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–11788, D–11789, D–11790, D–11791, and D–11792, The Les Schwab Tire Center of Washington, Inc., the Les Schwab Tire Centers of Idaho, Inc., and the Les Schwab Tire Centers of Portland, Inc.; L–11795, New England Carpenters Training Fund; D–11818, Virginia Bankers Association Defined Contribution Plan for First Capital Bank; D–11823, Idaho Veneer Company/Ceda-Pine Veneer, Inc. Employees' Retirement Plan; D–11835, United States Steel and Carnegie Pension Fund; D–11836, Roberts Supply, Inc. Profit Sharing Plan and Trust; D–11763, D–11764 and D–11765, Red Wing Shoe Company Pension Plan for Hourly Employees, The Red Wing Shoe Company Retirement Plan and the S.B. Foot Tanning Company Employees' Pension Plan; and D–11781, Frank Russell Company and Affiliates.

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–1515, 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.

The Les Schwab Tire Centers of Washington, Inc. (Les Schwab Washington), the Les Schwab Tire Centers of Idaho, Inc. (Les Schwab Idaho), and the Les Schwab Tire Centers of Portland, Inc. (Les Schwab Portland), (Collectively, With Their Affiliates, Les Schwab or the Applicant), Located in Bothell, Washington; Lacey, Washington; Renton, Washington; Twin Falls, Idaho; and Sandy, Oregon

[Application Nos. D–11699, D–11700, D–11701, D–11702, and D–11703]

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 66637, 66644, October 27, 2011).[2]

Section I. Transactions

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, and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A), 4975(c)(1)(D) and 4975(c)(1)(E) of the Code, shall not apply to the sales (the Sales) by the Les Schwab Profit Sharing Retirement Plan (the Plan) of the following parcels of real property (each, a ''Parcel'' and together, ''the Parcels'') to the Applicant:

(a) The Parcel located at 19401 Bothell Everett Highway in Bothell, Washington (the Bothell Parcel);

(b) The Parcel located at 150 Marvin Road, SE Lacey, Washington (the Lacey Parcel);

(c) The Parcel located at 354 Union Ave NE., Renton, Washington (the Renton Parcel);

(d) The Parcel located at 21 Blue Lakes Boulevard North Twin Falls, Idaho (the Twin Falls Parcel); and

(e) The Parcel located at 37895 Highway 26, Sandy, Oregon (the Sandy Parcel);

where the Applicant is a party in interest with respect to the Plan, provided that the conditions set forth in

[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 the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Section II of this proposed exemption are met.

Section II. Conditions

(a) The price paid by Les Schwab to the Plan (the Purchase Price) for each Parcel no less than the fair market value of each Parcel (exclusive of the buildings or other improvements paid for by Les Schwab, to which Les Schwab retains title), as determined by qualified independent appraisers (the Appraisers), working for CBRE, Inc., in separate appraisal reports (the Appraisals) that are updated on the date of the Sale.

(b) Each Sale is a one-time transaction for cash.

(c) The Plan does not pay any costs, including brokerage commissions, fees, appraisal costs, or any other expenses associated with each Sale.

(d) A qualified independent fiduciary (the Independent Fiduciary) represents the interests of the Plan with respect to each Sale, and in doing so:

(1) Determines that it is prudent to go forward with each Sale;

(2) Approves the terms and conditions of each Sale;

(3) Reviews and approves the methodologies used by the Appraisers and ensures that such methodologies are properly applied in determining the fair market values of the Parcels on the date of the Sales;

(4) Reviews and approves the determination of the Purchase Price; and

(5) Monitors each Sale throughout its duration on behalf of the Plan for compliance with the terms of the transaction and with the conditions of this exemption, if granted, and takes any appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries.

(e) The Appraisers determine the fair market value of their assigned Parcel, on the date of the Sale, using commercially accepted methods of valuation for unrelated third-party transactions, taking into account the following considerations:

(1) The fact that a lease between Les Schwab and the Plan is a ground lease and not a standard commercial lease;

(2) The assemblage value of the Parcel, where applicable;

(3) Any special or unique value the Parcel holds for Les Schwab; and

(4) Any instructions from the Independent Fiduciary regarding the terms of the Sale, including the extent to which the Appraiser should consider the effect that Les Schwab's option to purchase a Parcel would have on the fair market value of the Parcel.

(f) The terms and conditions of each Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations [3]

Background

1. According to the Applicant, Les Schwab Tire Centers (together with its affiliates, Les Schwab) was founded by its namesake in 1952 in Prineville, Oregon, in order to sell tires, batteries and other automotive equipment, and provide vehicle maintenance services. There are now approximately 430 Les Schwab tire and automotive service centers located primarily in the Northwest and with over $1 billion dollars in annual sales. Their facilities are located in Alaska, Washington, Oregon, Montana, Nevada, Utah and California.

2. Les Schwab, which has elected to be treated as a sub-chapter ''S'' corporation under the Code, is made up of eleven distinct entities, each with an overlapping ownership structure and part of a single controlled group. The eleven entities include Les Schwab Washington, Les Schwab Idaho, Les Schwab Portland, and the Les Schwab Warehouse Center, Inc. (the Warehouse Center). Furthermore, the Applicant represents that all of the officers and directors of the participating employers are also officers and directors of the Warehouse Center.

3. According to the Applicant, all entities within the Les Schwab controlled group are owned by Alan Schwab, Diana Tomseth, Julie Waibel, and Leslie Tuftin (or by trusts for the benefit of such individuals and/or their children). Mr. Schwab and Ms. Tomseth are siblings and Ms. Waibel and Ms. Tuftin are siblings. These four individuals are the grandchildren of Les Schwab and they are also currently employees of the Warehouse Center and board members of Les Schwab. The Applicant states that each of these four individuals is a Plan participant, as well as an owner-employee because they each own more than 5 percent of the stock of Les Schwab.[4]

4. The Plan is a qualified multiple-employer, defined contribution profit-sharing plan located in Bend, Oregon. The Plan is sponsored by the Warehouse Center. Thirteen employers, including Les Schwab Washington, Les Schwab Idaho, and Les Schwab Portland participate in the Plan. As of December 31, 2013, the Plan had 6,976 participants and beneficiaries. Also, as of December 31, 2013, the Plan had total assets of $653,315,345.00. The Applicant states that the Plan is the sole retirement plan available for Les Schwab employees.

5. The Administrative and Investment Committee of the Plan (the Committee) has the sole discretionary investment authority over the Plan and is a named fiduciary. The Committee has the exclusive right and discretionary authority to control, manage and operate the Plan. This includes the authority to direct the investment of the Plan's assets and to appoint and remove the Plan's Trustees and investment managers.

The Committee consists of seven trustees (the Trustees), who include executives and officers of Les Schwab. The Trustees are appointed by the Chief Executive Officer of the Warehouse Center. All of the Trustees are employees of the Warehouse Center, and some are officers of the Warehouse Center and Les Schwab Washington, Les Schwab Idaho and Les Schwab Portland.

Parcel Purchases

6. Over time, the Plan purchased twenty-six parcels of real property. As described below, following the purchases, the Plan entered into ground leases with various Les Schwab entities.[5] These Parcels of real property were then improved by buildings paid for by the Les Schwab entities. Under the terms of the leases, the Les Schwab entities retained title to these buildings.

The Applicant asserts that the Plan was initially motivated to purchase and lease the Parcels of real property to Les Schwab as a means to provide a secure return on Plan investments. In this

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

[4] The term ''owner-employee'' is defined under section 408(d) of the Act to include persons as defined in section 401(c)(3) of the Code, such as an employee who owns the entire interest in an unincorporated trade or business, or in the case of a partnership, a partner who owns more than 10 percent of either the capital interest or profits interest of such partnership. The term ''owner-employee'' also includes, in relevant part, (a) a shareholder-employee, which is an employee or officer of an S corporation who owns more than 5 percent of the outstanding stock of such corporation; (b) a member of the family of such owner-employee; or (c) a corporation in which such shareholder-employee owns, directly or indirectly, 50% or more of the total combined voting power of all classes of voting stock of a corporation or 50% or more of the total value of all classes of stock of such corporation.

[5] The Applicant represents that these leases are exempt under section 408(e) of the Act. Section 408(e) of the Act provides, in pertinent part, that the restrictions of sections 406 and 407 of the Act shall not apply to the acquisition, sale or lease by a plan of qualifying employer real property if—(a) such acquisition, sale, or lease is for adequate consideration; (b) no commission is charged with respect thereto; and (c) the plan is an eligible individual account plan.

regard, the Plan had intimate knowledge of Les Schwab's business success and creditworthiness, and determined that leasing the Parcels of real property to Les Schwab was a prudent investment decision.

The Applicant seeks an individual exemption for the Sales. The Sales involve five of the Parcels of real property on which Les Schwab has constructed buildings at its own expense (the Parcels). Given that Les Schwab has retained title to such buildings, pursuant to the terms of the relevant leases, the purchases do not involve the buildings themselves. Each Parcel is described below in further detail.

The Bothell Parcel

8. The Plan purchased the Bothell Parcel, which consists of approximately 40,947 square feet, in three separate transactions from unrelated parties. The first transaction involved the purchase by the Plan in November 1986 of approximately 29,382 square feet of land located at 19401 Bothell Everett Highway in Bothell, Washington for $159,791.00. The second purchase involved the Plan's acquisition on August 5, 1988 of an adjacent piece of land, located at 19411 Bothell Way SE., Bothell, Washington, and consisting of approximately 9,420 square feet of land for approximately $63,362.00. The third purchase involved the Plan's acquisition on September 10, 1988 of another piece of adjacent land, consisting of approximately 2,145 square feet and purchased for approximately $50,000.00.

9. The Plan and Les Schwab Washington entered into a ground lease of the Bothell Parcel (the Bothell Lease) on January 1, 1987, with the Plan as landlord and with Les Schwab Washington as tenant. The initial lease term commenced on January 1, 1987, and continued through December 31, 1996. The Bothell Lease also contained a provision for lease renewals of four terms, each of five years' duration. The initial base rent was $1,065.00 per month. Beginning on January 1, 1989 the monthly rent was increased to $1,487.00 to reflect the Plan's acquisition of the additional land. Beginning on September 10, 1998, the base rent was increased to $2,454.00, to reflect the Plan's inclusion of the third parcel of land and the increase in the ten-year the Consumer Price Index (the CPI).

The rent has been increased on the first day of each successive renewal period in proportion to the percentage increase in the CPI during the ''applicable period'' preceding the effective date of each such increase. Beginning with the renewal term commencing January 1, 2012, the monthly rent has been increased to $3,498.00.

The Bothell Lease permits Les Schwab Washington to construct improvements on the Bothell Parcel with the Plan's approval. Pursuant to the terms of the Bothell Lease, Les Schwab Washington constructed a tire center, an internal warehouse, and a large vehicle service facility, as well as other improvements (the Bothell Improvements).

As provided under the terms of the Bothell Lease, Les Schwab Washington retains sole responsibility with respect to the payment of property taxes and utilities on the Bothell Parcel, as well as sole responsibility for repairing, maintaining, renovating, and insuring the Bothell Improvements. As also provided under the terms of the Bothell Lease, Les Schwab Washington may not assign its interest, absent the Plan's written consent, and must indemnify the Plan against losses.

Finally, the Bothell Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Bothell Parcel as of the following dates: (a) The date on which Les Schwab Washington permanently discontinues operations on the Bothell Parcel; (b) the date the Bothell Lease terminates; (c) the end date of the initial Bothell Lease term; or (d) the end date of any renewal term for which Les Schwab Washington elects to renew. Pursuant to the terms of the Bothell Lease, the applicable option price is based on the greater of $273,153, or the fair market value of the Bothell Parcel (exclusive of the building and other improvements made by Les Schwab Washington) as determined by an appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Bothell Parcel.

The Lacey Parcel

10. The Plan purchased the Lacey Parcel on February 1, 1991 from Puget Sound National Bank,[6] an unrelated party, for a total purchase price of $499,069.00. The Lacey Parcel is comprised of 2.07 acres or approximately 90,169 square feet of land area. Aside from the initial purchase price, the Plan has not incurred any further expenses with respect to the Lacey Parcel.

11. The Plan and Les Schwab Washington entered into a ground lease of the Lacey Parcel (the Lacey Lease) on March 1, 1991, with the Plan as landlord and with Les Schwab Washington as tenant. The initial term for the Lacey Lease ran for a period of twenty years and nine months (March 1, 1991 through December 31, 2011). The Lacey Lease also includes four renewal terms, with each term set at five years' duration. The base rent for the Lacey Parcel was initially set at $3,746.00 per month and has been subject to adjustment every five years since January 1, 1997. As of each adjustment date, the monthly rent amount has been increased in proportion to corresponding increases to the CPI during the five lease years preceding the effective date of the increase, not to exceed 20%. Since January 1, 2012, Les Schwab Washington has been paying the Plan $9,150.00 per month, which includes the CPI increase.

The Lacey Lease allows Les Schwab Washington to construct improvements on the Lacey Parcel. Accordingly, Les Schwab Washington constructed a 13,013 square foot retail tire center, a vehicle service area, a 4,800 square foot warehouse, and made certain other improvements (the Lacey Improvements). Pursuant to the terms of the Lacey Lease, permissible uses of the Lacey Parcel include the construction and operation of a facility for the retail sale of merchandise, and the provision of automotive services. Additional uses of the Lacey Parcel require the Plan's consent.

As provided under the terms of the Lacey Lease, Les Schwab Washington retains sole responsibility with respect to the payment of property taxes and utilities on the Lacey Parcel, as well as sole responsibility for repairing, maintaining, renovating, and insuring the Lacey Improvements. As also provided under the terms of the Lacey Lease, Les Schwab Washington may not assign its interest, absent the Plan's written consent, and must indemnify the Plan against losses.

The Lacey Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Lacey Parcel as of the following dates: (a) The date on which Les Schwab Washington permanently discontinues operations on the Lacey Parcel; (b) The date such lease terminates; (c) the end date of the initial Lacey Lease term; or (d) the end date of any renewal term for which Les Schwab Washington elects to renew. Pursuant to the terms of the Lacey Lease, the applicable option price is based on: (a) The greater of $499,514.35, plus the Plan's total cost of improvements made on the Lacey Parcel, or (b) the fair market value of Lacey Parcel (exclusive

[6] Puget Sound National Bank merged into KeyBank in 1992.

of the improvements made by Les Schwab Washington made by Les Schwab Washington), as determined by an appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Lacey Parcel from the Plan.

The Renton Parcel

12. The Plan purchased the Renton Parcel in two separate transactions. On May 6, 1986, the Plan entered into a contract to purchase a 34,478 square foot piece of land located in Renton, Washington, from an unrelated party. Subsequently, the Plan purchased an additional 20,266 square feet of adjoining land in a sale that closed in October 1988, from an unrelated party. The two combined parcels make up the Renton Parcel, and cover 1.26 acres, or approximately 54,744 square feet of land area. The combined purchase price for the two parcels, including closing costs, was $317,796.00.

13. The Plan and Les Schwab Washington entered into a lease agreement for the Renton Parcel (the Renton Lease) on October 1, 1986, with the Plan, as landlord, and Les Schwab Washington, as tenant. The initial lease term commenced on October 1, 1986, and ran through December 31, 1996. The Renton Lease includes four renewal terms, each of five years' duration. The Renton Lease provides for an initial base rent amount of $1,297.00 per month and for rent escalations in the event that the Plan incurs any costs in connection with the provision of any additional improvements to the Renton Parcel.

With respect to the Renton Lease, rent escalations occurred on November 1, 1988, and subsequent rent escalations have occurred on the first day of each renewal period, where the rent has been increased in proportion to the percentage increase of the CPI during the ''applicable period'' preceding the effective date of the increase. Based on these calculations, Les Schwab Washington has been paying the Plan $4,334 per month since January 1, 2012.

The Renton Lease allows Les Schwab Washington to construct improvements on the Renton Parcel. Les Schwab Washington constructed a 13,300 square foot retail tire center, a vehicle service area, a large warehouse, and other improvements (the Renton Improvements). Pursuant to the terms of the Renton Lease, permissible uses of the Renton Parcel also include the operation of a facility for the retail sale of merchandise and the provision of automotive services. Additional uses of the Renton Parcel require the Plan's consent.

As provided under the terms of the Renton Lease, Les Schwab Washington retains sole responsibility with respect to the payment of property taxes and utilities on the Renton Parcel, as well as sole responsibility for repairing, maintaining, renovating, and insuring the Renton Improvements. As also provided under the terms of the Renton Lease, Les Schwab Washington may not assign its interest, absent the Plan's written consent, and must indemnify the Plan against losses.

The Renton Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Renton Parcel as of the following dates: (a) The date on which Les Schwab Washington permanently discontinues operations on the Renton Parcel; (b) the date the Renton Lease terminates; (c) the end date of the initial Renton Lease term; or (d) the end date of any renewal term for which Les Schwab Washington elects to renew. Pursuant to the terms of the Renton Lease, the applicable option price is based on the greater of $194,537.09, or the fair market value of the Renton Parcel (exclusive of the building and other improvements on the Renton Parcel made by Les Schwab Washington), as determined by an appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Renton Parcel from the Plan.

The Twin Falls Parcel

14. The Plan purchased the Twin Falls Parcel from unrelated parties in September 1986, at a final purchase price of $248,250.00. The Twin Falls Parcel is comprised of 1.72 acres or approximately 74,923 square feet of land that is rectangular in shape.

15. The Plan and Les Schwab Idaho entered into a lease agreement (the Twin Falls Lease) on October 1, 1986, with the Plan, as landlord, and Les Schwab Idaho, as tenant. The initial lease term commenced on October 1, 1986, and continued through December 31, 1996. The Twin Falls Lease contains a provision for lease renewals of four terms, each of five years' duration. The initial base rent was set at $1,655.00 per month, and provided for rent escalations in the event the Plan incurred any costs in connection with providing any additional improvements to the Parcel (the Twin Falls Improvements). A scheduled rent escalation occurred on January 1, 1992. Subsequent rent escalations have occurred on the first day of each renewal period. In this regard, rent was increased in proportion to the percentage increase in the CPI. Beginning with the renewal term commencing January 1, 2012, Les Schwab Idaho has been paying the Plan $3,382.00 per month.

In accordance with the Twin Falls Lease, Les Schwab Idaho constructed a 13,000 square foot retail tire center and a 9,216 square foot warehouse on the Twin Falls Parcel. Les Schwab also made additional improvements, which included utilities, parking, landscaping, and a fenced tire storage area.

Pursuant to the Twin Falls Lease, Les Schwab Idaho retains sole responsibility with respect to the payment of property taxes and utilities on the Twin Falls Parcel, as well as sole responsibility for repairing, maintaining, renovating, and insuring the Twin Falls Improvements. As also provided under the terms of the Twin Falls Lease, Les Schwab Idaho may not assign its interest, absent the Plan's written consent.

The Twin Falls Lease includes a purchase option under which Les Schwab Idaho has the right to purchase the Twin Falls Parcel as of the following dates: (a) The date on which Les Schwab Idaho permanently discontinues operations on the Twin Falls Parcel; (b) the date the Twin Falls Lease terminates; (c) the end date of the initial Twin Falls Lease term; or (d) the end date of any renewal term for which Les Schwab Idaho elects to renew. Pursuant to the terms of the Twin Falls Lease, the applicable option price is based on the greater of $248,250.82, or the fair market value of the Twin Falls Parcel (exclusive of the building and other improvements made by Les Schwab Idaho), as determined by an appraisal. Les Schwab Idaho now seeks to exercise its option to purchase the Twin Falls Parcel from the Plan.

The Sandy Parcel

16. The Plan purchased the Sandy Parcel in August 1986 from unrelated parties for $144,671.73. The Sandy Parcel is comprised of 1.08 acres, or approximately 47,045 square feet of land area. Added to the contract price were certain obligations for offsite improvements, as well as shared expenses for an entrance easement with a neighboring property owner.

17. The Plan and Les Schwab Portland entered into a lease agreement (the Sandy Lease) on September 1, 1986, with the Plan, as landlord, and Les Schwab Portland, as tenant. The initial lease term ran until December 31, 1996. The Sandy Lease also contained a provision for lease renewals of four terms, each of five years' duration. The initial base rent under the Sandy Lease was set at $964.00 per month and provided for rent escalations in the event the Plan incurred any costs in

connection with the provision of additional improvements to the Parcel. Scheduled rent escalations occurred on January 1, 1997 and on the first day of each renewal period. On the date of each such renewal, the rent amount was increased in proportion to the percentage increase of the CPI for the ''applicable period'' preceding the effective date of such increase. Since January 1, 2012, Les Schwab Portland has been paying the Plan $1,980.00 per month.

Pursuant to the Sandy Lease, Les Schwab Portland constructed an 8,352 square foot retail tire center on the Sandy Parcel, as well as other improvements including utilities, parking and landscaping (the Sandy Improvements).

As provided under the terms of the Sandy Lease, Les Schwab Portland retains sole responsibility with respect to the payment of property taxes and utilities on the Sandy Parcel, as well as sole responsibility for repairing, maintaining, renovating, and insuring the Sandy Improvements. As also provided under the terms of the Sandy Lease, Les Schwab Portland may not assign its interest, absent the Plan's written consent.

The Sandy Lease includes a purchase option under which Les Schwab Portland has the right to purchase the Sandy Parcel as of the following dates: (a) The date Les Schwab Portland permanently discontinues operation on the premises; (b) the date the Sandy Lease terminates; (c) at the end of the initial Sandy Lease term; or (d) on the date of each renewal term for which Les Schwab Portland elects to renew. Under the terms of the Sandy Lease, the option price will be the greater of $144,671.73 or the fair market value of the Sandy Parcel (exclusive of the building and other improvements made by Les Schwab Portland) as determined by an appraisal. Les Schwab Portland now seeks to exercise the option to purchase the Sandy Parcel.

Request for Exemptive Relief

18. The Applicant requests an administrative exemption for the proposed Sales of the Parcels by the Plan to Les Schwab Washington, Les Schwab Idaho, and Les Schwab Portland. Accordingly, the Applicant requests exemptive relief from section 406(a)(1)(A) and (D) and section 406(b)(1) and (b)(2) of the Act for such transactions.

19. Section 406(a)(1)(A) of the Act provides, in pertinent part, that a fiduciary with respect to a plan may not cause the plan to engage in a transaction if such fiduciary knows or should know that such a transaction constitutes a direct or indirect sale or exchange of any property between the plan and a party in interest. Section 406(a)(1)(D) of the Act provides, in pertinent part, that a fiduciary with respect to a plan may not cause the plan to engage in a transaction if such fiduciary knows or should know that such a transaction constitutes a direct or indirect transfer to, or use by or for the benefit of a party in interest, any assets of the Plan.

Section 3(14)(C) of the Act defines the term ''party in interest'' to include an employer, any of whose employees are covered by such Plan. The Applicant is a participating employer in the Plan, and as such, the Applicant's employees are covered by the Plan. The Applicant is thus a party in interest with respect to the Plan under section 3(14)(C) and the Sales would violate section 406(a)(1)(A) and (D) of the Act.

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, with respect to a plan, from acting in a transaction involving the plan on behalf of a party whose interests are adverse to those of the plan or of its participants and beneficiaries. As described above, the Trustees and the Committee are fiduciaries of the Plan. Additionally, the Trustees are also comprised of certain executive officers of Les Schwab, including officers of the Warehouse Center, Les Schwab Washington, Les Schwab Idaho, and Les Schwab Portland, and are appointed by the Chief Executive Officer of the Warehouse Center, the Plan sponsor.

