participants and beneficiaries as the Training Fund's purpose is to ''provide necessary construction equipment, qualified instructors, books, models [and] sites where instruction and practice on the equipment aforesaid can be available to persons eligible under this program . . .'' Further, the Independent Fiduciary states that the space in the Building is already set up to serve the Training Fund's purposes and the Training Fund is a current tenant. The Applicant represents that if the Pension Fund is required to sell the property to a third party, the Training Fund will be forced to vacate the Building and find a new training location, possibly incurring further costs. The Independent Fiduciary represents that the Training Fund may spend more money retrofitting a new location for its specific needs than it would purchasing the Building. Also, the Building is centrally located to serve all of the Training Fund's participants. Further, by effectuating this purchase, there would be no disruption in services or training programs for staff, participants, apprentices, and contributing employers.

22. The Independent Fiduciary assessed the financials and investment portfolio of the Training Fund and determined that, based on the investment objectives and overall purpose of the Training Fund, a 100% cash purchase would hamper the overall diversification of the Training Fund's assets and adversely impact the liquidity of the Training Fund. Therefore, the Independent Fiduciary recommends a down-payment of 20% of the purchase price with the remaining 80%, of an amount not to exceed $400,000, financed by a commercial mortgage. As of October 31, 2013, the 20% down payment constitutes approximately 8.74% of the Training Fund's assets. In contrast, if the total value of the Building were purchased in cash, it would represent approximately 44% of the Training Fund's assets. The Independent Fiduciary represents that the Training Fund has sufficient liquidity and funding through hourly employer contributions and future rental income to support the investment in the Building as recommended. The Independent Fiduciary further represents that employer contributions and rental income are anticipated to exceed the Training Fund's monthly mortgage payment.

23. The Independent Fiduciary recommended that the new lease agreements be entered into for terms of at least three years between the current tenants and the Training Fund. The Independent Fiduciary further recommended that the leases contain language holding each tenant responsible for its percentage share of the Building's common expenses, in addition to its respective rent. The Independent Fiduciary specified that such common expenses do not need to include any real estate taxes or capital improvement expenses. The Independent Fiduciary recommended, in accordance with the Pomeroy Appraisal Report, that the rents be no less than $12.00 per square foot for above-ground space and $8.00 per square foot for below-ground space. Further, the Independent Fiduciary recommended that the Pension Fund be required to place with the Training Fund a security deposit of $5,200, equivalent to four months' rent.

Statutory Findings

24. The Applicant represents that the requested exemption with respect to the Sale is administratively feasible because the Sale is a one-time transaction between the Pension Fund and the Training Fund, which will not require continuous or future monitoring by the Department.

The Applicant represents that the Sale is in the interest of the Pension Fund, the Training Fund, and their participants and beneficiaries because it will permit the Funds to maintain their offices and the training facilities at the present location with no disruption in services or training. The Applicant represents that, if the Pension Fund is forced to sell the property to a third party, the Training Fund will be forced to vacate the Building and find a new training location, putting the Union in a perilous state.

The Independent Fiduciary represents that the purchase of the Building is a prudent investment for the Training Fund as the Building should generate reasonable income in the form of rent. Further, amounts that the Training Fund previously expended for rent will now be invested in an asset that the Training Fund owns and utilizes. Also, the purchase furthers the purpose of the Training Fund to provide necessary construction equipment, instructors, books, models and sites for instruction and practice on the equipment, as the existing facility has been upgraded to meet the Training Fund's specific needs.

Finally, the Sale will provide the Pension Fund with an infusion of cash without the payment of any real estate commissions, allowing it to pay benefits to participants as requested by the PBGC.

The Applicant represents that the Sale is protective of the rights of the Training Fund as an Independent Fiduciary, Syracuse Securities, Inc., has approved the Sale and will represent the interests of the Training Fund throughout the purchase of the Building, including additional length of time if warranted. Also, a Qualified Independent Appraiser appraised the Building for purposes of determining the purchase price. The Applicant represents that objective procedural safeguards, including service provider agreements, discussion of the merits of the Sale at trustees' meetings, and retention of separate counsel for the Sale, have also been instituted.

Summary

25. In summary, the Applicant represents that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of the Act for the reasons stated above and for the following reasons, among others:

(a) At the time of the Sale, the Pension Fund receives a one-time payment of cash equal to the fair market value of the Building as established by a qualified independent appraiser in an Appraisal updated on the date of the Sale;

(b) The Training Fund may finance up to 80% of the purchase cost of the Building with an independent, third-party bank;

(c) The Training Fund pays no fees, commissions or other expenses associated with the Sale; and

(d) The Independent Fiduciary, acting on behalf of the Fund, represents the Training Fund's interests for all purposes with respect to the Sale, and: (1) Determines, among other things, that it is in the best interest of the Training Fund to proceed with the Sale; (2) reviews and approves the methodology used in the Appraisal; and (3) ensures that such methodology is properly applied by the Appraiser in determining the fair market value of the Building on the date of the Sale.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Union members within 15 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such individuals, and by posting in the Union hall in a prominent location. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 45 days of the publication of the notice of proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Erica R. Knox of the Department, telephone (202) 693–8644. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of April, 2015.

Lyssa E. Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration.

[FR Doc. 2015–08565 Filed 4–14–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2015–06; Application No. D–11827]

Notice of Exemption Involving BNP Paribas, S.A. (BNP or the Applicant); Located in Paris, France

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of Exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code). The exemption affects the ability of certain entities with specified relationships to BNP to continue to rely upon the relief provided by Prohibited Transaction Class Exemption 84–14.

DATES: *Effective Date:* This exemption is effective as of the earliest date a judgment of conviction against BNP is entered in either: (1) Case Number 14–cr–00460 (LGS) in the District Court for the Southern District of New York; or (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York.

FOR FURTHER INFORMATION CONTACT: Scott Ness, telephone (202) 693–8561, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: On November 26, 2014, the Department of Labor (the Department) published a notice of proposed exemption in the **Federal Register** at 79 FR 70661, for certain entities with specified relationships to BNP to continue rely upon the relief provided by Prohibited Transaction Class Exemption (PTE) 84–14,[1] notwithstanding judgments of conviction against BNP in: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York for conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.,* and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.,* and regulations issued thereunder; and (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York for falsifying business records in the first degree, in violation of Penal Law § 175.10, and conspiracy in the fifth degree, in violation of Penal Law § 105.05(1).

The proposed exemption contains conditions described in the QPAM class exemption, as well as a set of additional conditions, that must be satisfied in order for asset managers with specified relationships to BNP to engage in the transactions described in the QPAM class exemption. The individual exemption was requested by BNP pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[1] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).