According to the Applicant, the proposed Sales of the Parcels by the Plan to Les Schwab would involve a violation of section 406(b)(1) of the Act because Les Schwab, as a Plan fiduciary, would be dealing with the assets of the Plan for its own interest or own account. Additionally, the Applicant states that Les Schwab, as a Plan fiduciary, in effecting the Sales, could be viewed as simultaneously acting on behalf of itself and of the Plan in violation of section 406(b)(2) of the Act.[7]

Terms of the Sales

20. Each Sale will be a one-time transaction for cash. At the time of the Sales, the Plan will receive no less than the fair market value of each Parcel, as determined by the Appraisers, whose current Appraisals will be updated on the date of the Sales. In this regard, to the extent the terms of any Lease allow a Sale price that is greater than a Parcel's fair market value, then the price received by the Plan for such Parcel will equal such greater Sale price. In addition, the Plan will not pay any costs, including brokerage commissions, fees, appraisal costs, or any other expenses associated with the Sales. Further, the terms and conditions of each Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party. Finally, an Independent Fiduciary will represent the interests of the Plan with respect to each Sale. Among other things, the Independent Fiduciary will monitor each sale throughout its duration, review and approve the Appraiser's methodology and ultimate valuation determination, and determine, on behalf of the Plan, whether it is prudent to proceed with the transaction.

The Appraisers

21. Appraisals of the subject Parcels were completed by CBRE, Inc. (CBRE). Specifically, with respect to the Bothell and Lacey Parcels, the Appraisals were conducted by Mitchell J. Olsen and Whitney Haucke. For the Twin Falls and Renton Parcels, the Appraisals were conducted by Shawn Wayt and Whitney Haucke. Finally, with respect to the Sandy Parcel, the Appraisal was conducted by Mike Hall and Whitney Haucke. (Mr. Olsen, Mr. Hall, Ms. Haucke and Ms. Wayt are referred to herein as the ''Appraisers.'')

Mr. Olsen and Ms. Haucke are Certified General Real Estate Appraisers in the State of Washington. Mr. Olsen is an Associate Member of the Appraisal Institute, and has experience in appraising residential properties, vacant land, and commercial properties. Ms. Haucke is also a Designated Member of the Appraisal Institute in Seattle, Washington. Her experience includes valuing special use projects, mixed-use developments, as well as commercial and residential properties.

[7] As noted above, section 408(e) of the Act states, in pertinent part, that section 406 of the Act does not apply to the acquisition, sale or lease of qualifying employer real property by a plan to a party in interest, provided that certain conditions are satisfied. However, section 408(d)(3) of the Act provides, in pertinent part, that the statutory exemption set forth in section 408(e) does not apply to any transaction in which a plan sells any property to a corporation in which owner-employee with respect to such plan owns, directly or indirectly 50 percent or more of the total combined voting power of all classes of stock entitled to vote on 50 percent or more of the total value of shares of all classes of stock of the corporation. Since Mr. Schwab, Ms. Weibel, Ms. Tomseth, and Ms. Tuftin are owner-employees with respect to the Plan, and such individuals own, indirectly, 50% or more of Les Schwab Idaho, Les Schwab Washington, and Les Schwab Portland, the statutory exemption under section 408(e) of the Act is not available.

Mr. Wayt is a licensed Real Estate Appraiser in the State of Washington. Since 2012, Mr. Wayt has been appraising investment properties and commercial properties.

Mr. Hall is a designated member of the Appraisal Institute and is a certified Real Estate Appraiser in the State of Washington. Since 2001, Mr. Hall has been appraising retail, industrial, office, multi-family and local properties.

Pursuant to its Appraisal Engagement Letter, CBRE was retained to perform the following tasks, on behalf of the Plan: (a) Provide a fair market valuation of the Parcels using commercially acceptable methods of valuation for unrelated third party transactions, (b) explain whether or not, in the Appraisers' opinion, the Plan has received adequate consideration from the leases, and (c) opine on whether the proper CPI was used for the rent increases for each Parcel. CBRE represents that the total fees it earned from Les Schwab represent less than 2.0% of CBRE's revenues for 2014.

The Appraisals

22. In valuing the Parcels, the Appraisers applied the Sales Comparison Approach to valuation. As represented by the Appraisers, the Sales Comparison Approach is typically used for retail sites that are feasible for either immediate or near-term development.[8] The Appraisers omitted the use of other valuation methodologies, stating that such methodologies are primarily used when comparable land sales data is non-existent.

23. *Bothell.* According to the Bothell Appraisal, the Appraisers physically inspected the Bothell Parcel on July 26, 2013. They also inspected the Snohomish County Assessor's records and a previous appraisal dated September 30, 2011, which was prepared by Brown, Chudleigh, Schuler, Myers and Associates (BCSMA). In addition, the Appraisers reviewed applicable tax data, zoning requirements, flood zone status, demographics and comparable data.

The Bothell Appraisal provides that the Appraisers evaluated five prior sales of similar Parcels based on zoning and intended uses. Using the Sales Comparison Approach methodology, the Appraisers calculated the value of the Bothell Parcel at $26.86 per square foot, which multiplied by the actual square footage of the Bothell Parcel equaled a fair market value of $1,100,000.00 as of July 31, 2013. In an addendum to the Bothell Appraisal, dated September 22, 2014, the Appraisers projected the fair market value of the Bothell Parcel at $1,150,000.00 as of September 30, 2014. The Appraisers attributed the $50,000.00 increase in value to improved market conditions.

24. *Lacey.* The Lacey Appraisal indicates that the Appraisers physically inspected the Lacey Parcel on June 26, 2013. They also inspected the Thurston County Assessor's Records, reviewed a lease provided by the Plan, and analyzed a previous appraisal dated September 30, 2011, prepared by another appraisal firm. In addition, the Appraisers reviewed the applicable tax data, zoning requirements, flood zone status, demographics and other comparable data.

The Lacey Appraisal provides that the Appraisers valued the Lacey Parcel using the Sales Comparison Approach. In this regard, the Appraisers evaluated six similar sale-listings in the area and determined that land sales ranged from $13.15 per square foot to $15.99 per square foot, with an average of $14.94 per square foot.

The Appraisers placed an emphasis on two of the six Parcels due to the closing date and location. For purposes of the Lacey Appraisal, the Plan instructed the Appraisers to examine the Lacey Parcel without considering the improvements to such Parcel.

The Appraisers determined that the Lacey Parcel value would equate to $14.97 per square foot or a fair market value of $1,350,000 as of July 31, 2013. In an addendum to the Lacey Appraisal dated September 22, 2014, the Appraisers projected the fair market value of the Lacey Parcel at $1,350,000.00, as of September 30, 2014.

25. *Renton.* In connection with the Renton Appraisal, the Appraisers conducted interviews with regional and local market participants, reviewed available published data and other various resources. Additional research included a review of the applicable tax data, zoning requirements, flood zone status, demographics and comparable data.

In valuing the Renton Parcel, the Appraisers applied the Sales Comparison Approach to valuation. The Appraisers evaluated five similar sale-listings in the area and determined that land sales ranged from $10.80 per square foot to $25.01 per square foot, with an average of $18.61 per square foot. The Appraisers placed an emphasis on one of the six Parcels due to its identical characteristics in comparison with the Renton Parcel.

Based on their review and analysis of the Renton Parcel, the Appraisers placed the fair market value of the Parcel at $1,000,000 as of July 31, 2013. In an addendum to the Renton Appraisal dated September 22, 2014, the Appraisers projected the fair market value of the Renton Parcel at $1,000,000.00 as of September 30, 2014.

26. *Twin Falls.* According to the Twin Falls Appraisal, the Appraisers physically inspected the Twin Falls Parcel, conducted interviews with regional and local market participants, and reviewed available published data and other various resources. Additional research included a review of the applicable tax data, zoning requirements, flood zone status, demographics and comparable data.

In valuing the Twin Falls Parcel, the Appraisers applied the Sales Comparison Approach to valuation. The Appraisers evaluated five similar sale-listings in the area and determined that land sales ranged from $12.25 per square foot to $20.00 per square foot, with an average of $15.45 per square foot. The Appraisers placed an emphasis on one of the five Parcels, due to its close proximity to the Twin Falls Parcel.

Based on their review and analysis, the Appraisers placed the fair market value of the Twin Falls Parcel at $1,100,000 as of July 31, 2013. In an addendum to the Twin Falls Appraisal dated September 19, 2014, the Appraisers projected the fair market value of the Twin Falls Parcel at $1,300,000 as of September 30, 2014.

27. *Sandy.* As described in the Sandy Appraisal, the Appraisers also conducted interviews with regional and local market participants, reviewed available published data and other various resources. Additional research included a review of the applicable tax data, zoning requirements, flood zone status, demographics and comparable data.

For the purposes of the Sandy Appraisal, the Appraisers used the Sales Comparison Approach. The Appraisers evaluated five similar sale-listings in the area and determined that land sales ranged from $12.50 per square foot to $17.89 per square foot, with an average of $14.45 per square foot. The Appraisers placed an emphasis on two of the six Parcels due to the location of both sites.

Based on their review and analysis of the Sandy Property, the Appraisers placed the fair market value of the Parcel at $680,000 as of July 31, 2013. In an addendum to the Sandy Appraisal dated September 19, 2014, the Appraiser (Ms. Haucke) projected the

[8] According to the Appraisers, the Twin Falls, Sandy and Renton Parcels are suitable for near-term development and the Bothell Property is suitable for immediate development.

fair market value of the Sandy Parcel to be $680,000 as of September 30, 2014.

The Independent Fiduciary

28. On May 1, 2013, Les Schwab retained American Realty Advisors as the Independent Fiduciary to the Plan with respect to the proposed Sales. The Independent Fiduciary, located in Glendale, California, is an investment management firm managing institutional commercial real estate portfolios, with more than 280 investors and over $5.3 billion assets under management, as of March 31, 2013. The Independent Fiduciary maintains an exclusive focus on commercial real estate investment management. Furthermore, the Independent Fiduciary represents that it has over twenty-four years of real estate experience including, but not limited to, the following: (a) Acquiring real estate for investment; (b) representing secured lenders in real property transactions; (c) providing real estate asset management services; (d) disposing of real estate assets; (e) restructuring and working out of real estate loan assets; and (f) providing independent fiduciary services with respect to real estate assets.

29. The Independent Fiduciary represents that, beyond its engagement as Independent Fiduciary with respect to the Sales, it does not have any relationship with the parties involved in the proposed transactions. The Independent Fiduciary also represents that derived less than 2% of its 2014 gross revenues from Les Schwab.

30. The duties and the responsibilities of the Independent Fiduciary are being undertaken by Daniel Robinson and Alex Miller. Mr. Robinson is the Managing Director of American Realty Advisors, and has thirty years of experience as a licensed real estate broker, and has served as a Qualified Professional Asset Manager (QPAM) for ERISA-covered plans. Mr. Miller is an investment analyst at American Realty Advisors and has been a commercial real estate analyst for nine years.

31. As part of its duties and responsibilities, the Independent Fiduciary completed the following tasks: (a) Toured each of the Parcels and inspected comparable land sales, as outlined in each of the Appraisals; (b) engaged the Appraisers and instructed them with respect to the objectives of each Appraisal, the specific nuances of the leases between Les Schwab and the Plan (the Leases), and the valuation process, taking into account the questions posed by the Department during its review of the Application; (c) reviewed the Appraisals; (d) reviewed the annual audited financial statements for the Plan from 1988 to the present to assess the treatment of the Leases by the auditor and obtained additional documentation from the Warehouse Center in support of the rental payments made under the Leases; (e) reviewed and summarized the terms and conditions of the Leases and relevant amendments; (f) researched additional questions posed by the Department; and (g) reviewed the composition of the existing real estate portfolio of the Plan and the Plan's Statement of Investment Policy dated September 1, 2011.

The Independent Fiduciary also examined whether all twenty-six parcels of land owned by the Plan, including the Parcels, and leased by Les Schwab and its other affiliates, received their rental income on a timely basis from 1988 to 2012. Further, the Independent Fiduciary reviewed copies of the Plan's audited financial statements, prepared by PriceWaterhouseCoopers from 1998 to 2005 and by Jones & Roth from 2006 to 2012.

32. The Independent Fiduciary represents that it will represent the interests of the Plan in the proposed Sales. In so doing, the Independent Fiduciary will: (a) Determine whether it is prudent to go forward with each Sale; (b) negotiate, review, and approve the terms and conditions of each Sale; (c) monitor and manage the Sales on behalf of the Plan throughout their duration, taking any appropriate actions it deems necessary to safeguard the interests of the Plan.

Independent Fiduciary Reports

33. In the Independent Fiduciary Reports, the Independent Fiduciary states that the appraised value of each Parcel, as presented by the Appraisers, is an accurate reflection of the current market conditions and forms the basis for establishing a fair market price for the Sale of each respective Parcel to the Plan. The Independent Fiduciary Reports also notes that the Plan's real estate holdings are approximately 15.5% of the total assets of the Plan, and are within the 15–25% parameters of the Plan's Statement of Investment Policy (SIP) dated September 1, 2011. According to the Independent Fiduciary, the proposed Sale of each of the Parcels would reduce the real estate holdings of the Plan to approximately 14.6% of the total assets of the Plan and would modestly increase the liquidity of the Plan. Further, according to the Independent Fiduciary, the Sale of the Parcels would result in a real estate allocation that is nominally under the SIP range and would allow the Plan to continue its diversification strategy away from directly owned real estate.

The Independent Fiduciary concludes that it is an advantageous time for the Plan to sell the Parcels. Specifically, the Independent Fiduciary notes that the Parcels have produced a cash return of 6.70% under the Leases, which is deemed "good" to such fiduciary. However, because of the age of the improvements to the Parcels, the limited future value of the underlying improvements, and the mature nature of the Parcels' locations, the Independent Fiduciary represents that it is prudent for the Plan to sell the Parcels and to reinvest the proceeds in real estate with better future appreciation prospects.

Finally, the Independent Fiduciary states that it would not be appropriate for the Plan to receive a reversionary interest in the improvements that were constructed on the Parcels, given the fact that the Leases, when they were negotiated, were reflective of market conditions at the time, including the purchase option provisions, and given the fact that the Plan contributed nothing toward the construction of the improvements on the Parcels.

Statutory Findings

34. The Applicant represents that the proposed transactions are administratively feasible because they involve one-time Sales of the Parcels for cash. As such, the transactions will not require ongoing oversight by the Department. The Applicant also states that the sale of qualifying employer real property, such as the Parcels, by a plan to an employer participating in the plan is a common and customary transaction.

35. The Applicant represents that the proposed exemption is in the interest of the Plan and its participants and beneficiaries, because: (a) The Sales would reduce the effect of fluctuations in the rental and market values of the qualifying employer real property held as Plan assets; (b) under the express terms of the Sales, the Plan would avoid having to pay real estate brokerage commissions, fees or other expenses in connection with the Sales, which could equal 10% or more of the Purchase Price; (c) the Plan would receive the full fair market value of the Parcels in a lump-sum cash payment; and (d) the Sales would enable the Plan to diversify its assets.

The Applicant represents that after the Plan's divestiture of the Parcels, the Plan will continue to hold twenty-one other parcels of property that satisfy the definition of "qualifying employer real property," as set forth in section

407(d)(4) of the Act.[9] The Applicant represents that these remaining parcels of property are geographically dispersed, suitable for more than one use, and are being leased to Les Schwab at a fair market rental value. Therefore, according to the Applicant, once the Sales are consummated, the remaining parcels owned by the Plan and leased to Les Schwab will continue to comply with the exemptive relief provided in section 408(e) of the Act.

36. The Applicant represents that the proposed exemption is protective of the participants and beneficiaries because the Independent Fiduciary will represent the interests of the Plan's participants and beneficiaries with respect to: The decision to sell the Parcels to the Applicant; the terms and execution of the Sales; and the selection of a qualified independent appraiser.

Additionally, the Applicant states that the Independent Fiduciary will determine whether the transactions are prudent and in the best interest of the participants and beneficiaries, including whether or not the terms and conditions of the Sales are equivalent to an arm's length transaction with an unrelated third party.

Furthermore, the Applicant states that the Appraisers will appraise the fair market value of the Parcels as of the transaction date and ensure that the Plan receives adequate consideration. The Applicant also states that the amount received by the Plan will at least equal the fair market value of each Parcel on the date of the Sale (exclusive of the buildings or other improvements that are paid for by Les Schwab, to which Les Schwab retains title). An appropriate appraisal methodology will be used by the Appraisers and the Appraisals report will be updated on the date of each Sale.

Lastly, the Applicant represents that the aggregate value of the Parcels being sold represents a small, non-material portion of the Plan's total investments and the investments of the Plan will remain adequately diversified after the transactions are consummated.

Summary

37. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the reasons described above, including the following:

(a) The purchase price to be paid by Les Schwab for each Parcel will be no less than the fair market value of each Parcel, exclusive of buildings or other improvements paid for by Les Schwab, to which Les Schwab retains title), as determined the Appraisers, in updated Appraisals on the date of the Sale;

(b) The Plan will not pay any costs, fees, or commissions associated with each Sale;

(c) The Appraisers will determine the fair market value of their assigned Parcel, on the date of the proposed Sale, using commercially accepted methods of valuation for unrelated third-party transactions; and

(d) The Independent Fiduciary will represent the interests of the Plan with respect to each Sale.

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 and beneficiaries in the Plan. It is represented that all such interested persons will be notified of the publication of the Notice by first class mail to each 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(a)(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 forty-five (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: Ms. Jennifer Erin Brown or Mr. Joseph Brennan of the Department at (202) 693–8352 or (202) 693–8456, respectively. (These are not toll-free numbers.)

New England Carpenters Training Fund (the Plan or the Applicant) Located in Millbury, Massachusetts

[Application No. L–11795]

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). If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act shall not apply to the purchase (the Purchase), by the Plan, of a parcel of improved real property (the Property) from the Connecticut Carpenters Local 24 (Local 24), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) The Purchase price paid by the Plan for the Property is the lesser of $1,280,000 or the fair market value of such Property, as determined by an independent, qualified appraiser (the Appraiser), as of the date of the Purchase;

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

(3) The terms and conditions of the Purchase are no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's-length with unrelated third parties;

(4) Prior to entering into the Purchase, an independent, qualified fiduciary (the I/F) determines that the Purchase is in the interest of, and protective of the Plan and of its participants and beneficiaries;

(5) The I/F: (a) Has negotiated, reviewed, and approved the terms of the Purchase prior to the consummation of such transaction; (b) has reviewed and approved the methodology used by the Appraiser; (c) ensures that such methodology is properly applied in determining the fair market value of the Property at the time the transaction occurs, and determines whether it is prudent to go forward with the proposed transaction; and (d) represents the interests of the Plan at the time the proposed transaction is consummated;

(6) Immediately following the Purchase, the fair market value of the Property does not exceed 3 percent (3%) of the fair market value of the total assets of the Plan; and

(7) The Plan does not incur any fees, costs, commissions, or other charges as a result of engaging in the Purchase, other than the necessary and reasonable fees payable to the I/F and to the Appraiser, respectively.

[9] The Department is not expressing a view on whether the remaining parcels of property that would be owned by the Plan after the Sales would constitute qualifying employer real property under section 407(d)(4) of the Act, or whether the leases of such parcels of property by the Plan to Les Schwab would satisfy the provisions of section 408(e) of the Act.

Summary of Facts and Representations [10]

1. The Plan is a multiemployer apprenticeship and training fund, which provides education and training in residential and commercial construction skills to carpenter apprentices and journeyman carpenters in six New England states. The carpenter apprentices and journeyman are members of local carpenters unions (the Unions) that are affiliated with the New England Regional Council of Carpenters (the NERCC). The Plan is jointly sponsored by the Unions and signatory building contractors (the Contributing Employers). As of April 30, 2015, the Plan had net assets valued at $36,184,388.30. As of May 1, 2015, the Plan had 1,166 active apprentices in the program (that does not include Connecticut).

2. The Plan is administered by a fourteen member Board of Trustees (the Trustees), consisting of seven Trustees representing the Contributing Employers (the Employer Trustees) and seven Trustees representing the Unions (the Union Trustees). In accordance with the Plan's investment policy, the Trustees have the authority to invest the Plan's assets in real estate and other investments. The Plan currently owns two training facilities in Massachusetts and Maine, and it rents facilities located in New Hampshire, Vermont and Rhode Island. The Plan provides all of its classes and training at these facilities.[11]

3. Local 24 is a local labor organization that is affiliated with the NERCC. The NERCC is an organization made up of 30 local carpenter unions in the six New England states, including Local 24. No officials of Local 24 sit on the Plan's Board of Trustees.

4. The Connecticut Carpenters Training Fund (the CT Fund) is the only carpenters training fund in New England that has not merged into the Plan. The CT Fund has a Board of Trustees, consisting of five trustees that represent its union and four trustees that represent the contributing employers (the CT Fund Trustees).[12] The Business Manager of Local 24 sits on the Board of Trustees of the CT Fund. As of March 31, 2014, the CT Fund had total net assets of $1,336,104, and 312 participants.

5. The CT Fund operates from a training facility that is located at 500 Main Street, Yalesville, Connecticut. The training facility is owned by Local 24 and is the subject Property of this exemption request. Local 24 uses a portion of the Property as its administrative office and for periodic Executive Board and membership meetings. The Property consists of a 25,560 square foot one-story building. The CT Fund leases 15,949.5 of interior square feet of space in the building from Local 24. An additional 3,142 square feet of interior space in the building is shared jointly by Local 24 and the CT Fund.[13]

6. At their December 12, 2012 Trustee meeting, the Employer Trustees of the Plan voted to begin negotiations for a merger with the CT Fund and to purchase the Property for continuing use as a training facility. The vote was further subject to review by an I/F and the Department's granting an individual exemption. All of the Union Trustees recused themselves from the vote to (a) merge the two training funds, (b) hire an I/F, and (c) purchase the Property.[14]

7. Local 24 has decided to sell the Property because it no longer wishes to retain ownership or to act as landlord to the CT Fund. If the Plan does not purchase the Property, it is represented that the Plan will be at risk of losing its current facility and will need to purchase or lease a new Property in order to continue to provide its training programs. In addition, it is represented that the Property is hard to duplicate in the market. To find buildings of the same caliber, the Plan will either need to spend more money on a facility or relocate to a different market.

It is also represented that during the merger discussions, the Plan Trustees and the CT Fund Trustees agreed that it was important to maintain a training facility in Connecticut after the merger. The Plan Trustees and the CT Fund Trustees further determined that in order for the Plan to best serve the Connecticut carpenter apprentices, it would be desirable to maintain the facility in Yalesville, Connecticut due to the suitability of the facility for training purposes and the location.

8. Therefore, an administrative exemption is requested from the Department to allow the Plan to purchase the Property from Local 24. The proposed transaction will be subject to a number of conditions. In this regard, the Purchase price paid by the Plan for the Property will be the lesser of $1,280,000 or the fair market value of such Property, as determined by the Appraiser, on the date of the transaction. In addition, the Purchase will be a one-time transaction for cash. The terms and conditions of the Purchase will reflect arm's-length dealings between the Plan and Local 24. Further, the Purchase has been negotiated, reviewed, and approved by an I/F, who will monitor such transaction on behalf of the Plan and its participants and beneficiaries. The I/F has selected the Appraiser to determine the fair market value of the Property and has reviewed and approved the methodology used by the Appraiser. Finally, the Plan will not incur any fees, costs, commissions, or other charges as a result of engaging in the Purchase, other than the necessary and reasonable fees that will be paid to the I/F and to the Appraiser, respectively.

9. The Purchase would violate section 406(a)(1)(A) and (D) of the Act.[15] Section 406(a)(1)(A) of the Act provides, in relevant part, that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such

[10] 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.

[11] It is represented that there are no leases on these properties between the Plan and parties in interest.

[12] It is represented that the CT Fund has only four employer trustees sitting CT Fund Board of Trustees because one employer trustee resigned, and his position has not been filled due to the pending merger transaction that is described herein in Representations 6 and 7. It is further represented that the union and employer trustees comprising the CT Fund Trustees have a unit vote, so one side cannot outvote the other.

[13] The Department notes that the CT Fund is not a party to the proposed transaction that is described herein. Therefore, the Department has not considered whether the leasing arrangement and the joint sharing of space in the Property between Local 24 and the CT Fund fit within the statutory exemptive relief provided under section 408(b)(2) of the Act or Prohibited Transaction Exemption (PTE) 78–6 (43 FR 23024, May 30, 1978).

Section 408(b)(2) of the Act allows a plan to contract or make reasonable arrangements with a party in interest for office space, legal, accounting or other services necessary for the establishment or operation of the plan. Under section 408(b)(2), exemptive relief is permitted from violations of section 406(a) of the Act, exclusively.

PTE 78–6 is a class exemption that allows a contributing employer, a wholly owned subsidiary of a contributing employer, or an employee organization such as a union, to lease real property, other than office space, to an apprenticeship or training plan. PTE 78–6 provides relief from section 406(a)(1)(A),(C) and (D), only.

To the extent the leasing/joint sharing arrangements between Local 24 and the CT Fund do not comply with the terms and conditions of section 408(b)(2) of the Act (and the regulations that have been promulgated thereunder) or PTE 78–6, the Department is not providing an administrative exemption for such arrangements.

[14] To date, there has been no vote regarding the proposed lease of the Property by the Plan to Local 24. Once the Purchase takes place, and when that vote is taken, the Applicant represents that all of the Union Trustees will recuse themselves from the leasing decision.

[15] The Department notes that the Purchase does not appear to violate the fiduciary self-dealing and conflict of interest provisions of section 406(b)(1) and (b)(2) of the Act because no officials of Local 24 sit on the Plan's Board of Trustees. Therefore, exemptive relief is being provided herein from section 406(a)(1)(A) and (D) only.

transaction constitutes a direct or indirect sale of Property between a plan and a party in interest. The term ''party in interest'' is defined under section 3(14)(A) of the Act to include, a fiduciary such as the Trustees. Under section 3(14)(D), the term party in interest also includes an employee organization, any of whose employees or members are covered by such plan. Local 24 is a party in interest with respect to the Plan because it is an employee organization whose members are covered by the Plan.

In addition, section 406(a)(1)(D) of the Act provides that a fiduciary shall not cause a plan to engage in a transaction, if he knows or should know that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. As fiduciaries, the Plan's Trustees would be causing the Plan, in the process of purchasing the Property, to transfer funds to Local 24 in order to consummate the transaction. Thus, in the absence of an administrative exemption, the Purchase would violate section 406(a)(1)(A) and (D) of the Act.

10. As stated above, Local 24 currently maintains office space in the portion of the Property that the CT Fund does not presently occupy. If the Property is sold to the Plan, Local 24 intends to lease the same portion of the Property that it currently occupies from the Plan. According to the Applicant, the rental rate will be based on the fair market rental rates for office space in the Yalesville, Connecticut area, and the terms of the lease will comply with PTEs 76–1 and 77–10.[16]

11. Integra Realty Resources, Inc. (Integra) of New York City, New York has been retained to serve as the Appraiser. Specifically, Mark Bates, the Senior Managing Director for Integra and a Member of the Appraisal Institute, prepared the appraisal report (the Appraisal Report) for the Property to determine the fair market value of the Property. Mr. Bates represents that he provides advisory and valuation services to leading institutions, developers and owners, involving major commercial and residential properties throughout the United States. He also represents that Integra's gross revenues received from parties in interest with respect to the Plan, including the preparation of the Appraisal Report, represents less than 1% of Integra's actual gross revenues in 2014.

12. In the Appraisal Report dated July 3, 2014, Mr. Bates describes the Property as an existing industrial building containing 25,560 square feet of rentable area, including 53% finished office space used as administration space and classrooms. He explains that the improvements were constructed in 1973 and are 100% owner-occupied as of the effective appraisal date. The site consists of 3.10 acres or 135,036 square feet.

13. Mr. Bates considered two standard approaches for valuing older properties similar to the Property: (a) The Income Capitalization Approach; and (b) the Sales Comparison Approach. According to Mr. Bates, the Income Capitalization Approach is an applicable valuation method because there is an active rental market for similar properties that permits the estimation of the Property's income-generating potential. However, he believes the Sales Comparison Approach is the best valuation method because: (a) There is an active market for similar properties plus sufficient sales data available for analysis; (b) this approach directly considers the prices of alternative properties having similar utility; and (c) this approach is typically most relevant for owner-user properties.

Using the Sales Comparison Approach, Mr. Bates arrived at a value for the Property of $1,280,000, as of July 3, 2014, or 3% of the value of the Plan's assets. The Appraisal Report will be updated by the Appraiser on the date of the closing.

14. The Plan's Employer Trustees retained Gallagher Fiduciary Advisors, LLC (GFA) of Newark, NJ to serve as the I/F on behalf of the Plan. Under its engagement letter, the I/F agreed to: (a) Evaluate the proposed transaction to determine whether it is in the interest of the Plan's participants and beneficiaries; (b) negotiate and agree on behalf of the Plan to the specific terms of the proposed transaction, to decide on behalf of the Plan whether to consummate the proposed transaction, and (c) to direct the appropriate Plan fiduciaries to execute the instruments necessary for the proposed transaction, if it is consummated.

15. The I/F is a registered investment adviser subsidiary of Gallagher Benefit Services, Inc., an employee benefits consulting firm. The I/F has served, and continues to serve, as an independent fiduciary in connection with numerous pension and welfare funds' investment transactions, involving substantial issues under the fiduciary responsibility provisions of the Act. GFA has acted in a variety of independent fiduciary roles, including independent fiduciary, named fiduciary, investment manager and advisor or special consultant.

16. The I/F represents that it is a ''qualified independent fiduciary'' because it and its employees have the appropriate training, experience, and facilities to act on behalf of the Plan regarding the proposed transaction, in accordance with the fiduciary duties and responsibilities prescribed by the Act. In this regard, the I/F states that its staff includes professionals experienced with the management and disposition of portfolio assets, including real estate, as well as ERISA lawyers, who are aware of the fiduciary responsibilities involving investment activities.

The I/F further represents that it is ''independent'' because it has no relationship with Local 24 or other parties in interest, except for its role as the Plan's independent fiduciary with respect to the proposed transaction. The I/F's fee for its services for the Plan will be less than 1% of its annual gross revenues.

17. Besides retaining the Appraiser, the I/F retained Cardno ATC of Portland, Oregon (U.S. headquarters) to conduct a property condition assessment (PCA). The PCA identified some immediately needed repairs, which the I/F will require to be made by Local 24 before closing or ''reserved for in the Purchase price,'' meaning the value of the cost of those repairs will be deducted from the Purchase price. The repairs identified by Cardno ATC are site conditions, structural frame repair, HVAC system repair and handicapped access, totaling $35,200.

The I/F also retained Cardno ATC to conduct a phase one environmental survey of the Property. The survey identified an open question regarding the previous removal of an underground storage tank. This will likely require additional testing to ascertain soil conditions. The I/F will require this to be fully resolved or otherwise reserved prior to closing.

18. In addition, the I/F retained real estate consultants Bertram & Cochran,

[16] Part C of PTE 76–1 (41 FR 12740, March 26, 1976, as corrected at 41 FR 16620 (April 20, 1976)) provides exemptive relief from the prohibited transaction provisions of sections 406(a) and 407(a) of the Act for the leasing of office space, or the provision of administrative services, or the sale or leasing of goods by a multiple employer plan to a participating employee organization, participating employer or another multiple employer plan. PTE 77–10 (42 FR 33918, July 1, 1977), which complements PTE 76–1, provides exemptive relief from the prohibited transaction provisions of section 406(b)(2) of the Act with respect to the sharing of office space, administrative services or goods, or the leasing of office space, or the provision of administrative services or the sale or leasing of goods. In addition, with respect to the sharing of office space, PTE 77–10 requires that the plan must receive reasonable compensation. The costs of securing such space are assessed and paid on a pro-rata basis with respect to each party's use of such space, services and goods.

Notwithstanding the applicant's views on the applicability of PTEs 76–1 and 77–10 to the proposed leases, the Department expresses no opinion on whether the lease will satisfy the terms and conditions of these class exemptions.

Inc (B&C) of Hartford, Connecticut, to conduct a survey of other available properties that were potentially suitable for the purchase or leasing by the Plan. As mentioned above, the result of the survey was that purchasing the Property was the least expensive alternative and in the interest of the Plan's participants.

19. The I/F has reviewed and approved the methodology used by the Appraiser and it will ensure that such methodology is properly applied in determining the fair market value of the Property. In addition, the I/F will determine whether it is prudent to go forward with the proposed transaction. Further, the I/F will represent the interests of the Plan at the time the proposed transaction is consummated.

In carrying out its duties, the I/F requested, received and reviewed numerous documents concerning the Plan and the transaction. Among the documents the I/F reviewed were the: (a) Exemption application; (b) recent audited financial statements of the Plan; (c) the Appraisal Report for the Property; (d) the PCA; (e) the environmental assessment of the Property; (f) a competitive property market evaluation; (g) Local 24 financial statements; and (h) the existing lease between Local 24 and the CT Fund. In addition, the I/F visited the Property and met with the Plan's counsel and the NERCC Business Representative.

The I/F represents that the exemption request is administratively feasible because the purchase by the Plan from Local 24 will be a one-time transaction for cash, rather than a mortgage arrangement. Further, once the Property is owned by the Plan, the I/F represents that there will be no oversight required by the Department other than its usual and customary regulatory audits of all welfare benefit plans.

The I/F has opined that it is less expensive for the Plan to purchase the Property rather than find a similar facility and expend even more funds to convert it to an appropriate carpenter training facility. In this regard, the I/F hired a real estate appraiser to seek out other facilities that might serve as a training facility for the Plan that would also be less expensive than purchasing the Property. The result of the survey was that purchasing the Property was the least expensive alternative and in the interest of the Plan's participants.

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

(a) The Purchase price paid by the Plan for the Property will be the lesser of $1,280,000 or the fair market value of such Property, as determined by an Appraiser, as of the date of the Purchase;

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

(c) The terms and conditions of the Purchase will be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(d) Prior to entering into the Purchase, the I/F will determine that the Purchase is in the interest of, and protective of the Plan and of its participants and beneficiaries;

(e) The I/F has negotiated, reviewed, and approved the terms of the Purchase prior to the consummation of such transaction;

(f) The I/F has reviewed and approved the methodology used by the Appraiser, and it will ensure that such methodology is properly applied in determining the fair market value of the Property, and determine whether it is prudent to go forward with the proposed transaction. In addition, the I/F will represent the interests of the Plan at the time the proposed transaction is consummated;

(g) Immediately following the Purchase, the fair market value of the Property will not exceed 3 percent (3%) of the fair market value of the total assets of the Plan; and

(h) The Plan will not incur any fees, costs, commissions, or other charges as a result of engaging in the Purchase, other than the necessary and reasonable fees payable to the I/F and to the Appraiser.

Notice to Interested Persons

Notice of the proposed exemption (the Notice) will be given to interested persons within 7 days of the date of publication of the Notice in the **Federal Register**. The Notice will be given to interested persons by first class mail, with postage prepaid. Such Notice will contain a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 37 days of the publication of the 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: Blessed Chuksorji-Keefe of the Department at (202) 693–8567. (This is not a toll-free number).

Virginia Bankers Association Defined Contribution Plan for First Capital Bank (the Plan), Located in Glen Allen, Virginia

[Application No. D–11818]

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).

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,[17] shall not apply to: (1) The acquisition of certain warrants (the Warrants) to purchase a half-share of common stock (the Stock) of First Capital Bancorp, Inc. (First Capital) by the participant-directed accounts (the Accounts) of certain participants in the Plan (the Participants) in connection with a rights offering (the Rights Offering) of shares of Stock by First Capital, a party in interest with respect to the Plan; and (2) the holding of the Warrants received by the Accounts, provided that the conditions set forth in Section II below were satisfied for the duration of the acquisition and holding.

Section II. Conditions for Relief

(a) The acquisition of the Warrants by the Accounts of the Participants occurred in connection with the exercise of subscription rights to purchase Stock and Warrants (the Subscription Rights) pursuant to the Rights Offering, which was made available by First Capital to all

[17] 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.

shareholders of Stock, including the Plan;

(b) The acquisition of the Warrants by the Accounts of the Participants resulted from their participation in the Rights Offering, an independent corporate act of First Capital;

(c) Each shareholder of Stock, including each of the Accounts of the Participants, was entitled to receive the same proportionate number of Warrants, and this proportionate number of Warrants was based on the number of shares of Stock held by each such shareholder on the record date of the Rights Offering;

(d) The Warrants were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual participants in the Plan, a portion of whose Accounts in the Plan held the Stock;

(e) The decisions with regard to the acquisition, holding, and disposition of the Warrants by an Account have been made, and will continue to be made, by the individual Participant whose Account received the Subscription Right in respect of which such Warrants were acquired;

(f) The trustee of the Plan's fund maintained to hold Stock, the First Capital Stock Fund, will not allow Participants to exercise the Warrants unless the fair market value of the Stock exceeds the exercise price of the Warrants on the date of exercise; and

(g) No brokerage fees, commissions, or other fees or expenses were paid or will be paid by the Plan in connection with the acquisition, holding and/or exercise of the Subscription Right or the Warrants.

Effective Date: This proposed exemption, if granted, will be effective for the period beginning on April 30, 2012, until the date the Warrants are exercised or expire.

Summary of Facts and Representations [18]

Background

1. First Capital Bancorp, Inc. (First Capital or the Applicant) is a Virginia corporation maintaining its principal place of business in Glen Allen, Virginia. First Capital Bank (the Bank) is a subsidiary of First Capital that maintains its principal place of business in Glen Allen, Virginia.

2. First Capital represents that the Bank sponsors the Virginia Bankers Association Defined Contribution Plan for First Capital Bank (the Plan), a 401(k) plan that provides for participant-directed investments. The Applicant represents that the Plan was adopted by the Bank effective May 1, 1999. As of December 31, 2012, the Plan had total assets of approximately $4,252,512 and 97 participants.

3. First Capital represents that the participants in the Plan (the Participants) may direct the investments of their Plan accounts (individually, the Account, and collectively, the Accounts) into various investment funds, including a First Capital Stock Fund (the Stock Fund). The Applicant represents that the Plan does not impose requirements with respect to investing in First Capital Stock (the Stock). First Capital represents that, as of December 31, 2012, the Stock Fund was valued at $332,197, which represented approximately 8% of the fair market value of total Plan assets, and those shares of the Stock Fund were allocated to the Accounts of 35 Participants.

First Capital represents that Participants may make investment directions in the Stock Fund in increments of 1% of their pre-tax elective deferral Account under the Plan, subject to a 25% limit. Account balances invested in the Stock Fund are distributed in whole shares of Stock and cash instead of fractional shares.

4. First Capital represents that, at the time the transactions described herein occurred, the VBA Benefits Corporation, located in Glen Allen, Virginia, served as the trustee of the Plan (the Trustee). However, effective June 1, 2014, Reliance Trust Company (Reliance), located in Atlanta, Georgia, assumed the role of Trustee and is the Custodian of the Stock Fund (the Custodian). The Applicant represents that the Trustee holds the Plan's assets, and executes investment directions in accordance with Participants' instructions.

The Rights Offering

5. In a prospectus, dated February 13, 2012 (the Offering Prospectus), First Capital initiated a rights offering (the Rights Offering) to permit shareholders of record as of February 10, 2012 (the Record Date), including the Plan, to purchase Stock and transferable 10-year warrants (the Warrants). As of the Record Date, there were 2,971,171 shares of Stock issued and outstanding.

6. The Applicant represents that the Rights Offering was undertaken as an independent act on the part of First Capital, as a corporate entity under which all shareholders of Stock, including the Plan, were treated in a like manner. The Applicant represents that First Capital engaged in the Rights Offering in order to raise equity capital and improve its capital position. Under the terms set forth in the Offering Prospectus, the Rights Offering commenced on February 13, 2012, and was intended to terminate on April 16, 2012 (the Subscription Period). First Capital had reserved the right to extend the Subscription Period to no later than June 29, 2012. On April 4, 2012, First Capital exercised its right to extend the Subscription Period, and extended it until April 30, 2012.

7. First Capital represents that the Stock and the Warrants were issued separately, but were offered together as ''Units'' consisting of one share of Stock and one Warrant to purchase one-half of a share of Stock at a price of $2.00 per share. The Rights Offering provided that, for every share of Stock held as of the Record Date, each shareholder had the nontransferable right to subscribe for up to three Units (the Subscription Right) for an exercise price of $2.00 per Unit. Furthermore, First Capital represents, shareholders who exercised the Subscription Right in full for three Units subsequently had the opportunity to purchase Units not purchased by other shareholders (the Over-Subscription Privilege). The Applicant represents that the exercise of the Over-Subscription Privilege was subject to a right of first refusal that First Capital granted to a private investor (the Standby Purchaser).[19]

8. First Capital represents that, while the Stock is traded on the NASDAQ under the ticker symbol ''FCVA,'' neither the Subscription Rights nor the Warrants were listed for trading on the NASDAQ or any other stock exchange or market.[20] First Capital represents that the shares of Stock issuable upon the exercise of the Warrants will be listed for trading on the NASDAQ with the other outstanding shares of Stock.

9. First Capital represents that Participants were offered the opportunity to purchase Units through the Stock Fund investment option under the Plan. In this regard, Participants completed a Rights Offering Election Form (the Election Form) and submitted it to the Bank, indicating the total number of Units to be purchased for their Accounts and the total purchase

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

[19] The Applicant represents that First Capital also entered into a standby purchase agreement (the Standby Agreement) with the Standby Purchaser, pursuant to which the Standby Purchaser agreed to acquire from First Capital, at the price of $2.00 per Unit, 350,000 Units if such Units were available after exercise of the Subscription Right.

[20] First Capital reserved its right to apply to list the Warrants for trading on the NASDAQ following the Rights Offering. However, the Applicant represents that First Capital has thus far not elected to do so and does not currently expect to do so.

price, or their election not to participate in the Rights Offering. First Capital represents that the Election Form also provided for the Participant to designate which Plan investment fund(s) in the Participant's Account were to be liquidated in order to pay for the Units and the designated amounts to be liquidated from each fund. The Applicant represents that the Bank provided the Election Form to the Custodian to facilitate the Participants' elections to participate in or opt out of the Rights Offering.

10. The Applicant represents that First Capital engaged a financial advisor, Davenport & Company LLC (Davenport), to advise it on the Rights Offering. The Applicant represents that First Capital paid Davenport's fees in connection with the Rights Offering, with no fees paid with Plan assets. The Applicant represents that Davenport helped to negotiate the terms of the Standby Agreement and render a fairness opinion to the First Capital's Board of Directors that the consideration to be received by First Capital for the Units was fair.

First Capital represents that, on February 13, 2012, the closing sale price of the Stock on the NASDAQ Capital Market (NASDAQ) was $2.65 per share. First Capital further notes that, on April 30, 2012, the closing sale price of the Stock on the NASDAQ was $2.03 per share. Therefore, the per-Unit exercise price of $2.00 per share was below the price at which the Stock was trading on the date that the Rights Offering commenced as well as the date of the exercise of the Rights.

The Warrants

11. As described above, the Warrants entitled each shareholder who participated in the Rights Offering the right to purchase one-half a share of Stock at $2.00 per share, paid in cash at the time of exercise. Pursuant to the Offering Prospectus, each Warrant was exercisable immediately upon completion of the Rights Offering and will expire on the tenth anniversary of the end of the Subscription Period. The Offering Prospectus notes that the Warrants will be subject to redemption by First Capital for $0.01 per Warrant, on not less than 30 days written notice, at any time after the closing price of the Stock exceeds $4.00 per share for 20 consecutive business days ending within 15 days of the date on which notice of redemption is given, provided that the Warrant may not be redeemed before the first anniversary of the completion of the Rights Offering.[21] The Offering Prospectus indicates that the Warrants will be adjusted to reflect any stock split, stock dividend or similar recapitalization with respect to the Stock. Furthermore, as no fractional shares of Stock would be issued, the Offering Prospectus explains that if a shareholder purchased an odd number of Units, the number of shares of Stock to be purchased through the Warrants would be rounded down to the nearest whole share.

12. First Capital represents that, with respect to the exercise and disposition of the Warrants, the Trustee will follow the directions of the Participants in accordance with the procedures set forth in the Warrant Certificate and established by the Bank. However, First Capital states, the Trustee will not allow Participants to exercise the Warrants unless the fair market value of the Stock exceeds the exercise price of the Warrants. The Applicant represents that the shares of Stock received upon the exercise of the Warrants will be credited to Participants' Accounts.

13. First Capital represents that all shareholders of Stock, including Participants, were treated in a similar manner with respect to their acquisition and holding of the Warrants. First Capital further represents that no Participant in the Plan paid, or will pay, any fees or commissions in connection with the acquisition, holding or exercise of the Warrants. Finally, First Capital represents that all decisions regarding the acquisition, holding, and disposition of the Warrants have been and will be made by the Participants to whose Plan accounts the Warrants were allocated.

Exemptive Relief Requested

14. First Capital previously requested retroactive exemptive relief to cover the Plan's acquisition and holding of both the Subscription Rights and the Warrants. However, the Department was unable to make the required statutory findings under section 408(a) of the Act for retroactive exemptive relief, due to, among other things, the length of time between the end of the Subscription Period and the filing of the application for exemptive relief, and the inadequacy of the information presented to Participants with respect to the Rights Offering. Consequently, First Capital withdrew its request for retroactive exemptive relief with respect to the acquisition and holding of Subscription Rights by the Plan. First Capital filed a Form 5330 with the IRS disclosing a prohibited transaction with no related loss.[22] Therefore, the Department is proposing relief only for the acquisition and holding of the Warrants.

15. First Capital states that the acquisition and holding of the Warrants violates certain prohibited transaction restrictions of the Act. In this regard, First Capital states that, although the Warrants constitute ''employer securities'' as defined under section 407(d)(1) of the Act, they do not satisfy the definition of ''qualifying employer securities'' as defined under section 407(d)(5) of the Act because they are not stock or marketable debt securities. Under section 407(a)(1)(A) of the Act, a plan may not acquire or hold any ''employer security'' which is not a ''qualifying employer security.'' In addition, section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any ''employer security in violation of section 407(a) of the Act.'' Finally, section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any ''employer security'' in violation of section 407(a) of the Act. Therefore, First Capital states that the acquisition and holding of the Warrants by the Plan constitute prohibited transactions in violation of sections 406(a)(1)(E) and 406(a)(2) of the Act.

16. Furthermore, First Capital states that the acquisition of the Warrants violates section 406(a)(1)(A) of the Act. First Capital notes that, in relevant part, section 406(a)(1)(A) of the Act provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if the fiduciary knows or should know that the transaction is a sale or exchange of any property between a plan and a party in interest. First Capital states that, because the Plan fiduciaries acquired the Warrants on behalf of Participants through the exercise of Subscription Rights in the Rights Offering, the acquisition of the Warrants constituted a sale or exchange of property between a Plan and a party in interest, in violation of section 406(a)(1)(A) of the Act.

17. First Capital states further that the acquisition and holding of the Warrants may violate sections 406(b)(1) and 406(b)(2) of the Act. First Capital notes that section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest

[21] The Department notes that the redemption of the Warrants by First Capital from the Plan in exchange for cash would constitute a prohibited transaction under sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act, for which exemptive relief is not provided hereunder.

[22] The Department is taking no view herein regarding whether First Capital properly filed the Form 5330, including properly reporting such loss amount.

or for his own account. Furthermore, section 406(b)(2) of the Act prohibits a fiduciary with respect to a plan from acting in any transaction involving the plan on behalf of a party, or representing a party, whose interests are adverse to the interests of the plan or its participants and beneficiaries. First Capital states that, in effecting the Plan's participation in the Rights Offering and allowing the Plan to purchase and hold the Warrants, the Plan fiduciaries may have violated section 406(b)(1) of the Act because they dealt with the assets of the Plan in their own interest. Furthermore, the Applicant states that the Plan fiduciaries may have violated section 406(b)(2) of the Act because they acted on their own behalf as well as the Plan's behalf in the Rights Offering. Therefore, First Capital requests that the Department grant an exemption from the prohibitions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act, for the acquisition and holding of the Warrants.

18. As explained above, First Capital represents that the acquisition of the Warrants has been completed. First Capital represents that, to date, no Plan Participants have exercised any of their Accounts' Warrants. First Capital further represents that, to date, no Plan Participants have transferred any Warrants in their Accounts to third parties. According to First Capital, all Accounts that received the Warrants may hold them until exercised for Stock or transferred to a third party, or until the Warrants expire, ten years from the date that the Rights Offering closed. First Capital seeks retroactive relief effective from April 30, 2012, the date that the Accounts of Participants exercised their Subscription Rights, until the Warrants are exercised or expire.

Statutory Findings

19. First Capital represents that the proposed exemption is administratively feasible. First Capital represents that all shareholders, including the Plan, were, and will continue to be treated in a like manner with respect to the acquisition and holding of the Warrants. First Capital represents that the Plan recordkeeper has indicated that it can administer the Warrants as part of the Plan's assets, of which the Warrants comprise less than 1 percent. As such, First Capital represents that there is no reason for any continuing Departmental oversight with respect to the holding of the Warrants.

20. First Capital represents that the Plan's acquisition of the Warrants through its participation in the Rights Offering was in the interests of the Plan and its Participants because it provides Participants with the opportunity to purchase additional Stock at below fair market value price. Furthermore, First Capital represents that rights offerings are a very common approach used by banks and other issuers to raise capital, and that they provide shareholders, including the Plan, with an additional opportunity to invest in the entity. Furthermore, the price of a Unit, which included one share of Stock and one Warrant to purchase a half-share of Stock, was lower than the price of Stock, as reflected on the NASDAQ, on the date the Rights Offering commenced and the date of the exercise of the Rights.

21. First Capital represents that the acquisition and holding of the Warrants in the Rights Offering was protective of the rights of Participants and beneficiaries because all decisions regarding the holding, exercise and disposition of the Warrants by an Account were made or will be made by the Participant whose Account received such Warrants. Furthermore, the Trustee will not allow Participants to exercise the Warrants unless the fair market value of the Stock exceeds the exercise price of the Warrants on the date of exercise.

Summary

22. In summary, First Capital 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:

a. The acquisition of the Warrants by the Accounts of the Participants occurred in connection with the exercise of Subscription Rights pursuant to the Rights Offering, which was made available by First Capital to all shareholders of Stock, including the Plan;

b. The acquisition of the Warrants by the Accounts of the Participants resulted from their participation in the Rights Offering, an independent corporate act of First Capital;

c. Each shareholder of Stock, including each of the Accounts of the Participants, was entitled to receive the same proportionate number of Warrants, and this proportionate number of Warrants was based on the number of shares of Stock held by each such shareholder;

d. The Warrants were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual Participants, a portion of whose Accounts in the Plan held the Stock;

e. The decisions with regard to the holding, exercise and disposition of the Warrants by an Account were made and are to be made by the Participant whose Account received the Warrants;

f. The Trustee will not allow Participants to exercise the Warrants unless the fair market value of the Stock exceeds the exercise price of the Warrants on the date of exercise; and

g. No brokerage fees, commissions, or other fees or expenses were paid by the Plan in connection with the acquisition, holding or exercise of any of the Warrants.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Interested Persons 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. 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: 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: Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Idaho Veneer Company/Ceda-Pine Veneer, Inc. Employees' Retirement Plan, Located in Post Falls, ID

[Application No. D–11823]

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]

Section I. Covered Transactions

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 and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the in-kind contribution (the Contribution) by Idaho Veneer Company (Idaho Veneer or the Applicant) of unimproved real property (the Property) to the Idaho Veneer Company/Ceda-Pine Veneer, Inc. Employees' Retirement Plan (the Plan), provided that the conditions described in Section II below have been met.

Section II. Conditions for Relief

(a) The Property is contributed to the Plan at the greater of either: (1) $1,249,000; or (2) the fair market value of the Property, as determined by a qualified independent appraiser, in an appraisal (the Appraisal) that is updated on the date of the Contribution;

(b) A qualified independent fiduciary (the Independent Fiduciary), acting on behalf of the Plan, represents the interests of the Plan and its participants and beneficiaries with respect to the Contribution, and in doing so: (1) Determines that the Contribution is in the interests of the Plan and of its participants and beneficiaries and is protective of the rights of participants and beneficiaries of the Plan; (2) reviews the Appraisal to approve of the methodology used by the appraiser and to verify that the appraiser's methodology was properly applied; and (3) ensures compliance with the terms of the Contribution and the conditions for the proposed exemption, if granted;

(c) All rights exercisable in connection with any existing third-party lease for billboard space (the Lease) on the Property are transferred to the Plan along with the Property;

(d) The Plan does not incur any expenses with respect to the Contribution;

(e) As of the date of the Contribution, there are no adverse claims, liens or debts to be levied against the Property, and Idaho Veneer is not aware of any pending adverse claims, liens or debts to be levied against the Property;

(f) On the date of the Contribution, and to the extent that the value of the Property as of the date of the Contribution is less than the cumulative cash contributions Idaho Veneer would have been required to make to the Plan in the absence of the Contribution, Idaho Veneer will make a cash contribution to the Plan equal to the difference between the value of the Property at the date of the Contribution and the outstanding required cash contributions;

(g) The Property represents no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan; and

(h) The terms and conditions of the Contribution are no less favorable to the Plan than those the Plan could negotiate in an arms-length transaction with an unrelated third party.

Effective Date: The proposed exemption, if granted, will be effective as of the date that a final notice of granted exemption is published in the **Federal Register**.

Summary of Facts and Representations[24]

Background

1. Idaho Veneer Company (Idaho Veneer or the Applicant) is a producer of white pine lumber and veneer products based in Post Falls, Idaho. Idaho Veneer was first established in 1953 and has operated from its headquarters in Post Falls for over 60 years. Idaho Veneer also owns a property in Samuels, Idaho, on which it operated a mill until recently. From 1993 to 2013, Idaho Veneer and Ceda-Pine Veneer, Inc. (Ceda-Pine) were wholly-owned subsidiaries of Excaliber, Inc. (Excaliber), a holding company for all Idaho Veneer and Ceda-Pine stock. In October 2013, Ceda-Pine was liquidated and dissolved. Idaho Veneer was merged with Excaliber, the surviving corporation, which subsequently changed its name to ''Idaho Veneer Company.'' The Applicant represents that during its boom years in the 1980s, Idaho Veneer employed more than 200 workers and distributed its products in North America, Asia, and Europe. However, the Applicant explains, a decline in demand for timber products in recent years caused Idaho Veneer to modify its product lineup, and has occasionally resulted in seasonal layoffs. The Applicant represents that, due to low demand, Idaho Veneer ceased production at the Samuels Mill in 2009 and auctioned the mill equipment in May 2012.

2. Idaho Veneer is the sponsor of the Idaho Veneer Company/Ceda-Pine Veneer, Inc. Employees' Retirement Plan (the Plan), a defined benefit plan established effective December 4, 1972. The Plan was later amended to freeze benefit accruals, effective December 31, 2006. In addition, no future accrual service would be credited and no future compensation will be taken into account when determining the participant's accrued benefit, and no additional employees will become active participants. As of December 31, 2013, the Plan had 236 participants and total net assets valued at $7,139,481. Idaho Veneer represents that the current trustees of the Plan (the Trustees) include: John Malloy, the President and 1/3 owner of Idaho Veneer; Daniel J. Malloy, Director and 1/3 owner of Idaho Veneer; and Terry Newcomb, the chief financial officer of Idaho Veneer.

3. Idaho Veneer represents that it owns a parcel of vacant, unimproved land (the Property), consisting of 11.8 acres bordering Interstate 90, and in close proximity to its primary business location and mill site in Post Falls. The Applicant purchased the Property in 1980 from John and Julia Gregor, the original founders of Idaho Veneer. Idaho Veneer represents that it originally purchased the Property with the intention to expand its mill site operations. However, Idaho Veneer represents that it ultimately abandoned its plans for expansion onto the Property as another site proved adequate.

4. Idaho Veneer represents that the Property, though currently undeveloped, generates advertising revenue from two billboard signs located on the Property. On September 14, 2010, Idaho Veneer entered into a ten-year lease (the Lease) with the Lamar Advertising Company (Lamar) beginning on December 1, 2010. Lamar is one of the largest advertising companies in North America, with more than 300,000 displays in the United States, Canada, and Puerto Rico. Lamar offers billboard, interstate logo, and transit advertising formats, as well as a network of digital billboards with over 2,000 displays. The Lease provides Lamar access to the Property to construct and maintain the billboards, in exchange for paying Idaho Veneer the greater of $5,000 annually or 20% of the annual gross income generated from the billboard rentals. Idaho Veneer represents that it has earned approximately $18,000 per year in

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

[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.

advertising income in 2013 and 2014 through its ownership of the Property. Idaho Veneer states that, as of May 14, 2014, the Property has an appraised value of $1,249,000. Idaho Veneer represents that it paid $9,140 in 2013 and $8,736 in 2014 in property taxes with respect to the Property.

Plan Funding Shortfalls

5. According to projections prepared by Milliman, the Plan's actuary (the Actuary), the Plan had a 78% Adjusted Funding Target Attainment Percentage (AFTAP)funded status as of January 1, 2015.[25] The projections indicate that the Plan's funded status will decline to 77.6% funded after 1 year, 75% after 2 years, and 55.8% after 7 years. Idaho Veneer further represents that it lacks the financial resources to meet its current minimum required contribution, as required under section 305 of the Act and section 412(d) of the Code, through a contribution of cash. Idaho Veneer explains that it applied for and was granted a partial Minimum Funding Waiver (the Waiver) from the IRS for the 2011 Plan year. Pursuant to the terms of the Waiver, Idaho Veneer, on June 7, 2012, contributed the first two quarterly payments for the 2011 Plan year, in the amounts of $78,705 and $78,709. However, the Applicant explains, the partial relief provided under the Waiver did not sufficiently improve Idaho Veneer's financial condition so as to allow it to make its minimum required contributions for either Plan years 2012 or 2013.[26]

The In-Kind Contribution

6. Idaho Veneer wishes to satisfy its funding obligation to the Plan through an in-kind contribution of the Property to the Plan (the Contribution). The Applicant represents that the Contribution will fully satisfy Idaho Veneer's minimum funding obligations with respect to the 2011 and 2012 Plan Years. The Applicant further contends that the Contribution will satisfy most of the minimum funding obligation for the 2013 Plan Year, and that Idaho Veneer will contribute the remaining amount for the 2013 Plan Year in cash. Furthermore, Milliman projects, the Plan's AFTAP following the Contribution will increase to 91.4% after 1 year, then decrease to 89.1% after 2 years, and 67.5% after 7 years.

7. The Trustees have determined that the Property is a prudent investment for the Plan. Idaho Veneer represents that, although the Property is already valuable, the Trustees believe there is still significant opportunity for increased upside as the real estate market in the western United States continues to recover. On the other hand, the Applicant notes, if the Property does decline in value, Idaho Veneer will have to supplement its future contributions in order to account for any resulting shortfall in the Plan's funding status.

8. The Applicant notes that Idaho Veneer has previously used the Property for storage space. However, all items owned by Idaho Veneer will be removed from the Property, and nothing will be stored on the Property after the Contribution. According to Idaho Veneer, the Property is clear of any adverse claims and there are no liens or debts to be levied against the Property, and Idaho Veneer is not aware of any pending adverse claims, liens or debts to be levied against the Property. Idaho Veneer represents that all rights under the Lease will transfer to the Plan along with the Property. Furthermore, Idaho Veneer represents that a Phase 1 environmental site assessment was done on October 21, 2013 by Hoy Environmental, PLLC located in Spokane, Washington. According to Idaho Veneer, the assessment revealed no evidence of recognized adverse environmental conditions.

9. Idaho Veneer notes that it has been actively marketing the Property. A third-party buyer, Active West Development, LLC, has expressed interest in purchasing the Property, as well as another parcel Idaho Veneer owns, as part of a larger development in Post Falls.[27] The Applicant notes that, if the proposed exemption is granted and Idaho Veneer contributes the Property to the Plan, the Trustees will continue to market the Property for sale to potential buyers. According to Idaho Veneer, the Property is currently zoned industrial, but re-zoning is not required for the Plan to market the Property.

10. The Applicant represents that, to the extent that the value of the Property at the date of the Contribution is less than the cumulative cash contributions Idaho Veneer would have been required to make to the Plan in the absence of the Contribution, Idaho Veneer will make a cash contribution to the Plan on the date of the Contribution equal to the difference between the value of the Property at the date of the Contribution and the outstanding required cash contributions.

11. The Applicant represents that Idaho Veneer plans to satisfy its minimum required contributions for any subsequent years following the Contribution. The Applicant represents that Idaho Veneer intends to take into account the value of the Property in calculating its minimum required payment.

The Independent Fiduciary Report

12. The Trustees engaged William J. Kropkof, Managing Member of the ERISA Advisory Group, to serve as the qualified independent fiduciary (the Independent Fiduciary) on behalf of the Plan. The Independent Fiduciary represents that he has served in various engagements as a qualified independent fiduciary for 19 years, including reviewing various types of real estate transactions for ERISA-covered plans.

13. The Independent Fiduciary represents that he understands that his duties and responsibilities under ERISA require him to act on behalf of the participants and beneficiaries of the Plan, and not on behalf of Idaho Veneer. To this end, the Independent Fiduciary represents that he has no current or former relationship with any party in interest with respect to the Contribution, including Stanley Moe of Columbia Valuation Group, Inc., the qualified independent appraiser (the Appraiser), or any affiliates except to the extent necessary to perform his duties as Independent Fiduciary. The Independent Fiduciary estimates that the percentage of his current revenue derived from any party in interest involved in the proposed transaction will be 1.26%, determined by comparing, in fractional form, his revenues from Idaho Veneer (or its affiliates) and any party in interest, in the current federal income tax year (expressed as a numerator), and his revenues from all sources (excluding fixed, non-discretionary retirement income) for the prior federal income tax year (expressed as a denominator).

14. The Independent Fiduciary submitted to the Department his report, dated November 4, 2014 (the Independent Fiduciary Report), in which he analyzed the proposed transaction and submitted and formulated recommendations for the Trustees.

In the Independent Fiduciary Report, the Independent Fiduciary explains that he identified and considered several issues in forming the recommendation,

[25] Idaho Veneer notes that the funding valuation results prepared by the Actuary were made utilizing interest rate assumptions provided under the Moving Ahead for Progress in the 21st Century Act (MAP–21) legislation enacted on July 6, 2012, that, among other things, changed the interest rate that pension plans use to measure their liabilities.

[26] The Applicant represents that it has filed a Form 5330 with the IRS in connection with Idaho Veneer's missed minimum required contributions.

[27] The Applicant expects that discussions with Active West Development, LLC will continue after the Contribution and that the Plan may be able to sell the Property shortly after the Contribution.

including: The prudence of the proposed transaction; the impact of the proposed transaction on the Plan, including the need to diversify the Plan's investments, the Plan's current and projected liquidity needs based on actuarial models, and the Property's fit with the Plan's other investments in light of the overall investment objectives; the impact of alternatives to proceeding with the proposed transaction; the risks associated with the proposed transaction; and the need to monitor the Plan's real estate investments going forward.

15. In the Independent Fiduciary Report, the Independent Fiduciary represents that he evaluated numerous aspects of the proposed transaction in analyzing the impact of the Contribution on the Plan. The Independent Fiduciary reviewed the appraisal of the Property (the Appraisal), completed by the Appraiser. Furthermore, the Independent Fiduciary discussed the actuarial projections with the Actuary and analyzed the Plan's ability to pay required benefits as well as the liquidity of all the Plan's assets. The Independent Fiduciary represents that he also conducted an analysis of the Plan's existing investment allocation mix and the impact the Contribution would have on the Plan's overall investment strategy. Finally, the Independent Fiduciary evaluated the current real estate conditions and the potential for short- and mid-term appreciation of the value of the Property.

16. After performing the necessary due diligence, the Independent Fiduciary recommends in the Independent Fiduciary Report that the parties engage in the Contribution. The Independent Fiduciary notes that the Plan currently has sufficient liquidity to pay benefits as they become due. The asset projections prepared for the Plan indicate that the Plan will continue to have sufficient liquidity to meet its benefit obligations for at least the next 10 years, with or without the Contribution.

17. Furthermore, according to the Independent Fiduciary Report, the Independent Fiduciary believes that the Contribution is in the interests of the Plan's Participants. The Independent Fiduciary Report notes that the Contribution will satisfy most of the minimum funding requirements for Plan years 2012 and 2013. As such, the Independent Fiduciary contends that the Contribution would alleviate the cash burden on Idaho Veneer, and make it more likely that Idaho Veneer will remain financially stable and able to make required cash contributions to the Plan in future years.[28]

18. The Independent Fiduciary represents that he reviewed the credentials of the Appraiser and determined that he is a certified appraiser in good standing with the Idaho Bureau of Occupational Licenses and the Washington State Department of Licensing. Based on the Appraiser's credentials and the Appraisal completed in connection with the Contribution, the Independent Fiduciary believes that the valuation is fair and reasonable.

19. The Independent Fiduciary also notes that because local real estate values remain depressed relative to historical trends, the Property has significant upside potential. The Independent Fiduciary states that, based on recent interest in the Property by third-party potential buyers, even a sale in the near future may yield proceeds in excess of the current appraised value. Furthermore, according to the Independent Fiduciary, the Property generates a stable cash flow through the Lease without posing substantial risks to the Plan.

20. In the Independent Fiduciary Report, the Independent Fiduciary concludes that the Contribution is protective of the rights of the Plan participants and beneficiaries because the Trustees will perform the following duties on an on-going basis: Inspect the Property at least annually; review the Plan's financial stability each year; review and update the insurance provided for the Property (including liability and fire insurance) as necessary; commission a full appraisal of the Property every three years and order an update from the Appraiser every year in which a full appraisal is not done; review with the Actuary the impact that the continued investment in the Property will have on the Plan's liquidity; negotiate all current and/or future leases, collect stated rents and ensure tenant(s) are performing consistent with the terms of those leases; periodically (at least annually) review compliance with the terms of any current or future leases; maintain the Property in a safe, stable and marketable condition, including performing any necessary maintenance on, or removal of, personal property, improvements, or other items that are in the best interest of the Plan, and keeping the Property free of hazards, noxious weeds and other items that could increase risk to the Plan or interfere with the Property's value; periodically (at least annually) discuss the current strategy for holding the Property and document any changes to such strategy; and review, and approve or reject, all purchase offers or other proposed transactions involving real estate held by the Plan.

[28] The Independent Fiduciary states that the interests of the Plan sponsor, Idaho Veneer, are relevant only insofar as the Contribution will affect the Applicant's continuing financial viability and its ability to fund the Plan.

The Appraisal of the Property

21. In the Appraisal, dated May 14, 2014, and addendum, dated July 9, 2014, the Appraiser represents that he was hired to perform a market appraisal of the property, to be submitted to the Department for the purpose of obtaining a prohibited transaction exemption, and that the Appraisal was completed solely on behalf of the Plan. The Appraiser represents that he is a Member of the Appraisal Institute and has performed real estate appraisals in Idaho since 1976. The Appraiser represents that he has performed two Appraisals on behalf of the Plan. However, the Appraiser represents that he has no other relationship with any party in interest with respect to the Contribution, or its affiliates, that may influence the Appraiser's actions. The Appraiser represents that less than 1% of his revenue in 2014 was derived from Idaho Veneer.

22. In the Appraisal, the Appraiser represents that he employed the sales comparison approach to valuing the property. The Appraiser explains that the sales comparison approach reflects the opinions of buyers and sellers of comparable properties in the local real estate market, evaluating certain benchmark value indicators such as price per square foot, price per unit, price per room, or an indication of value through some variant of the gross income multiplier. The Appraiser states that the sales comparison approach is usually the only applicable valuation method for unimproved real property.

23. In the Appraisal, the Appraiser explains that he examined four land sales and one active listing that represent the most recent comparable land deals with similarities to the Property. The Appraiser represents that, after adjustments for differences in economic and physical conditions, the land sales indicate a range of value between $1.89 and $2.40 per square foot for the Property. The Appraiser concludes that this is the most probable transaction range in which a sale of the subject property would occur. The Appraiser also observes that location, configuration, access and utility are all considered good for light industrial or a mixed use development, although access and visibility from the freeway are less than ideal. Based on the

comparison, the Appraiser derived the current market value of the Property at $2.25 per square foot, or $1,157,000.

24. The Appraiser then considered the effect that the Lease would have on the value of the Property. The Appraiser notes that the signs cover very little land area and are located close to the freeway in the least likely location to place buildings. As such, even if a prospective buyer wished to develop the Property, a prudent investor would continue leasing to Lamar. The Lease would add income to whatever other use might develop over time. Therefore, the Appraiser reasons, the minimum value added would be the present value income over the remaining Lease term. In calculating the present value, the Appraiser applied a discount rate of 8%, recognizing this income is virtually guaranteed for 7 more years. The Appraiser concluded that the added value from the Lease would be $92,000. As such, the Appraiser concluded that the total value of the Property, including the Lease, is $1,249,000.

Exemptive Relief Requested

25. Idaho Veneer requests exemptive relief from certain of the prohibited transaction restrictions of section 406 of ERISA for the Contribution.[29] Idaho Veneer represents that the Contribution violates section 406(a)(1)(A) of the Act, which prohibits the sale or exchange of property between a plan and a party in interest. Idaho Veneer notes that the Department concluded in Interpretive Bulletin 2509.94–3 that an in-kind contribution of property by a plan sponsor to an employee pension plan constitutes a prohibited transaction in violation of section 406(a)(1)(A) of the Act. Furthermore, an employer whose employees participate in the plan is a ''party in interest'' under section 3(14) of the Act. As such, Idaho Veneer requests exemptive relief from section 406(a)(1)(A) of the Act for the transfer of the Property to the Plan through the Contribution.

26. Idaho Veneer states that section 406(a)(1)(D) of the Act provides that any transfer to, or use by or for the benefit of, a party in interest or disqualified person, of any assets of the Plan is a prohibited transaction. Idaho Veneer states that, accordingly, the Contribution may also violate section 406(a)(1)(D) of the Act. Thus, Idaho Veneer requests exemptive relief from 406(a)(1)(D) of the Act.

27. The Applicant further requests exemptive relief from sections 406(b)(1) and 406(b)(2) of the Act. The Applicant represents that section 406(b)(1) of the Act prohibits a plan fiduciary from dealing with the assets of the plan in its own interest or for its own account (*i.e.,* self-dealing). The Applicant represents that the current Trustees, other than the Independent Fiduciary, are full-time executives and are each ⅓ owners of Idaho Veneer. As such, the proposed Contribution may constitute transactions in which the Trustees deal with Plan assets in a manner which benefits themselves by strengthening the financial prospects of Idaho Veneer. The Applicant states further that section 406(b)(2) of the Act prohibits a fiduciary from acting in its individual or any other capacity in any transaction involving the plan, on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. In acting on behalf of the Plan as Trustees and on behalf of Idaho Veneer as executives and owners in connection with the Contribution, the Trustees will have acted on behalf of a party whose interests are adverse to the interests of the Plan.

Statutory Findings

28. Idaho Veneer represents that the proposed exemption is administratively feasible because the Contribution is a one-time transaction. The Applicant represents that Idaho Veneer has clear title to the Property and that it is authorized to transfer title to the Plan. Idaho Veneer further represents that the Independent Fiduciary will review and approve the terms of the Contribution on behalf of the Plan. Idaho Veneer represents that, once the Contribution is completed, the Plan Trustees will continue to seek a third-party buyer for the Property, unrelated to either the Plan or the parties in interest.

29. Idaho Veneer represents that the Contribution is in the interests of the Plan and its participants and beneficiaries because the Plan will enjoy the potential appreciation of the Property. Furthermore, the Property has the potential for future development because of its prime location close to a major interstate highway. In addition, there will be no restrictions on the resale of the Property by the Plan, and the Trustees have stated that they intend to market its subsequent sale to third parties. The Applicant notes further that, as Idaho Veneer's current financial state precludes it from making its timely minimum required contributions, the Contribution currently provides the only means of providing additional assets to the Plan.

30. Finally, Idaho Veneer represents that the Contribution is protective of the rights of the participants and beneficiaries because the Property will be contributed at the greater of (1) $1,249,000, or (2) the fair market value of the Property, as determined by a qualified independent appraiser updated on the date of the Contribution. Furthermore, the Independent Fiduciary was engaged by the Plan to represent the Plan's interests related to the Contribution. In this capacity, the Independent Fiduciary represents that it reviewed the terms of the Contribution and the Appraisal; approved of the methodology used in the Appraisal; and verified that the Appraiser's methodology was properly applied. The Independent Fiduciary will ensure compliance with the terms of the Contribution and the conditions for the proposed exemption, if granted. Idaho Veneer represents that all rights exercisable in connection with the Lease on the Property will be transferred to the Plan along with the Property. Idaho Veneer notes that the Plan will not incur any expenses with respect to the Contribution. In addition, the Property will represent no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan. Finally, Idaho Veneer represents that the Trustees will closely monitor the Plan's investment in the Property and will continue to solicit third-party buyers for the Property in order to facilitate an expeditious sale.

Summary

31. In summary, in addition to the reasons described above, Idaho Veneer represents that the proposed exemption, if granted, satisfies the statutory criteria of section 408 of the Act for the following reasons:

(a) The Property will be contributed to the Plan at the greater of either: (1) $1,249,000; or (2) its fair market value of the Property, as determined in the Appraisal that is updated on the date of the Contribution;

(b) The Independent Fiduciary has been retained to represent the interests of the Plan and its participants and beneficiaries with respect to the Contribution, and in doing so: (1) Determined that the Contribution is in the interests of the Plan and of its participants and beneficiaries and is protective of the rights of participants and beneficiaries of the Plan; (2) reviewed the Appraisal to approve of the methodology used by the Appraiser and to verify that the Appraiser's methodology was properly applied; and (3) will ensure compliance with the terms of the Contribution and the

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

conditions for the proposed exemption, if granted;

(c) All rights exercisable in connection with any existing Lease will be transferred to the Plan along with the Property;

(d) As of the date of the Contribution, there are no adverse claims, liens or debts to be levied against the Property, and Idaho Veneer is not aware of any pending adverse claims, liens or debts to be levied against the Property;

(e) On the date of the Contribution, and to the extent that the value of the Property as of the date of the Contribution is less than the cumulative cash contributions the Applicant would have been required to make to the Plan in the absence of the Contribution, the Applicant will make a cash contribution to the Plan equal to the difference between the value of the Property at the date of the Contribution and the outstanding required cash contributions; and

(f) The Property represents no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Interested Persons in the manner agreed to with the Department 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. 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: 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: Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

United States Steel and Carnegie Pension Fund (UCF or the Applicant), Located in New York, New York

[Application No. D–11835]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, as amended, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[30]

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective from January 1, 2015, through December 31, 2017, to a transaction between a party in interest with respect to Former U.S. Steel Related Plan(s), as defined in Section II(e), and an investment fund, as defined in Section II(k), in which such plans have an interest (the Fund), provided that UCF has discretionary authority or control with respect to the plan assets involved in the transaction, and the following conditions are satisfied:

(a) UCF is an investment adviser registered under the Investment Advisers Act of 1940 (the 1940 Act) that has, as of the last day of its most recent fiscal year, total client assets, including in-house plan assets (the In-House Plan Assets), as defined in Section II(g), under its management and control in excess of $100,000,000 and equity, as defined in Section II(j), in excess of $1,000,000 (as measured yearly on UCF's most recent balance sheet prepared in accordance with generally accepted accounting principles); and provided UCF has acknowledged in a written management agreement that it is a fiduciary with respect to each Former U.S. Steel Related Plan that has retained it;

(b) At the time of the transaction, as defined in Section II(m), the party in interest, as defined in Section II(h), or its affiliate, as defined in Section II(a), does not have the authority to—

(1) Appoint or terminate UCF as a manager of any of the plan assets of the Former U.S. Steel Related Plans, or

(2) Negotiate the terms of the management agreement with UCF (including renewals or modifications thereof) on behalf of the Former U.S. Steel Related Plans.

(c) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006–16 (PTE 2006–16),[31] relating to securities lending arrangements (as amended or superseded);

(2) Prohibited Transaction Exemption 83–1 (PTE 83–1),[32] relating to acquisitions by plans of interests in mortgage pools (as amended or superseded), or

(3) Prohibited Transaction Exemption 88–59 (PTE 88–59),[33] relating to certain mortgage financing arrangements (as amended or superseded);

(d) The terms of the transaction are negotiated on behalf of the Fund by, or under the authority and general direction of, UCF, and either UCF, or (so long as UCF retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by UCF, makes the decision on behalf of the Fund to enter into the transaction;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of UCF, the terms of the transaction are at least as favorable to the Fund as the terms generally available in arm's-length transactions between unrelated parties;

(f) Neither UCF nor any affiliate thereof, as defined in Section II(b), nor any owner, direct or indirect, of a 5 percent (5%) or more interest in UCF is a person who, within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) Any felony involving abuse or misuses of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) Any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) Income tax evasion;

(4) Any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion,

[30] 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.

[31] 71 FR 63786, October 31, 2006.

[32] 48 FR 895, January 7, 1983.

[33] 53 FR 24811, June 30, 1988.

or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) Any other crimes described in section 411 of the Act.

For purposes of this Section I(f), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal;

(g) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(h) The party in interest dealing with the Fund:

(1) Is a party in interest with respect to the Former U.S. Steel Related Plans (including a fiduciary) solely by reason of providing services to the Former U.S. Steel Related Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act;

(2) Does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets; and

(3) Is neither UCF nor a person related to UCF, as defined, in Section II(i).

(i) UCF adopts written policies and procedures that are designed to assure compliance with the conditions of this proposed exemption;

(j) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act, and who so represents in writing, conducts an exemption audit, as defined in Section II(f) of this proposed exemption, on an annual basis. Following completion of each such exemption audit, the independent auditor must issue a written report to the Former U.S. Steel Related Plans that engaged in such transactions, presenting its specific findings with respect to the audited sample regarding the level of compliance with the policies and procedures adopted by UCF, pursuant to Section I(i) of this proposed exemption, and with the objective requirements of this proposed exemption. The written report also shall contain the auditor's overall opinion regarding whether UCF's program as a whole complies with the policies and procedures adopted by UCF and the objective requirements of this proposed exemption. The independent auditor must complete each such exemption audit and must issue such written report to the administrators, or other appropriate fiduciary of the Former U.S. Steel Related Plans, within six (6) months following the end of the year to which each such exemption audit and report relates; and

(k)(1) UCF or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the persons described in Section I(k)(2) to determine whether the conditions of this proposed exemption have been met, except that (A) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UCF and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (B) no party in interest or disqualified person other than UCF shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by Section I(k)(2), of this proposed exemption.

(2) Except as provided in Section I(k)(3), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(k)(1), of this proposed exemption are unconditionally available for examination at their customary location during normal business hours by:

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

(B) Any fiduciary of any of the Former U.S. Steel Related Plans investing in the Fund or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any of the Former U.S. Steel Related Plans investing in the Fund or any duly authorized employee representative of such employer;

(D) Any participant or beneficiary of any of the Former U.S. Steel Related Plans investing in the Fund, or any duly authorized representative of such participant or beneficiary; and

(E) Any employee organization whose members are covered by such Former U.S. Steel Related Plans;

(3) None of the persons described in Section I(k)(2)(B) through (E), of this proposed exemption shall be authorized to examine trade secrets of UCF or its affiliates or commercial or financial information which is privileged or confidential.

Section II. Definitions

(a) For purposes of Section I(b) of this proposed exemption, an ''affiliate'' of a person means—

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

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, five percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets.

A named fiduciary (within the meaning of section 402(a)(2) of the Act) or a plan, with respect to the plan assets and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of Section I(b), if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(f), of this proposed exemption, an ''affiliate'' of a person means—

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

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person) or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

(c) For purposes of Section II(e) and (g), of this proposed exemption, an ''affiliate'' of UCF includes a member of either:

(1) A controlled group of corporations, as defined in section

414(b) of the Code, of which United States Steel Corporation (U.S. Steel) is a member, or

(2) A group of trades or business under common control, as defined in section 414(c) of the Code of which U.S. Steel is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) or the rules thereunder.

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

(e) ''Former U.S. Steel Related Plan(s)'' mean:

(1) The Marathon Petroleum Retirement Plan and the Speedway Retirement Plan (the Marathon Plans);

(2) The Pension Plan of RMI Titanium Company, the Pension Plan of Eligible Employees of RMI Titanium Company, the Pension Plan for Eligible Salaried Employees of RMI Titanium Company, and the TRADCO Pension Plan;

(3) Any plan the assets of which include or have included assets that were managed by UCF as an in-house asset manager, pursuant to Prohibited Transaction Class Exemption 96–23 (PTE 96–23) [34] but as to which PTE 96–23 is no longer available because such assets are not held under a plan maintained by an affiliate of UCF (as defined in Section II(c) of this proposed exemption); and

(4) Any plan (an Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of UCF (as defined in Section II(c), of this proposed exemption; provided that:

(A) The assets of the Add-On Plan are invested in a commingled fund (the Comingled Fund), as defined in Section II(n) of this proposed exemption, with the assets of a plan or plans, described in Section II(e)(1)–(3) of this proposed exemption and

(B) The assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such fund, as measured on the day immediately following the initial commingling of their assets (the 25% Test). For purposes of the 25% Test, as set forth in Section II(e)(4);

(i) In the event that less than all of the assets of an Add-On Plan are invested in a Commingled Fund on the date of the initial transfer of such Add-On Plan's assets to such fund, and if such Add-On Plan subsequently transfers to such Commingled Fund some or all of the assets that remain in such plan, then for purposes of compliance with the 25% Test, the sum of the value of the initial and each additional transfer of assets of such Add-On Plan shall not exceed 25 percent (25%) of the value of the aggregate assets in such Commingled Fund, as measured on the day immediately following the addition of each subsequent transfer of such Add-On Plan's assets to such Commingled Fund;

(ii) Where the assets of more than one Add-On Plan are invested in a Commingled Fund with the assets of plans described in Section II(e)(1)–(3) of this proposed exemption, the 25% Test will be satisfied, if the aggregate amount of the assets of such Add-On Plans invested in such Commingled Fund do not represent more than 25 percent (25%) of the value of all of the assets of such Commingled Fund, as measured on the day immediately following each addition of Add-On Plan assets to such Commingled Fund;

(iii) If the 25% Test is satisfied at the time of the initial and any subsequent transfer of an Add-On Plan's assets to a Commingled Fund, as provided in Section II(e), this requirement shall continue to be satisfied notwithstanding that the assets of such Add-On Plan in the Commingled Fund exceed 25 percent (25%) of the value of the aggregate assets of such fund solely as a result of:

(AA) A distribution to a participant in a Former U.S. Steel Related Plan;

(BB) Periodic employer or employee contributions made in accordance with the terms of the governing plan documents;

(CC) The exercise of discretion by a Former U.S. Steel Related Plan participant to re-allocate an existing account balance in a Commingled Fund managed by UCF or to withdraw assets from a Commingled Fund; or

(DD) An increase in the value of the assets of the Add-On Plan held in such Commingled Fund due to investment earnings or appreciation;

(iv) If, as a result of a decision by an employer or a sponsor of a plan, described in Section II(e)(1)–(3) of this proposed exemption, to withdraw some or all of the assets of such plan from a Commingled Fund, the 25% Test is no longer satisfied with respect to any Add-On Plan in such Commingled Fund, then the exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund; and

(v) Where the assets of a Commingled Fund include assets of plans other than Former U.S. Steel Related Plans, as defined in Section II(e) of this proposed exemption, the 25% Test will be determined without regard to the assets of such other plans in such Commingled Fund.

(f) An ''Exemption Audit'' of any of the Former U.S. Steel Related Plans must consist of the following:

(1) A review by an independent auditor of the written policies and procedures adopted by UCF, pursuant to Section I(i), for consistency with each of the objective requirements of this proposed exemption (as described in Section II(f)(5)).

(2) A test of a representative sample of the subject transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis:

(A) To make specific findings regarding whether UCF is in compliance with

(i) The written policies and procedures adopted by UCF pursuant to Section I(i) of the proposed exemption and

(ii) The objective requirements of the proposed exemption; and

(B) To render an overall opinion regarding the level of compliance of UCF's program with this Section II(f)(2)(A)(i) and (ii) of the proposed exemption;

(3) A determination as to whether UCF has satisfied the requirements of Section I(a), of this proposed exemption;

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings; and

(5) For purposes of Section II(f) of this proposed exemption, the written policies and procedures must describe the following objective requirements of the proposed exemption and the steps adopted by UCF to assure compliance with each of these requirements:

(A) The requirements of Section I(a) of this proposed exemption regarding registration under the 1940 Act, total assets under management, and equity;

(B) The requirements of Section I(d) of this proposed exemption regarding the discretionary authority or control of UCF with respect to the assets of the Former U.S. Steel Related Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Former U.S. Steel Related Plans to enter into the transaction;

(C) That any procedure for approval of the transaction meets the requirements of Section I(d);

(D) The transaction is not entered into with any person who is excluded from relief under Section I(h)(1) of this proposed exemption or Section I(h)(2), to the extent that such person has

[34] 61 FR 15975, April 10, 1996.

discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(E) The transaction is not described in any of the class exemptions listed in Section I(c) of this proposed exemption.

(g) ''In-house Plan Assets'' mean the assets of any plan maintained by an affiliate of UCF, as defined in Section II(c) of this proposed exemption, and with respect to which UCF has discretionary authority of control.

(h) The term ''party in interest'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(i) UCF is ''related'' to a party in interest for purposes of Section I(h)(3) of this proposed exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in U.S. Steel, or if UCF (or a person controlling, or controlled by UCF) owns a 5 percent (5%) or more interest in the party in interest.

For purposes of this definition:

(1) The term ''interest'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation;

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(j) For purposes of Section I(a) of this proposed exemption, the term ''equity'' means the equity shown on the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this proposed exemption, in accordance with generally accepted accounting principles.

(k) ''Investment Fund'' includes single customer and pooled separate accounts maintained by an insurance company, individual trust and common collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of UCF) is subject to the discretionary authority of UCF.

(l) The term ''relative'' means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(m) The ''time of the transaction'' is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the effective date of this Final Exemption or a renewal that requires the consent of UCF occurs on or after such effective date and the requirements of this proposed exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as authorizing a transaction entered into by an Investment Fund which becomes a transaction described in section 406(a) of the Act or section 4975(c)(1)(A) through (D) of the Code while the transaction is continuing, unless the conditions of this proposed exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this proposed exemption. In determining compliance with the conditions of this proposed exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(h) of this proposed exemption will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(n) ''Commingled Fund'' means a trust fund managed by UCF containing assets of some or all of the plans described in Section II(e)(1)–(3) of this proposed exemption, plans other than Former U.S. Steel Related Plans, and if applicable, any Add-On Plan, as to which the 25% Test provided in Section II(e)(4) of this proposed exemption has been satisfied; provided that:

(1) Where UCF manages a single sub-fund or investment portfolio within such trust, the sub-Fund or portfolio will be treated as a single Commingled Fund; and

(2) Where UCF manages more than one sub-fund or investment portfolio within such trust, the aggregate value of the assets of such sub-funds or portfolios managed by UCF within such trust will be treated as though such aggregate assets were invested in a single Commingled Fund.

Effective Date: If granted, this proposed exemption will be effective for the period beginning on January 1, 2015, and ending on the day which is two (2) years from the effective date.

Summary of Facts and Representations [35]

UCF

1. UCF, with principal offices in New York, New York, is a Pennsylvania non-profit non-stock membership corporation created in 1914 to manage the pension plan of the United States Steel Corporation (the Original U.S. Steel) and an endowment fund created by Andrew Carnegie for the benefit of that company's employees. Being a non-stock membership corporation, UCF has no shareholders, but is governed currently by eight (8) members who serve as directors of UCF and manage UCF's affairs in that capacity. The majority of these members are employees of U.S. Steel. Vacancies in the membership are filled by the vote of the majority of the remaining members.

UCF, a registered investment adviser under the 1940 Act, currently serves as the plan administrator and trustee of several employee benefit plans sponsored by United States Steel Corporation (U.S. Steel), the successor to the Original U.S. Steel, and by affiliates and joint ventures of U.S. Steel, as well as certain former affiliates of U.S. Steel. The Original U.S. Steel was for many years a part of the USX Corporation (USX).

As of December 31, 2013, UCF held a total of $9.9 billion in assets under management. The majority of these assets, $6.3 billion, are held in a group trust and managed by UCF for the benefit of a defined benefit plan covering certain employees of U.S. Steel. With respect to the remainder of UCF's assets under management, approximately $1.1 billion is managed for pension plans of U.S. Steel Canada, Inc., a wholly-owned foreign subsidiary of U.S. Steel,[36] and approximately $1.0 billion is managed for certain funds used to provide the steelworkers with welfare benefits. UCF also manages $1.9 million in assets for the U.S. Steel Foundation, a tax-exempt organization not subject to the Act, $162 million for pension plans of RMI, $145 million in legacy investments for pension plans of Marathon Petroleum Company (Marathon Petroleum), and $214 million

[35] 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.

[36] In 2007, U.S. Steel acquired Stelco Inc., renaming the Canadian wholly-owned subsidiary as U.S. Steel Canada Inc. UCF took over management of the investment of assets and certain administrative functions of its defined benefit pension plans in August 2008.

for pension plans of USS/POSCO Industries (UPI).[37]

Investments managed by UCF include domestic and international equity securities (both public and private), fixed-income securities, real estate, mineral interests, timber and investment trusts.

USX Spin-Offs and Divestitures

2. The current U.S. Steel is the result of a series of spin-offs and divestitures by USX of several of its subsidiaries. The major divestitures relevant to this proposed exemption are RTI International Metals, Inc. (RTI), Marathon Oil Corporation (Marathon Oil), and Marathon Petroleum.

Following these divestitures, UCF continued to manage the assets of plans sponsored by the spun-off entities. These plans include the Pension Plan of RMI Titanium Company, the Pension Plan of Eligible Employees of RMI Titanium Company, the Pension Plan for Eligible Employees of RMI Titanium Company, and the TRADCO Pension Plan (the RMI Plans), as well as the Marathon Petroleum Retirement Plan and the Speedway Retirement Plan (the Marathon Plans).

Reasons for Continuing To Use UCF

3. The assets of both the RTI Plans and the Marathon Plans had been managed by UCF for several years since the separation of their respective sponsors from what is now U.S. Steel. The Applicant represents that, based on past experience with UCF, both companies were familiar and comfortable with UCF's investment management style, and believed it prudent to continue to have the assets of their plans invested with UCF. In addition, it is represented that because UCF is a non-profit organization, it is able to provide its services at a relatively low cost.

INHAM and QPAM Issues

4. Prohibited Transaction 96–23 (PTE 96–23) (61 FR 15795, April 10, 1996, as amended at 76 FR 18255, April 1, 2011), provides an exemption from certain of the prohibited transaction rules for the management of plan assets by an in-house asset manager (INHAM). Section IV(a) of the exemption specifically contemplates that an INHAM may be a ''membership nonprofit corporation a majority of whose members are officers or directors of . . . an employer or parent organization [of an employer].'' Because a majority of the members of UCF were officers or directors of USX, UCF relied on PTE 96–23 in connection with its management of the assets of the plans of USX and USX affiliates, including the RTI Plans and the Marathon Plans.

Following the spin-off of the U.S. Steel Group from USX at the end of 2001, the majority of the UCF members are employees of U.S. Steel, and not employees of Marathon Oil. As Marathon Oil is no longer an affiliate of the parent organization whose officers and directors constitute a majority of UCF's members, UCF no longer qualifies as an INHAM with respect to the Marathon Plans. For the same reason, UCF also no longer qualifies as an INHAM with respect to the RTI Plans.

Part I of Prohibited Transaction Exemption 84–14 (PTE 84–14) (49 FR 9494, March 13, 1994, as amended at 67 FR 9483, March 1, 2002 and 75 FR 38837, July 6, 2010), provides relief from section 406(a) of the Act for investment transactions between plans and parties in interest, provided that such transactions are negotiated by a qualified professional asset manager (QPAM), and provided further that certain conditions are satisfied.

The Applicant represents that UCF meets substantially all of the requirements to qualify as a QPAM as to the RTI Plans and the Marathon Plans. In this regard, UCF is registered as an investment adviser under the 1940 Act. UCF also meets the capitalization requirement, pursuant to PTE 84–14 that a QPAM have either (a) equity in excess of $1,000,000, or (b) payment of all its liabilities unconditionally guaranteed by an affiliate, if the investment advisor and the affiliate together have equity in excess of $1,000,000. Further, UCF meets the assets under management test in Section VI(a) of PTE 84–14, which requires an investment adviser to have (as of the last day of its most recent fiscal year) total client assets under its management and control in excess of $85 million. In this regard, UCF represents that it currently manages assets of the RTI Plans and the Marathon Plan with a value in excess of $306 million.

However, UCF represents that it is unable to rely on PTE 84–14, because it does not satisfy the ''diverse clientele test,'' as set forth in that class exemption. This test requires that the assets of a plan when combined with the assets of other plans maintained by the same employer (or its affiliates) managed by the QPAM must not represent more than 20 percent (20%) of the QPAM's total client assets. Although the assets of the RTI Plans and the Marathon Plan managed by UCF comprise less than 20 percent (20%) of the assets under UCF's management, the vast majority of the remaining assets consist of plan assets for which UCF acts as an INHAM which do not count as ''client assets'' for purposes of the ''diverse clientele test.'' Accordingly, UCF is unable to act as a QPAM with respect to the RTI Plan and the Marathon Plans.

Prior Relief

5. Previously, UCF requested and was granted final authorization on February 15, 2003 (FAN 2003–03E) under the Department's expedited exemption procedure (Prohibited Transaction Exemption 96–62, 67 FR 44622, July 3, 2002) or ''EXPRO.'' The authorization afforded relief similar to that provided in Part I of PTE 84–14 for transactions involving the assets of (a) the RTI Plans; (b) the Retirement Plan of Marathon Oil Company;[38] (c) the Marathon Plans; (d) any plans, the assets of which include or have included assets that were managed by UCF as an INHAM, pursuant to PTE 96–23, but as to which PTE 96–23 is no longer available because such assets are not held under a plan maintained by an affiliate of UCF; and (e) any Add-On Plan that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of UCF, provided certain conditions were satisfied. FAN 2003–03E was only made effective for five (5) years.

FAN 2003–03E required that an exemption audit be conducted on an ''annual basis.'' The report for the exemption audit for the year 2003 was not completed until November 15, 2007, more than three and a half years after the period being audited, and similar questions were raised for the years 2004–2006. UCF sought and was granted on September 1, 2009, a final administrative exemption (PTE 2009–24). PTE 2009–24 (74 FR 45294, September 1, 2009) provided retroactive relief for the period from February 15, 2003, through December 31, 2007, interim relief from January 1, 2008, to the effective date of prospective relief, and prospective relief beginning with the first day of the first fiscal year of UCF after the date of the publication of the final exemption in the **Federal**

[37] In 1986, U.S. Steel and Pohang Iron and Steel Company entered into a steel-producing joint venture in Pittsburg, California, named UPI. U.S. Steel owns 50 percent of UPI. UCF took over management of the investment of assets of the two (2) UPI pension plans in July 2012.

[38] It is represented that, effective July 1, 2011, the assets of the Retirement Plan of Marathon Oil Company were removed from the master trust and placed in a separate trust, which continued to be managed by UCF. However, UCF was terminated as trustee for this plan, effective September 30, 2012. Therefore, the Retirement Plan of Marathon Oil Company is not included in the current application.

Register and expiring five (5) years from that date. The relief provided by PTE 2009–24 expired on January 1, 2015.

Current Request

6. On September 19, 2014, UCF submitted a request (E–00754) for an authorization, pursuant to EXPRO, seeking an extension of the relief provided by PTE 2009–24 for an additional period of five (5) years for the Former U.S. Steel Related Plan, as defined in Section II(e). On November 4, 2014, at the Department's request, UCF withdrew the EXPRO submission, and acknowledged that the request would be processed as an individual administrative exemption. Accordingly, UCF's request was assigned the case number ''D–11835'' and transferred to the administrative process, pursuant to 408(a) of the Act.

Retroactive and Prospective Relief

7. The proposed exemption would permit UCF to continue managing the assets of the Former U.S. Steel Related Plans without change to the investment of those assets, which is represented to be in the interests of those plans. The relief provided by this proposed exemption is temporary in nature. Although UCF originally requested relief for a five (5) year period, this proposed exemption, if granted, will provide relief only for a two (2) year period. Accordingly, the proposed exemption is effective for the period commencing January 1, 2015, through December 31, 2017.

Merits of the Proposed Transaction

8. It is represented that the proposed exemption is administratively feasible because it would not impose any administrative burdens on either UCF or the Department beyond those described in PTE 84–14 and PTE 96–23. The proposed exemption would also be effective only for two (2) years. Further, UCF would maintain and offer to make available certain records necessary to enable Federal agencies and other interested parties to determine whether the conditions of exemption, if granted, have been met.

9. The Applicant represents that the proposed exemption is in the interests of the former U.S. Steel Related Plans and the participants and beneficiaries of such plans because it would allow UCF, on behalf of the Former U.S. Steel Related Plans, to negotiate transactions that might involve parties in interest where the transactions are in the best interests of the Former U.S. Steel Related Plans. Absent the exemption, the Former U.S. Steel Related Plans may be precluded from engaging in such transactions, even where the transactions offer favorable investment opportunities.

10. The Applicant represents that the proposed exemption is protective of the rights of the participants and beneficiaries of the former U.S. Steel related Plans because it incorporates safeguards that the Department has previously found to be protective of the rights of participants and beneficiaries of affected plans, since UCF would be subjected to the requirements of PTE 84–14 and to certain procedural requirements of PTE 96–23. In this regard, UCF would be required to maintain written policies and procedures designed to ensure compliance with the exemption and to retain an independent auditor to evaluate UCF's compliance with such policies and procedures and with the objective requirements of the exemption. The auditor must report his findings on an annual basis.

Denial of Exemption and Resulting Hardships

11. UCF represents that a denial of the proposed exemption could deprive UCF of the ability to provide a full range of investment opportunities to the Former U.S. Steel Related Plans without undue administrative costs. Absent authorization of the proposed exemption, UCF would be unable to offer the full range of investment opportunities to the Former U.S. Steel Related Plans, which could substantially reduce UCF's overall effectiveness as an investment manager with respect to the former U.S. Steel Related Plans.

12. UCF represents that the proposed exemption is administratively feasible because it would not impose administrative burdens on the Department beyond those described in PTE 84–14 and PTE 96–23. UCF emphasizes that the proposed exemption will only be effective for five years and asserts that it will maintain and offer to make available certain records to enable government agencies and other interested parties to determine whether the conditions of the proposed exemption have been met.

13. In summary, it is represented that the subject transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) UCF is an investment adviser registered under the 1940 Act that has, as of the last day of its most recent fiscal year, total client assets, including In-House Plan Assets, under its management and control in excess of $100,000,000 and equity in excess of $1,000,000 (as measured yearly on UCF's most recent balance sheet prepared in accordance with generally accepted accounting principles);

(b) UCF has acknowledged in a written management agreement that it is a fiduciary with respect to each of the Former U.S. Steel Related Plans that have retained it;

(c) At the time of the transaction, the party in interest or its affiliate does not have the authority to appoint or terminate UCF as a manager of any of the plan assets of the Former U.S. Steel Related Plans, or to negotiate the terms of the management agreement with UCF (including renewals or modifications thereof) on behalf of the Former U.S. Steel Related Plans.

(d) The transactions that are the subject of the proposed exemption are not described in PTE 2006–16 (as amended or superseded); PTE 83–1 (as amended or superseded), or PTE 88–59 (as amended or superseded);

(e) The terms of the transaction are negotiated on behalf of the Fund by, or under the authority and general direction of UCF, and either UCF, or (so long as UCF retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by UCF, makes the decision on behalf of the Fund to enter into the transaction;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of UCF, the terms of the transaction are at least as favorable to the Fund as the terms generally available in arm's-length transactions between unrelated parties;

(g) Neither UCF nor any affiliate thereof, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in UCF is a person who, within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of any felony, as set forth in Section I(f) of this proposed exemption;

(h) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(i) The party in interest dealing with the Fund is a party in interest with respect to the Former U.S. Steel Related Plans (including a fiduciary) solely by reason of providing services to the Former U.S. Steel Related Plans, or solely by reason of a relationship to a service provider; and does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets; and is neither UCF nor a person related to UCF;

(j) UCF adopts written policies and procedures that are designed to assure compliance with the conditions of this proposed exemption;

(k) An independent auditor, who has appropriate technical training, or experience and proficiency with the fiduciary responsibility provisions of the Act, and who so represents in writing, conducts an exemption audit on an annual basis. Following completion of each such exemption audit, the independent auditor must issue a written report to the Former U.S. Steel Related Plans that engaged in such transactions, presenting its specific findings with respect to the audited sample regarding the level of compliance with the policies and procedures adopted by UCF, pursuant to Section I(i) of this proposed exemption, and with the objective requirements of this proposed exemption. The written report also shall contain the auditor's overall opinion regarding whether UCF's program as a whole complies with the policies and procedures adopted by UCF and the objective requirements of this proposed exemption. The independent auditor must complete each such exemption audit and must issue such written report to the administrators, or other appropriate fiduciary of the Former U.S. Steel Related Plans, within six (6) months following the end of the year to which each such exemption audit and report relates; and

(l) UCF or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the Department, the IRS, and other persons to determine whether the conditions of this proposed exemption have been met.

Notice to Interested Persons

UCF will furnish a copy of the notice of proposed exemption (the Notice) along with the supplemental statement described at 29 CFR 2570.43(a)(2) to the investment committee or other appropriate fiduciaries of the RTI Plans and the Marathon Plans to inform them of the pendency of the proposed exemption, by hand delivery or by first class mail (return receipt requested) within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and request for hearing are due on or before 45 days from the date of the publication of the Notice in the **Federal Register**. A copy of the final exemption, if granted, will also be provided to the Former U.S. Steel Related Plans.

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: Joseph Brennan of the Department telephone (202) 693–8456 (This is not a toll-free number.)

Roberts Supply, Inc. Profit Sharing Plan and Trust (the Plan), Located in Winter Park, FL

[Exemption Application No. D–11836]

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).[39] 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 cash sale (the Sale) by the Plan of a parcel of improved real property located at 7457 Aloma Avenue, Winter Park, Florida (the Property) to Roberts Brothers Development, LLC (Roberts Development), a party in interest with respect to the Plan, provided that the following conditions have been met:

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

(b) The Plan receives an amount of cash in exchange for the Property, equal to the greater of $900,000, or the current fair market value of the Property as determined by a qualified independent appraiser (the Appraiser) in a written appraisal that is updated on the date the Sale is consummated;

(c) The Plan incurs no real estate fees, commissions, or other expenses in connection with the Sale, aside from the appraisals; and

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

[39] 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.

Summary of Facts and Representations[40]

Background

1. Roberts Supply, Inc. (Roberts Supply) is an outdoor power equipment distributor based in Winter Park, Florida. Roberts Supply is majority-owned by two brothers, Wayne P. Roberts and William H. Roberts, in equal proportions of 46.84% (Wayne P. Roberts and William H. Roberts, Jr. are hereinafter collectively referred to as the ''Applicant''). The brothers are also owners of Roberts Brothers Development, LLC (Roberts Development), which was formed in May of 2008 for the purpose of investing in commercial real estate. Roberts Development is currently owned 50% each by Wayne P. Roberts and his wife, Robin Roberts; and by William Roberts, Jr. and his wife, Mary Roberts. Currently, the LLC owns several small free standing buildings and two small office buildings.

2. The Roberts Supply, Inc. Profit Sharing Plan and Trust (the Plan) is a frozen defined contribution profit sharing plan sponsored by Roberts Supply, with an original effective date of March 1, 1977. Under the Plan, the participants may receive employer contributions which are then invested by the board of trustees (the Board) on their behalf in investments which the Board considers suitable for a retirement plan. Plan participants are always 100% vested in the employer contributions received by the Plan on their behalf. Each participant's account value is based on a proportionate percentage of the total value of the Plan assets. According to the Applicant, as of November 6, 2014, the Plan had six participants[41] and approximately $11,200,000 in total assets.

3. The Applicant states that the current members of the Board (the Trustees) are Wayne P. Roberts and William H. Roberts, Jr. The Trustees are advised by Wells Fargo Advisors, LLC and Raymond James & Associates, Inc., who also manage the investment portfolios for the Plan.

4. According to the Applicant, the Plan currently owns an office building located at 7457 Aloma Avenue, Winter Park, Florida, and an adjacent parking

[40] 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.

[41] The participants in the Plan include Wayne P. Roberts, William H. Roberts, Jr., Robin Roberts, Mary Roberts, and two unrelated individuals.

lot located at 4920 Palm Avenue, Winter Park, Florida (together, the Property). The Property is a three-story, multi-tenant professional office building of approximately 13,212 square feet and an adjacent parking lot of 0.20 acres. The Applicant represents that the Property was initially purchased by the Plan in 1990 for a total initial purchase price of $557,000. The Property was transferred within the Plan to the Roberts Supply Profit Sharing, LLC in 2008. The LLC's assets include cash in a Wells Fargo checking account, and the subject Property.

5. The Applicant represents that the purpose of the investment was to diversify Plan assets and provide income to the Plan. In this regard, during the course of the Plan holding the Property, the Plan leased it to various tenants, including one principal tenant. However, the principal tenant outgrew the space, and vacated in July 2014. The Plan currently leases space to one tenant and is attempting to secure new occupants.

6. As provided by the Applicant, the income versus expenses for the previous five years was as follows:

	2010	2011	2012	2013	2014
Annual Income	94,195.31	94,239.15	106,704.58	107,170.06	66,373.60
Annual Expense	24,080.32	35,478.20	38,571.39	36,640.51	44,140.53
Net Income	70,114.99	58,760.95	68,133.19	70,529.55	22,233.07

The Applicant represents that these figures are representative of the income versus expenses over the course of the Plan holding the property.

7. The Property was appraised by Central Florida Appraisal Consultants (Central Florida) in connection with this application for exemption in October 2014, at $900,000. The October 2014 appraisal is discussed in more detail below.

8. The Applicant notes that the Plan does not own any real property aside from the Property. The Applicant represents that no parties in interest with respect to the Plan own or lease any property adjacent to the Property. In addition, the Applicant further represents that the Property has not been leased to, or used by, any party in interest with respect to the Plan since the date of acquisition.

The Sale

9. The Applicant represents that they wish for the Plan to sell the Property as they intend to terminate the Plan and distribute the proceeds to the participants. The Applicant represents that because of the number of participants, a proportionate distribution of the Property is impractical. Further, because of the value of the Property, it would not be appropriate to distribute it to any one participant. According to the Applicant, the Plan has had the Property listed for sale since July 2013 and has not received any serious offers. The Applicant therefore seeks this proposed exemption, which, if granted, would permit the Plan to sell the Property to Roberts Development.

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 the 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 the plan. The Applicant states that, because Roberts Development, jointly owned by Wayne P. Roberts and William H. Roberts, Jr., and their spouses, is a party in interest to the Plan under section 3(14)(G) 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 representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Because Wayne P. Roberts and William H. Roberts, Jr. have an interest in Roberts Development, the Sale represents a violation of section 406(b)(1) of the Act. Furthermore, by acting on both sides of the proposed Sale, the Trustees would violate section 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. Applicant represents that, in connection with the proposed Sale, the Plan arranged for a qualified, independent appraiser to conduct an appraisal of the Property. In its October 24, 2014, appraisal report (the Appraisal Report), Central Florida valued the Property at $900,000. The Applicant represents that the Property's decline in value from earlier appraisals can be attributed to a general decline in real estate values in the Orlando area as a result of the 2008 recession.

12. As provided in the Appraisal Report, Daniel L. Peele (the Appraiser) has worked as an appraiser for Central Florida since 1994, and is currently its president. He has over 25 years of full-time commercial real estate appraisal experience. Central Florida represents that the Appraiser is also certified by the State of Florida as a General Real Estate Appraiser, and is a Designated Member of the American Society of Appraisers. In the Appraisal Report, the Appraiser represents that there is no relationship between him and the Plan or Roberts Development. Furthermore, Central Florida represents and warrants that it meets the revenue test for a qualified independent appraiser for 2014, the year of the appraisal, as the fees received from the Plan were less than 2% of its annual revenues for income tax year 2013.

13. The Appraisal Report provides that the Appraiser utilized the Sales Comparison and Income Capitalization approaches in arriving at his valuation for the Property. In using the Sales Comparison Approach, the Appraiser evaluated two recent sales of properties purchased for owner-occupancy. The Appraiser then adjusted those prices to account for financing terms, conditions of sale, market conditions, location, land area, property size, property condition and age, parking ratios, and other features. Based on his analysis, the Appraiser derived a value of $890,000 for the Property.

14. In utilizing the Income Capitalization Approach, the Appraiser evaluated the leasing information from three comparable rentals within the Orlando marketplace. According to the Appraisal Report, the Appraiser adjusted those prices to account for differences in lease types, age, condition, size, and location. Based on

his analysis, the Appraiser derived a total value of $900,000 for the Property.

15. The Appraisal Report provides that the Sales Comparison Approach provided a good indication of market value and was given primary weight, while the Income Approach was given secondary weight. Thus, the Appraiser arrived at his valuation of the Property at $900,000.

Statutory Findings

16. The Applicant represents that the requested exemption is administratively feasible because the Sale is a one-time transaction for cash, which will not require continuous or future monitoring by the Department.

The Applicant represents that the requested exemption is in the interest of the Plan and its participants and beneficiaries because it will facilitate the distribution of Plan assets to participants upon termination. As described earlier, the Applicant represents that a proportionate distribution of the Property is impractical; a distribution to any one participant of the whole Property is inappropriate; and the Applicant has been unable to sell the property to a third-party.

The Applicant represents that the requested exemption is protective of the rights of the Plan and its participants and beneficiaries, because a qualified, independent appraiser was retained by the Plan to appraise the Property for the purpose of determining the purchase price. Furthermore, the Plan will pay no commissions, fees, or other charges in connection with the Sale, aside from the appraisals; and the Sale will be for the greater of $900,000, or the current fair market value.

Summary

17. 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 following reasons, among others:

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

(b) The Plan receives an amount of cash in exchange for the Property, equal to the greater of $900,000, or the current fair market value of the Property as determined by a qualified independent appraiser (the Appraiser) in a written appraisal that is updated on the date the Sale is consummated;

(c) The Plan will incur no real estate fees, commissions, or other expenses in connection with the Sale, aside from the appraisals; and

(d) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arms-length transaction with an unrelated third party.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons 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. 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: 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: Erica R. Knox of the Department, telephone (202) 693–8644. (This is not a toll-free number.)

Red Wing Shoe Company Pension Plan for Hourly Employees, the Red Wing Shoe Company Retirement Plan and the S.B. Foot Tanning Company Employees' Pension Plan (Collectively, the Plans), Located in Red Wing, MN

[Application Nos. D–11763, D–11764, and D–11765]

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 (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).[42]

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B), (D) and (E) of the Code, shall not apply to: (1) The in-kind contribution (the Contribution) of shares (the Shares) in Red Wing International, Ltd. (RWI) to the Plans by Red Wing Shoe Company, Inc. (Red Wing or the Applicant), a party in interest with respect to the Plans; (2) the sale of the Shares by the Plans to Red Wing or an affiliate of Red Wing in connection with the exercise of the Terminal Put Option, the Call Option, or the Liquidity Put Option in accordance with the terms thereof; and (3) the deferred payment of: (i) The price of the Shares by Red Wing or its affiliate to the Plans in connection with the exercise of the Liquidity Put Option, the Terminal Put Option and the Call Option; and (ii) any Make-Whole Payments by Red Wing; provided that the conditions described in Section II below have been met.

Section II. Conditions

(a) The Plans acquire the Shares solely through one or more in-kind Contributions by Red Wing;

(b) An Independent Fiduciary acts on behalf of the Plans with respect to the acquisition, management and disposition of the Shares. Specifically, such Independent Fiduciary will: (1) Determine, prior to entering into any of the transactions described herein, that each such transaction, including the Contribution, is in the interest of the Plans; (2) negotiate and approve, on behalf of the Plans, the terms of the Contribution Agreements, and the terms of any of the transactions described herein; (3) manage the holding and sale of the Shares on behalf of the Plans, taking whatever actions it deems necessary to protect the rights of the Plans with respect to the Shares; and (4) ensure that all of the conditions of this exemption, if granted, are met;

(c) An Independent Appraiser selected by the Independent Fiduciary determines the fair market value of the Shares contributed to each Plan as of the date of the Contribution, and for purposes of the Make-Whole Payments, the Terminal Put Option, the Liquidity Put Option, and the Call Option;

(d) Immediately after the Contribution, the aggregate fair market

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

value of the Shares held by any Plan will represent no more than 10 percent (10%) of the fair market value of such Plan's assets;

(e) The Plans incur no fees, costs or other charges in connection with any of the transactions described herein;

(f) For as long as the Plans hold the Shares, Red Wing makes the Periodic Make-Whole Payments and, if applicable, a Terminal Make-Whole Payment to the Plans in accordance with the terms thereof;

(g) The Liquidity Put Option and the Terminal Put Option are exercisable by the Independent Fiduciary in its sole discretion in accordance with the terms thereof;

(h) Each year, Red Wing will make a cash contribution to each Plan that is the greater of: (1) The minimum required contribution, as determined by section 430 of the Code; or (2) the lesser of: (i) The minimum required contribution, as determined by section 430 of the Code, as of the Plan's valuation date, except that the value of the assets will be reduced by an amount equal to the value of a Share, multiplied by the number of Shares in the Plan at the end of the Plan year, and (ii) the contribution that would result in the respective Plan attaining a 100% FTAP funded status (reflecting assets reduced by the credit balance) at the valuation date determining the contributions based on the value of all Plan assets, including the Shares. Any cash contributions in excess of the minimum required contribution described above will not be used to create additional prefunding credit balance;

(i) The terms of any transactions between the Plans and Red Wing are no less favorable to the Plans than terms negotiated at arm's-length under similar circumstances between unrelated third parties.

Section III. Definitions

(a) ''affiliate'' means:

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

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

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

For the purposes of clause (a)(1) above, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) ''Contribution Agreement'' means the written agreement governing the contribution of Shares to a Plan, by and between Red Wing and Vanguard Fiduciary Trust Company, to be executed prior to any Contribution to which such agreement relates.

(c) ''Commission Agreement'' means the written Sales Agent Contract between Red Wing and RWI, to be executed prior to the Contributions, that governs the relationship between the parties and obligates RWI to act as a sales agent for Red Wing with respect to sales of certain Red Wing products for a ten-year term.

(d) ''Make-Whole Payments'' means either Periodic Make-Whole Payments or Terminal Make-Whole Payments.

(e) ''Periodic Make-Whole Payments'' means periodic payments made to each Plan every five years as follows:

(1) Each periodic payment shall be made in an amount equal to the excess, if any, of:

(A) A presumed 7.5% annual return, compounded annually, on the value of the Shares calculated from the beginning of the Holding Period, less

(B) the sum of (i) the after-tax total return on such Shares (*i.e.,* appreciation of the Shares' fair market value (whether realized or unrealized) plus after-tax dividend income), plus (ii) any Periodic Make-Whole Payments previously made to each Plan over the Holding Period with respect to such Shares.

For purposes of calculating this reduction, any realized gains on the Shares will be credited with a presumed 7.5% annual return, compounded annually, calculated from the date the cash was received by the Plan. The after-tax dividend amounts and any previously paid Periodic Make-Whole Payments will be credited at the Plan's actual rate of return on its investments, compounded annually, calculated from the date the cash was received by the Plan.

(2) A separate Periodic Make-Whole Payment will be calculated with respect to each Contribution to a Plan, every five years as of the anniversary date of such Contribution.

(3) Each Periodic Make-Whole Payment will be due and payable to each Plan 60 days after the five-year anniversary date of the Contribution to which it relates. During the 60-day period, any unpaid portion of a Periodic Make-Whole Payment will accrue interest, compounded annually, at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%), to be confirmed by the Independent Fiduciary, over the period from the five-year anniversary date of the Contribution to which it relates to the date of payment.

(4) The amount of any Make-whole Payment otherwise payable at any five-year term will be reduced (but not below zero) to the extent all or any portion of the Make-Whole Payment then payable would cause a Plan's ''funding target attainment percentage,'' as determined under section 430 of the Code and as calculated by its enrolled actuary and confirmed by the Independent Fiduciary immediately following such Contribution, to exceed: (A) 110%; or (B) if an amendment is adopted to terminate the Plan pursuant to the Plan's governing document, that Plan's termination liability as determined by its enrolled actuary and confirmed by the Independent Fiduciary.

(f) ''Terminal Make-Whole Payment'' means a one-time cash contribution made to the Plans in the event of a Catastrophic Loss of Value of the Shares arising from a termination of the Commission Agreement between Red Wing and RWI, due and payable to each Plan 90 days after the date of a written demand by the Independent Fiduciary (the demand date) as follows:

(1) The Terminal Make-Whole Payment, if triggered, will terminate Red Wing's obligation to make Periodic Make-Whole Payments calculated as of any date that is after the Catastrophic Loss of Value.

(2) The amount of the Terminal Make-Whole Payment will be calculated as the excess, if any, of:

(A) The fair market value of the Shares as of the date of Contribution of such Shares to each Plan increased by a 7.5% annual growth rate, compounded annually, over the Holding Period, less

(B) the sum of (i) the amount of the after-tax dividends on the Shares received during such Shares' Holding Period, and (ii) any Periodic Make-Whole Payments made to each Plan with respect to the Shares, further subtracted by

(C) any previous realized gains on such Shares during their Holding Period.

For purposes of calculating this reduction, any realized gains on the Shares will be credited with a presumed 7.5% annual return, compounded annually, calculated from the date the cash was received by the Plan. The after-tax dividend amounts and any previously paid Periodic Make-Whole Payments will be credited at the Plan's actual rate of return on its investments, compounded annually, calculated from the date the cash was received by the Plan.

(3) The Terminal Make-Whole Payment will be further reduced by any

remaining fair market value of the Shares after the Catastrophic Loss of Value.

(4) In the event of Catastrophic Loss of Value, the Shares held by a Plan will be subject to a put option (the Terminal Put Option) exercisable by the Independent Fiduciary to sell the Shares back to Red Wing at the Shares' fair market value as of the demand date as determined by the Independent Fiduciary; provided that, if the fair market value of the Shares is equal to $0.00 s a result of the Catastrophic Loss of Value, the Shares shall be transferred to Red Wing upon payment of the Terminal Make-Whole Payment.

(5) The Terminal Make-Whole Payment, as well as the exercise price on the Terminal Put Option (if any) subsequently exercised by the Independent Fiduciary, can be paid in five equal annual installments. Any unpaid portion of the Terminal Make-Whole Payment or exercise price of the Terminal Put Option will accrue interest (compounded annually as of the anniversary of the demand date or the exercise date of the Terminal Put Option, as applicable) at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%), to be confirmed by the Independent Fiduciary, over each 12-month period.

(6) The amount of any Terminal Make-Whole Payment will also be reduced (but not below zero) to the extent all or any portion of the Terminal Make-Whole Payment then payable would cause a Plan's ''funding target attainment percentage'' as determined under Code section 430, and as calculated by its enrolled actuary to exceed: (A) 110%; or (B) if an amendment is adopted to terminate the Plan pursuant to the Plan's governing document, that Plan's termination liability as determined by its enrolled actuary and confirmed by the Independent Fiduciary).

(g) ''Holding Period'' means, for purposes of calculating the Make-Whole Payments with respect to certain Shares, the period of time over which each Plan has held such Shares, beginning from the date such Shares were received by each Plan through the date of calculation of such Periodic Make-Whole Payment.

(h) ''Catastrophic Loss of Value'' means, for purposes of triggering the Terminal Make-Whole Payment, any diminution of the value of the Shares held by the Plans arising from a termination of the Commission Agreement.

(i) ''Liquidity Put Option'' means a put option granting each Plan the right to require Red Wing to purchase some or all of the Shares from the Plan at the Shares' fair market value as of the date of exercise, payable in cash no later than 60 days following the date of exercise. During this 60-day period, any unpaid portion of the purchase price for the Shares payable by Red Wing in connection with the exercise of the Liquidity Put Option will accrue interest, compounded annually, at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%), to be confirmed by the Independent Fiduciary, over the period from the date of exercise of the Liquidity Put Option to the date of payment of such unpaid portion of the purchase price. The Liquidity Put Option is exercisable as follows:

(1) For a period of 60 days leading up to a Change of Control, the Liquidity Put Option will be exercisable by the Independent Fiduciary on behalf of the Plans; and

(2) Upon a Plan becoming entitled to receive a Periodic Make-Whole Payment, the Independent Fiduciary may exercise the Liquidity Put Option on behalf of the Plan with respect to as much as 20% of the original number of Shares to which the Periodic Make-Whole Payment relates, no later than 45 days following the five-year anniversary date of the Contribution, as follows:

(A) If the Plan elects to exercise its Liquidity Put Option with respect to any of the Shares to which the Periodic Make-Whole Payment relates in the first year in which the Liquidity Put Option is exercisable, the Plan will be able to exercise a Liquidity Put Option for as much as an additional 20% of the original number of Shares to which the Periodic Make-Whole Payment relates upon each of the four succeeding anniversaries of the Contribution to the Plan, but no later than 45 days following each such anniversary; and

(B) The exercise of a Liquidity Put Option for any of the Shares to which the Periodic Make-Whole Payment applies in the first year that the Liquidity Put Option is exercisable will eliminate the Plan's right to that Periodic Make-Whole Payment with respect to all Shares to which the Periodic Make-Whole Payment in that year relates, but any Shares for which the Liquidity Put Option is not exercised will continue to be eligible for future Periodic Make-Whole Payments.

(3) Upon the occurrence of the tenth anniversary (the Anniversary Date) of a Contribution to a Plan, the Independent Fiduciary on behalf of the Plan will be able to exercise the Liquidity Put Option with respect to as much as 20% of the number of Shares to which such Contribution relates, in each year following the Anniversary Date.

(4) Upon the effective date of a Plan's termination and at any time until the final distribution date of the Plan's assets, the Plan will have the right to exercise the Liquidity Put Option for any or all Shares remaining in the Plan, and Red Wing will have the right to exercise the Call Option.

(j) ''Call Option'' means Red Wing's right to cause a Plan to sell any or all remaining Shares held in the Plan to Red Wing, exercisable upon the effective date of a Plan's termination, in exchange for cash at the Shares' fair market value on the date of exercise. The Plan will transfer its Shares to Red Wing and Red Wing will pay cash for such Shares no later than 60 days after Red Wing exercises the Call Option. During this 60-day period, any unpaid portion of the purchase price for the Shares payable by Red Wing in connection with its exercise of the Call Option will accrue interest, compounded annually, at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%), to be confirmed by the Independent Fiduciary.

(k) ''Change of Control'' means, for purposes of triggering the Liquidity Put Option, the sale or other transfer for value of all or substantially all of Red Wing's assets in a transaction or series of related transactions to a Third Party purchaser, or a transaction or series of transactions in which a Third Party acquires more than 50% of the voting power of Red Wing's outstanding shares. A ''Third Party'' for this purpose is an individual or entity other than: (1) (i) A current shareholder of Red Wing, or a spouse or issue of such shareholder, (ii) a trust created for the shareholder, his spouse, or his issue, or (iii) a shareholder of a shareholder; or (2) an entity controlled by an individual or entity described in (1), or an entity under common control with such an entity.

(l) ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (GFA) or another fiduciary of the Plans who: (1) Is independent or unrelated to Red Wing and its affiliates, and has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the covered transactions in accordance with the fiduciary duties and responsibilities prescribed by ERISA (including, if necessary, the responsibility to seek the counsel of knowledgeable advisors to assist in its compliance with ERISA); and (2) if relevant, succeeds GFA in its capacity as Independent Fiduciary to the Plans in connection with the transactions described herein. The Independent Fiduciary will not be deemed to be independent of and unrelated to Red Wing and its affiliates if: (i) Such Independent Fiduciary directly or indirectly controls, is controlled by or is under common control, with Red Wing and its affiliates; (ii) such Independent Fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption other than for acting as Independent Fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (iii) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from Red Wing and its affiliates, exceeds two percent (2%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for is prior tax year.

(m) ''Independent Appraiser'' means an individual or entity meeting the definition of a ''Qualified Independent Appraiser'' under Department Regulation 25 CFR 2570.31(i) retained to determine, on behalf of the Plans, the fair market value of the Shares as of the date of the Contributions and while the Shares are held on behalf of the Plans, and may be the Independent Fiduciary, provided it satisfies the definition of Independent Appraiser herein.

Summary of Facts and Representations [43]

Background

1. Red Wing Shoe Company, Inc. (Red Wing or the Applicant) is a privately-held corporation based in Red Wing, Minnesota that produces footwear sold to both consumer and industrial customers in the United States and in more than 100 countries around the world. Five members of the Sweasy family own the largest percentages of Red Wing stock, either in their individual capacities or within trusts established by or for the benefit of these individuals. The Applicant operates domestic manufacturing facilities in Red Wing, Minnesota; Potosi, Missouri; and Danville, Kentucky. The Applicant also sources products from contract manufacturers in China and the Dominican Republic, as well as owning and operating international subsidiaries in Japan and the Netherlands.

The Applicant also owns and operates S.B. Foot Tanning Company based in Red Wing, Minnesota. S.B. Foot Tanning Company finishes and supplies leather for shoes, apparel, furniture and other applications. In addition to the shoe business, the Applicant's wholly-owned subsidiary Red Wing Hotel Corporation owns and operates The St. James Hotel located in downtown Red Wing, Minnesota. The Applicant earned revenues of $625 million during fiscal year 2013, representing a 10% growth over the reporting period in 2012.

2. The Applicant represents that it owns approximately 38% of the outstanding shares (the Shares) of Red Wing International, Ltd. (RWI), a Delaware corporation incorporated in 1982 that operates as a Domestic International Sales Corporation (DISC). The Applicant explains that a DISC is a corporation whose ''qualified export revenues'' are generally exempt from federal income taxes. According to the Applicant, RWI operates under the provisions of Sections 991 through 997 of the Code, which were enacted by Congress to encourage and subsidize the export of products made in the United States. The Applicant represents that there are currently 39,272 issued and outstanding Shares. The Applicant represents further that all of the current shareholders of RWI are also shareholders of the Applicant.

3. The Applicant represents that RWI contracts annually with Red Wing to be its commissioned agent for the sale and export of the Applicant's qualifying domestically-produced goods. The Applicant represents that Red Wing currently maintains a ''Sales Agent Contract'' with RWI (the Commission Agreement), which is terminable at will by either party, that governs the relationship between the parties and obligates RWI to act as a sales agent for Red Wing with respect to certain sales of Red Wing products.[44] The Applicant represents that Red Wing has been RWI's only client since the DISC's incorporation. The Applicant represents that it pays RWI a tax-deductible sales commission for these services. RWI, in turn, pays no income tax on its ''qualifying export commissions.''

4. The Applicant represents that RWI's income (which it derives solely from these sales commissions) is then distributed to RWI's shareholders as dividends and is taxed against the shareholders at their applicable dividend tax rate. The Applicant represents that its international revenues in 2013 increased 11% to $150.4 million, representing 24% of the Applicant's consolidated revenues. Furthermore, RWI's qualifying DISC revenues decreased 7% to $63 million. The RWI dividend payment to shareholders was $157.40 per share in 2013, a decrease of 5.9% from 2012.

5. Because neither the common stock of Red Wing nor the Shares are publically traded, they are valued at the conclusion of each fiscal year by an independent valuation firm, Duff & Phelps Corporation (Duff & Phelps). The Applicant represents that the independent valuation completed by Duff & Phelps for fiscal year 2013, using the discounted cash flow valuation method, valued the Shares at $2,050 per share, a 10.6% increase over the 2012 value.

The Plans

6. The Applicant represents that the three pension plans involved in the proposed transaction are: (1) The Red Wing Shoe Company Pension Plan for Hourly Wage Employees (the Hourly Plan); (2) the Red Wing Shoe Company Retirement Plan (the Salary Plan); and (3) the S.B. Foot Tanning Company Employees' Pension Plan (the S.B. Foot Plan) (collectively, the Plans).

7. Red Wing is the sponsor of the Hourly Plan and the Salary Plan with the authority, either directly or through a committee of officers or employees (the Pension Committee), to appoint and remove trustees and investment managers. The Applicant is the plan administrator and the named fiduciary of the Hourly Plan and the Salary Plan for purposes of section 402(a) of the Act. The Applicant represents that it retains the authority to amend and terminate the Hourly Plan and the Salary Plan, subject to collective bargaining limitations, and to transfer assets and liabilities to and from the Plans.

8. The Applicant represents that other fiduciaries include Vanguard Fiduciary Trust Company (Vanguard), Vanguard Institutional Advisory Services, certain employees of the Applicant and its affiliates, and the Pension Committee as it relates to the Hourly Plan and the Salary Plan. The Applicant states that Red Wing, as the sponsor of the Hourly

[43] 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.

[44] Under the Commission Agreement, these sales generally include: (1) A sale to a purchaser outside of the United States including delivery to a carrier or freight forwarder for delivery outside of the United States, regardless of the point or place of passage of title, whether to a United States or foreign purchaser; (2) a sale to an entity unrelated to Red Wing or RWI that qualifies as a DISC; or (3) a sale in which delivery occurs within the United States, provided that after the sale there is no further sale, use, assembly or other processing within the United States, and the property is delivered outside of the United States within one year after the sale.

Plan and the Salary Plan, by and through the Pension Committee, generally has discretion with respect to the investments of those particular Plans' assets.

9. The Applicant represents that the Hourly Plan covers substantially all employees who are paid on an hourly rate basis or whose compensation is determined under a collective bargaining agreement with the United Food and Commercial Workers Boot & Shoe Union Local 527. Accrual of benefits under the Hourly Plan was frozen in 2004, and the Hourly Plan was frozen to new participants in 2011.

10. The Applicant represents that the Salary Plan covers substantially all of the Applicant's salaried employees and sales personnel (other than employees at the Danville, Kentucky, and Potosi, Missouri facilities). The Salary Plan also covers a small group of employees and former employees whose employment with the Applicant is or was covered by a collective bargaining agreement with the International Brotherhood of Teamsters Warehousing Employees Local Union 160.

11. Red Wing represents that it has made timely minimum funding contributions to the Hourly Plan and the Salary Plan and it intends to continue to do so. The Applicant represents that contributions required to fund the Hourly Plan and the Salary Plan are made to, and held under separate trust agreements for, each Plan. Vanguard is the trustee of the Hourly Plan and the Salary Plan's trust. Red Wing represents that, as of the most recent valuation, the Hourly Plan is 89.8% funded, and the Salary Plan is 95.7% funded.[45]

12. S.B. Foot Tanning Company is the sponsor of the S.B. Foot Plan with the authority to appoint and remove trustees and investment managers. S.B. Foot Tanning Company is also the plan administrator and a named fiduciary of S.B. Foot Plan for purposes of section 402(a) of the Act, and retains the authority to amend and terminate the S.B. Foot Plan and to transfer assets and liabilities to and from the Plan. Furthermore, S.B. Foot Tanning Company generally has discretion with respect to the investment of the S.B. Foot Plan's assets.

13. The Applicant represents that the S.B. Foot Plan covers substantially all salaried and hourly employees of S.B. Foot Tanning Company. Amendments to the Salary Plan and S.B. Foot Plan in June 2008 froze those Plans to new entrants, though all participants in both Plans at the time of the freeze continue to accrue benefits.

14. The Applicant represents that S.B. Foot Tanning Company has made timely minimum funding contributions to the S.B. Foot Plan and it intends to continue to do so. The Applicant represents that contributions required to fund the S.B. Foot Plan are made to and held under separate trust agreements for the Plan. Vanguard is also the trustee of the S.B. Foot Plan's trust. As of the most recent valuation, the S.B. Foot Plan is 98% funded.

The In-Kind Contributions

15. The Applicant seeks to make one or more in-kind contributions (individually, the Contribution, and collectively, the Contributions) of all or a portion of the Shares it owns to the Plans. The Applicant represents that, if this proposed exemption is granted, the value of Shares contributed to any Plan, when added to the Shares previously contributed to that Plan by the Applicant, will not exceed 10% of the aggregate fair market value of the respective Plan's assets as of the date of any Contribution.

16. The Applicant represents that for each Plan year in which a Plan holds Shares at the end of the Plan year, Red Wing will continue to make a cash contribution to each Plan equal to the greater of: (1) The minimum required contribution, as determined by section 430 of the Code; or (2) the lesser of: (i) The minimum required contribution, as determined by section 430 of the Code, as of the Plan's valuation date, except that the value of the assets will be reduced by an amount equal to the value of a Share, multiplied by the number of Shares in the Plan at the end of the Plan year, and (ii) the contribution that would result in the respective Plan attaining a 100% FTAP funded status (reflecting assets reduced by the credit balance) at the valuation date determining the contributions based on the value of all Plan assets, including the Shares. The Applicant represents that any cash contributions in excess of the minimum required contribution described in (1) above will not be used to create additional prefunding credit balance.

17. The Applicant represents that the proposed transactions would benefit the Plans and their participants because the current value of the Shares would improve each Plan's funded status over time, and the expected cash flows from dividends paid on the Shares would provide additional liquidity each year. The Applicant represents that, while the expected investment return used by the Plans' actuary is approximately 7.0%, the average dividend yield on the Shares from 2006 through 2013 was approximately 11% per year.

18. The Applicant represents that, although dividends paid to the Plans by RWI would be subject to the unrelated business income tax, the net after-tax yield to the Plans based on the prior 6-year average dividend yield would be approximately 8.76%, applying the 20% income tax rate for qualified dividends. Thus, the Applicant represents, the anticipated after-tax cash dividends alone will likely equal or exceed each Plan's actuarially assumed return on investments without any appreciation of the Shares. The Applicant represents that this cash liquidity will enhance each Plan's ability to satisfy its benefit obligations as they become due without the necessity for liquidating other investments.

19. The Applicant represents that, based on comparative funding projections prepared by Mercer, the Plans' actuary, the Contributions will increase each Plan's funded status, even assuming no appreciation in the fair market value of the Shares over the time period covered by the projections other than a conservative after-tax cash dividend amount of 7.0% consistent with the growth assumption applicable to the Plans' other investments. The Applicant represents that the actuarial projections assume the Applicant or an affiliate will continue to make minimum required contributions to each Plan each year in an amount not less than the Plan's minimum required contributions under section 303 of ERISA and section 430 of the Code. For this purpose, the fair market value of the Shares held by each Plan each year after the initial Contribution will be taken into account for purposes of determining the difference between the Plans' benefit obligations and assets.

20. The Applicant states that, under the terms of the ''Agreement Between Red Wing Shoe Company, Inc. and Vanguard Fiduciary Trust Company regarding Contribution of Property'' entered into between Red Wing and Vanguard in connection with the Contributions to each Plan (collectively, the Contribution Agreements), to be executed prior to the Contributions, Gallagher Fiduciary Advisors, LLC (GFA), in its capacity as qualified, independent fiduciary (the Independent Fiduciary), will make all decisions on behalf of each Plan and each Plan's trust regarding the acceptance of the Contributions, engage a qualified, independent appraiser (the Appraiser)

[45] The Applicant notes that the funding valuation results prepared by the enrolled actuary were made utilizing interest rate assumptions provided under the Moving Ahead for Progress in the 21st Century Act (MAP–21), legislation enacted on July 6, 2012, that, among other things, changed the interest rate that pension plans use to measure their liabilities.

to determine the value of the Shares held by each Plan's trust, and make such other decisions with regard to the Shares as are contemplated by the proposed transaction.

Value Protection Features

21. The Applicant represents that the proposed transactions will be structured to ensure the Plans' continued protection against the risks of illiquidity of the Shares and adverse business conditions that could impair their value. The value protection features negotiated by GFA will consist of the following: (a) A new Commission Agreement with a ten-year term; (b) periodic cash payments (Periodic Make-Whole Payments) by the Applicant to the Plans for as long as the Plans hold the Shares; (c) a terminal cash payment (Terminal Make-Whole Payment) from the Applicant to the Plans in the event of the termination of the Commission Agreement; and (d) a put option given to the Plans (the Liquidity Put Option), which gives the Plans the right to require Red Wing to purchase some or all of the Shares from the Plan. The Applicant represents that GFA will negotiate on behalf of the Plans the formal, binding instruments documenting the transactions, including the value protection features described in more detail below.

22. *New Commission Agreement.* The Applicant represents that a new Commission Agreement between Red Wing and RWI will be entered into, amending and superseding the existing Commission Agreement to provide for a 10-year term certain. In the event of a breach of the 10-year term, the Plans will receive Terminal Make-Whole Payments from Red Wing and may exercise a put option for the remaining value of the Shares (the Terminal Put Option), as described in further detail below.

23. *Periodic Make-Whole Payments.* Red Wing may be required to make a Periodic Make-Whole Payment every five years as of the anniversary date of each Contribution. Each Periodic Make-Whole Payment will be due and payable to each Plan 60 days after the applicable anniversary date. The Applicant represents that any unpaid portion of a Periodic Make-Whole Payment will accrue interest, compounded annually, at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%) over the period from the applicable anniversary date to the date of payment. The Applicant represents that the Independent Fiduciary will verify Red Wing's corporate borrowing rate. A separate Periodic Make-Whole Payment will be calculated with respect to each Contribution to a Plan, every five years as of the anniversary date of such Contribution.

24. The Applicant states that the amount of each Periodic Make-Whole Payment with respect to a Contribution of Shares will be calculated as the excess, if any, of a presumed 7.5% annual return, to be compounded annually, on the value of the Shares calculated from the beginning of the period of time over which a Plan has held such Shares (the Holding Period), minus the sum of: (1) the after-tax total return on the Shares (*i.e.,* the appreciation of the Shares' fair market value (whether realized or unrealized) plus after-tax dividend income), and (2) any Periodic Make-Whole Payments previously made to the Plan with respect to such Shares over the Holding Period. The Applicant states that, for purposes of calculating this reduction, any realized gains on the Shares will be credited with a presumed 7.5% annual return, compounded annually, calculated from the date the cash was received by the Plan. Furthermore, the after-tax dividend amounts and any previously paid Periodic Make-Whole Payments will be credited at the Plan's actual rate of return on its investments, compounded annually, calculated from the date the cash was received by the Plan.

25. The Applicant states that the amount of any Periodic Make-Whole Payment will be further reduced (but not below zero) to the extent all or any portion of the Make-Whole Payment then payable would cause a Plan's ''funding target attainment percentage,'' as determined under section 430 of the Code and as calculated by its enrolled actuary immediately following such contribution, to exceed 110% (or if an amendment is adopted to terminate the Plan pursuant to the Plan's governing document, that Plan's termination liability as determined by its enrolled actuary and confirmed by the Independent Fiduciary).

26. *Terminal Make-Whole Payment.* Red Wing will be required to make a one-time cash Terminal Make-Whole Payment to each Plan in the event of the Shares' loss of value arising from a termination of the Commission Agreement (Catastrophic Loss), which is due and payable to each Plan 90 days after the date of a written demand by the Independent Fiduciary (the demand date). The Applicant represents that the Terminal Make-Whole Payment, if triggered, will terminate Red Wing's obligation to make future Periodic Make-Whole Payments calculated as of any date that is after the Catastrophic Loss.

27. The Applicant represents that the amount of the Terminal Make-Whole Payment will be calculated as the excess, if any, of: The fair market value of the Shares as of the date of the respective Contribution to each Plan increased by a 7.5% annual growth rate, compounded annually, over the Holding Period, minus the sum of: (1) The amount of the after-tax dividends on the Shares received during the Holding Period, and (2) any Periodic Make-Whole Payments made to each Plan with respect to such Shares, and (3) any previous realized gains on such Shares during their Holding Period. The Applicant notes that, for purposes of calculating this reduction, any realized gains on the Shares will be credited with a presumed 7.5% annual return, compounded annually, calculated from the date the cash was received by the Plan. Furthermore, the after-tax dividend amounts and any previously paid Periodic Make-Whole Payments will be credited at the Plan's actual rate of return on its investments, compounded annually, calculated from the date the cash was received by the Plan. The Applicant represents that the Terminal Make-Whole Payment will be further reduced by any remaining fair market value of the Shares after the Catastrophic Loss.

28. The Applicant represents that the Shares will also be subject to the Terminal Put Option, exercisable by the Independent Fiduciary in the event of a Catastrophic Loss, to sell the Shares back to Red Wing at the Shares' fair market value as of the date of exercise. If the fair market value of the Shares is zero at the time of the Catastrophic Loss, the Shares will be transferred to Red Wing upon payment of the Terminal Make-Whole Payment.

29. The Applicant represents that the Terminal Make-Whole Payment as well as the exercise price on the Terminal Put Option may be paid in five equal annual installments. The Applicant further represents that any unpaid portion of the Terminal Make-Whole Payment or exercise price of the Terminal Put Option during this period will accrue interest (compounded annually as of the anniversary of the demand date or the exercise date of the Terminal Put Option, as applicable) at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%) over each 12-month period. The Applicant represents that the Independent Fiduciary will be responsible for verifying Red Wing's corporate

borrowing rate in the event of a Catastrophic Loss.

30. The Applicant represents that the amount of any Terminal Make-Whole Payment will also be reduced (but not below zero) to the extent all or any portion of the Contribution then payable would cause a Plan's "funding target attainment percentage," as determined under section 430 of the Code and as calculated by its enrolled actuary immediately following such Contribution, to exceed 110% (or if an amendment is adopted to terminate the Plan pursuant to the Plan's governing document, that Plan's termination liability as determined by its enrolled actuary and confirmed by the Independent Fiduciary).

31. *Liquidity Put Option.* The Liquidity Put Option will give the Plans the ability to cause Red Wing to purchase some or all of the Shares from the Plan at the Shares' fair market value as of the date of exercise, payable in cash no later than 60 days following the date of exercise. Any unpaid portion of the purchase price for the Shares payable by Red Wing in connection with the exercise of the Liquidity Put Option will accrue interest, compounded annually, at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%), to be confirmed by the Independent Fiduciary, over the period from the date of exercise of the Liquidity Put Option to the date of payment of such unpaid portion of the purchase price.

32. Pursuant to the Liquidity Put Option, in the event of a Change of Control, all or a portion of the Shares held by a Plan will be exercisable for a period of 60 days by the Independent Fiduciary on behalf of the Plan. The Applicant represents that, for purposes of triggering the Liquidity Put Option, a "Change of Control" includes the sale or other transfer for value of all or substantially all of Red Wing's assets in a transaction or series of related transactions to a Third Party purchaser, or a transaction or series of transactions in which a Third Party acquires more than 50% of the voting power of Red Wing's outstanding shares. A "Third Party" for this purpose is an individual or entity other than: (1) (i) A current shareholder of Red Wing, or a spouse or issue of such shareholder, (ii) a trust created for the shareholder, his spouse, or his issue, or (iii) a shareholder of a shareholder; or (2) an entity controlled by an individual or entity described in (1), or an entity under common control with such an entity.

33. Pursuant to the Liquidity Put Option, upon a Plan's becoming entitled to receive a Periodic Make-Whole Payment, the Independent Fiduciary on behalf of the Plan may exercise as much as 20% of the original number of Shares to which the Periodic Make-Whole Payment relates, no later than 45 days following the five-year anniversary date of the Contribution. The Applicant represents that, if the Plan exercises its Liquidity Put Option with respect to any of the Shares to which the Periodic Make-Whole Payment relates in the first year in which the Liquidity Put Option is exercisable, the Plan may exercise a Liquidity Put Option for as much as an additional 20% of the original number of Shares to which the Periodic Make-Whole payment relates upon each of the four succeeding anniversaries of the Contribution to the Plan, but no later than 45 days following each such anniversary. The Applicant represents that the exercise of a Liquidity Put Option for any of the Shares to which the Periodic Make-Whole Payment applies in the first year in which the Liquidity Put Option is exercisable eliminates the Plan's right to that Periodic Make-Whole Payment with respect to all Shares to which the Periodic Make-Whole Payment in such year relates, but any Shares for which the Liquidity Put Option is not exercised will continue to be eligible for future Periodic Make-Whole Payments, if any.

34. Pursuant to the Liquidity Put Option, upon the occurrence of the tenth anniversary (the Anniversary Date) of a Contribution to a Plan, the Independent Fiduciary on behalf of the Plan may exercise the Liquidity Put Option with respect to as much as 20% of the number of Shares to which such Contribution relates, in each year following the Anniversary Date.

35. Pursuant to the Liquidity Put Option, upon the effective date of a Plan's termination and at any time until the final distribution date of the Plan's assets, the Independent Fiduciary on behalf of the Plan may exercise the Liquidity Put Option for any or all Shares remaining in the Plan, and Red Wing will have the right to cause a Plan to sell any or all remaining Shares held in the Plan to Red Wing (the Call Option).

36. *Call Option.* Red Wing may exercise the Call Option upon the effective date of a Plan's termination. The Applicant represents that in such event, the Plan will transfer its Shares to Red Wing in exchange for a cash payment equal to the Shares' fair market value on the date of exercise as determined by the Independent Fiduciary, no later than 60 days after Red Wing exercises the Call Option. Any unpaid portion of the purchase price for the Shares payable by Red Wing in connection with its exercise of the Call Option will accrue interest, compounded annually, at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%), to be confirmed by the Independent Fiduciary, over the period from the date of exercise of the Call Option to the date of payment of such unpaid portion of the purchase price.

Exemptive Relief Requested

37. The Applicant requests exemptive relief from certain of the prohibited transaction restrictions of sections 406 and 407 of the Act and section 4975 of the Code for the Contributions. Section 407(a)(1)(A) of the Act precludes a plan from acquiring or holding any employer security which is not a "qualifying employer security." Moreover, section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any "employer security in violation of section 407(a) of the Act." Finally, section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any "employer security" that violates section 407(a) of the Act.

38. The Applicant represents that, with respect to the Plans, the Shares constitute "employer securities," as defined in section 407(d)(1) of the Act. The Applicant notes that, to be an "employer security," the Shares must be issued by an employer of employees covered by the plan or by an affiliate of such employer. According to the Applicant, although RWI is not the employer of any employees covered by the plans, RWI can be considered an affiliate of Red Wing. The Applicant notes that section 407(d)(7) of the Act defines an "affiliate" as an entity that is a member of the employer's controlled group, as defined by section 1563(a) of the Code, but by substituting 50% for 80% ownership for purposes of establishing control. The Applicant notes also that the stock ownership attribution rules set forth in section 1563(a) of the Code could cause the Sweasy family to own both RWI and Red Wing.[46] In this regard, the

[46] Section 1563(a)(2) of the Code provides that a brother-sister controlled group of corporate entities applies to "two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own. . .stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation."

Applicant explains that the largest percentages of Red Wing stock and RWI Shares, attributing Shares owned by Red Wing to Red Wing shareholders, are owned by five members of the Sweasy family or trusts established by or for the benefit of such individuals. With respect to three trusts established by one of these individuals and her husband, the Applicant contends that certain assumptions concerning the control the individual or her husband exercises over the trusts or the beneficiaries of the trusts could cause RWI and Red Wing to be considered members of a brother-sister controlled group under section 1563(a)(2) of the Code. As such, the Applicant believes that RWI can be considered an ''affiliate'' of Red Wing under section 407(d)(7) of the Act, and the Shares would thus constitute ''employer securities'' under section 407(d)(1) of the Act. The Applicant contends that the Shares are not ''qualifying employer securities'' within the meaning of Section 407(d)(5) of the Act, because the Shares will not satisfy the requirements of Section 407(f)(1) following the Contributions.[47] As such, the Applicant requests an exemption from sections 406(a)(1)(E) and 406(a)(2), and section 407(a)(1)(A) of the Act.

39. The Applicant notes that section 406(a)(1)(A) of the Act provides that any sale, exchange, or leasing of any property between a plan and a party in interest constitutes a prohibited transaction. According to the Applicant, the Department concluded in Interpretive Bulletin 2509.94–3 that an in-kind contribution of property by a plan sponsor to an employee pension plan constitutes a prohibited transaction in violation of section 406(a)(1)(A). Furthermore, an employer whose employees participate in the plan is a ''party in interest'' under section 3(14) of the Act. The Applicant states that Red Wing is prohibited from purchasing the Shares from the Plans in connection with the Plans' exercise of the Terminal Put Option and the Liquidity Put Option as well as Red Wing's exercise of the Call Option. Therefore, the Applicant requests an exemption from section 406(a)(1)(A) of the Act for the transactions described above.

40. The Applicant notes that section 406(a)(1)(B) of the Act provides that any lending of money or other extension of credit between the plan and a party in interest constitutes a prohibited transaction. The Applicant represents that the Terminal Make-Whole Payment and the exercise price on the Terminal Put Option are due and payable 90 days after the demand date, and can be paid over a five-year period, with interest. Such arrangement may constitute a prohibited extension of credit between the Plans and Red Wing. As such, the Applicant requests an exemption from section 406(a)(1)(B) of the Act.

41. The Applicant represents that section 406(a)(1)(D) of the Act provides that any transfer to, or use by or for the benefit of, a party in interest, of any assets of the Plans is a prohibited transaction. The Applicant states that, accordingly, the proposed transactions also violate section 406(a)(1)(D) of the Act, in that in connection with the Plans' acceptance of the Contributions, Red Wing proposes to transfer assets of the Plans to itself upon the exercise of the Terminal Put Option, the Liquidity Put Option, or the Call Option.

42. The Applicant notes that section 406(b)(1) of the Act prohibits a plan fiduciary from dealing with the assets of the plan in its own interest or for its own account. Furthermore, the Applicant notes that section 406(b)(2) of the Act prohibits a fiduciary of a plan from acting in its individual or any other capacity in any transaction involving the plan, or on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. The Applicant represents that Red Wing is a fiduciary of the Plans. The Applicant states that it is possible that the Contributions could be considered to violate section 406(b)(1) of the Act because of the possible ancillary effects to the Applicant of reduced future cash contributions due to additional funding of the Plans. Moreover, according to the Applicant, it is possible that the Contributions could violate section 406(b)(2) of the Act because the Applicant, a fiduciary with respect to the Plans, will be acting on behalf of another party (itself) whose interests may be adverse to those of the Plan. Therefore, the Applicant requests an exemption from section 406(b)(1) and (2) of the Act for the transactions described herein.

The Independent Fiduciary

43. The Applicant represents that it has retained GFA to act as the Independent Fiduciary and investment manager of the Plans with respect to the acquisition, management and disposition of the Shares on behalf of the Plans. GFA represents that it is qualified to serve as Independent Fiduciary on behalf of the Plans with respect to the covered transactions by virtue of its experience and expertise. GFA represents that it has acted as an independent fiduciary regarding numerous ERISA-covered plans' acquisitions and holdings of securities issued by or contributed by the current or former employer of plan participants. GFA represents further that it serves as an investment consultant to ERISA-covered plans with assets totaling approximately $36.5 billion. GFA represents that it regularly evaluates matters of investment policy, diversification, and expected risk and return for a variety of asset classes, including privately-held securities.

44. The Applicant represents that GFA does not provide any other services to the Applicant or its affiliates other than as the Independent Fiduciary. Red Wing represents that it is paying GFA for the entirety of its engagement with respect to the proposed transactions. GFA represents that its compensation for services related to the proposed transactions is less than 1% of its revenue. GFA has retained Lincoln Partners Advisors LLC (Lincoln) to prepare a preliminary valuation study of RWI which GFA has utilized in determining the valuation of the Shares to be contributed to the Plans. GFA has complete discretion to determine the valuation methodologies as well as the ultimate value of the Shares contributed to the Plans.

45. The Applicant represents that GFA reviewed relevant Plan documents and financial information. In addition, the Applicant represents that GFA conducted extensive negotiations with the Applicant's management and advisors regarding the value protection features described above.

46. The Applicant represents that GFA will have discretion and authority to negotiate the final terms and conditions of the Contributions, including any administrative security provisions, provided such terms comply with the requirements of the exemption. The Applicant represents that the contributed Shares will be held in an Investment Fund account within each Plan's trust, that is separate and distinct from the Plans' other assets. The Investment Fund account will be under

[47] Section 407(d)(5) of the Act requires, in relevant part, that, in the case of a plan other than an individual account plan, in order for stock to constitute ''qualifying employer securities,'' it must satisfy the requirements of section 407(f)(1) of the Act. Section 407(f)(1) provides that, immediately after its acquisition, qualifying stock must constitute (A) no more than 25 percent of the aggregate amount of the stock of the same class issued and outstanding at the time of acquisition is held by the plan, and (B) at least 50 percent of such aggregate amount is held by persons independent of the issuer. The Applicant represents that the Sweasy family will own in excess of 50% of the Shares through various family trusts and indirectly through its ownership of Red Wing, after the Contribution. Thus, the Shares will not satisfy the requirement under section 407(f)(1)(B) of the Act.

GFA's investment management and control until such time as GFA determines it is in the interests of the Plans' participants and beneficiaries to dispose of the Shares or the Plans are terminated.

47. The Applicant represents that GFA will continue to serve as Independent Fiduciary and discharge the functions assigned to it until all transactions related to the Shares are concluded or GFA has been replaced by another Independent Fiduciary or the Plans are terminated.

48. The Applicant represents that GFA is, and will continue to be during the term of its engagement, an ''investment manager'' within the meaning of section 3(38) of the Act and the Investment Advisers Act of 1940, and, with respect to its duties, GFA will be a fiduciary as defined in section 3(21)(A) of the Act. The Applicant represents that GFA will take whatever actions it deems necessary to protect the rights of the Plans with respect to the Shares, and will act prudently and for the exclusive benefit and in the sole interest of the Plans and their participants and beneficiaries.

Appraisal of the Shares

49. In its appraisal, dated September 4, 2012 (the Appraisal), Lincoln represents that it was retained by GFA to act as the independent appraiser of the Shares in connection with the Applicant's request for an exemption from the Department for the proposed transactions. Lincoln represents that its fees are not contingent on the conclusions provided within the Appraisal, and it had not provided previous services to Red Wing, GFA, or the Plans for which it received compensation. Red Wing represents that it is paying Lincoln for the entirety of its engagement with respect to the proposed transactions. Lincoln represents that its compensation for services related to the proposed transactions is less than 1% of its revenue.

50. Lincoln represents that Patricia Luscombe, the Managing Director of Lincoln's Valuations and Opinions Group responsible for the Appraisal, is a chartered financial analyst and has more than 20 years of experience in financial advisory and valuation. Lincoln represents that Ms. Luscombe has worked on valuations of closely held businesses, including for various transactions, tax, accounting, litigation and regulatory purposes. Lincoln further represents that Michael Fisch, the senior member of Lincoln's Valuations and Opinions Group assigned to the Appraisal, is a Certified Public Accountant, and has experience in managing or participating in valuation assignments.

51. Lincoln represents that it calculated the enterprise value of RWI, or the measure of a company's fair market value of the aggregate assets (both tangible and intangible) on a going concern basis. Lincoln explains that the enterprise value is normally calculated as the aggregate fair market value of equity plus debt, minority interests, and preferred shares. Lincoln notes that, as RWI has no debt, minority interests, or preferred shares, the enterprise value for RWI equals the aggregate fair market value of the Shares. Lincoln represents that it calculated the enterprise value of the Shares by employing the income approach valuation method (the Income Approach). Lincoln represents that the Income Approach estimates value based on projected future free cash flows and an estimated discount rate.

52. As RWI depends on Red Wing's commissions for international sales, Lincoln represents further that the enterprise value Lincoln derived from the Income Approach reflects the expectations of the business by senior management and the going concern value of Red Wing on a monthly basis. To arrive at RWI's fair market value, Lincoln applied a 10% discount to account for RWI's lack of marketability. Lincoln concluded that, as of April 30, 2012 the Shares could be valued between $1,920 to $2,177.[48]

53. In explaining its need for a discount in its valuation, Lincoln represents that the Shares have never been traded in any public market nor is there any prospect of the Shares being registered in the future. In the absence of a price set in a public market, widely circulated information about a company, a following of security analysts and investors, or an initial public offering in the near term, Lincoln states that it is difficult to find parties interested and willing to buy a minority interest investment in a privately owned company such as RWI. In recognition of this difficulty, Lincoln determines a discount for lack of marketability.

54. After reviewing the value protection provisions described herein, Lincoln concludes that the expected volatility associated with the Shares would be reduced given the guaranteed annual return of 7.5% provided through the Periodic Make-Whole Payments and the Terminal Make-Whole Payment. Furthermore, Lincoln represents that the Periodic Make-Whole Payment as well as the Terminal Make-Whole Payment provide RWI shareholders a floor on value that is linked to the Applicant's overall creditworthiness.

55. Lincoln represents that the holding period risk is significant with respect to the Shares because of the uncertainty surrounding the long-term outlook of RWI's tax treatment as well as potential volatility of international sales. With only the Applicant's international business contributing to RWI's net sales, net sales could be highly volatile and thus commission income would also be highly volatile, in turn leading to volatility in the value of the Shares. However, Lincoln asserts that this uncertainly would be offset by the value protection provisions.

56. In its report, Lincoln states that the market of interested buyers for the Shares is quite limited. Red Wing management has stated it intends to remain an independent family owned business, so an investor in the Shares would not likely receive liquidity based upon a sale of Red Wing overall. Furthermore, because of RWI's dependence upon the Applicant's international sales, Lincoln concludes that it is unlikely that there would be willing buyers of Shares beyond the Red Wing shareholders.

57. The Applicant represents that Duff & Phelps performed the most recent valuation of the Shares, as part of Red Wing's annual valuation of RWI. The Applicant represents that the Duff & Phelps valuation for fiscal year 2013, using the discounted flow valuation method, valued the Shares at $2,050, a 10.6% increase over the 2012 value. GFA represents that, in connection with the proposed exemption, it will obtain an updated appraisal report from Lincoln, the independent appraiser, in accordance with the terms of the proposed exemption.

The Independent Fiduciary's Opinion

58. In its capacity as Independent Fiduciary with respect to the proposed transactions, GFA submitted to the Department its report entitled ''Statement by GFA as the Independent Fiduciary in Support of the Application,'' dated November 16, 2012 (the GFA Report). In the GFA Report, GFA represents that it reviewed relevant documents concerning the Applicant, RWI and the proposed transactions. Such documents include: The Plan documents and related amendments; the Plans' trust agreements; the Plans' investment policy statement, most recent audited financial statements, statements of assets, and actuarial funding reports; copies of the most recent appraisals of the Shares; schedules of the appraised value per

[48] GFA represents that it will obtain an updated appraisal report prior to the Contributions.

Share and dividends paid per Share during the prior five years; copies of RWI's organizing documents; the most recent audited financial statements for Red Wing; and the Commission Agreement. GFA represents that it conducted research into DISCs to understand their purpose, legal structure, and the tax consequences of the commission arrangement for both the sponsoring companies and DISC shareholders. GFA also met with the Applicant to learn more about its history, business model and financial performance, the history, structure and status of and outlook for RWI and its relationship to the Applicant, and the status of the Plans and the purpose and expected effect of the proposed transactions.

59. According to the GFA Report, GFA proposed and negotiated the value protection features included as a condition of the Contribution Agreement. GFA represents further that it proposed and designed the Liquidity Put Option to address concerns with respect to the liquidity of the Shares and negotiated with Red Wing to further develop its terms.

60. As provided in the GFA Report, after reviewing the documents as well as the independent valuation performed by Lincoln, GFA believes that the proposed transactions are in the interest of the Plans and their participants and beneficiaries, and protective of the rights of the participants and beneficiaries. GFA also believes the Shares represent a sound investment for the Plans. In this regard, the GFA Report provides that the Applicant's international sales have been the fastest growing segment for the Applicant, having grown at a compound annual growth rate of 12% from 2008 to 2011, with sales increasing 11% from 2012 to 2013. Between 2008 and 2011, GFA notes in the GFA report that the percentage of international sales relative to the Applicant's total sales increased from 19% to 23%. In 2013, international revenues represented 24% of the Applicant's total sales. As a result of the strong pace of international sales growth, RWI's qualifying DISC revenues, income and dividends to shareholders grew at compound annual growth rates of 14%, 13%, and 13%, respectively, from 2008 to 2011.[49] Furthermore, GFA states in the GFA Report that from 2008 through 2011, the average dividend yield on the Shares was almost 12%. Over a broader period, the Applicant represents that the average dividend yield on the Shares has been approximately 11% from 2006 through 2013.

61. In addition, the GFA Report emphasizes that the appraised value of the Shares has appreciated over time, growing at a compound annual growth rate of 22% between 2006 until 2011. The Applicant represents that the appraised value of the Shares grew approximately 11% between 2012 and 2013. The GFA Report provides that continued future growth in the Applicant's international sales and DISC-qualified sales and income should have a positive effect on future appraised values.

62. As provided in the GFA report, GFA believes that the Applicant has a strong financial standing. The GFA Report provides that the Applicant's debt-to-capital ratio stood at 36% as of November 30, 2011. GFA represents that, as of August 2014, Red Wing's debt-to-equity ratio stood at 31% while the times-interest-earned ratio is 49,000. GFA explains that a times-interest-earned ratio of 49,000 is very high and a favorable statistic from the perspective of the Plans, as it means Red Wing is able to pay its interest expenses 49 times over, based on its level of operating earnings. Furthermore, according to the Applicant, Red Wing's cash flow generation has recently been strong, providing it with necessary liquidity to fund its obligations and growth initiatives.

63. GFA represents that the value of the Shares and expected cash flows from dividends on the Shares will improve the Plans' funded status over time and provide additional liquidity for the Plans each year, given that the Contributions will be in addition to and in excess of the mandatory minimum funding requirements required for each of the Plans. In addition, GFA represents that the proposed transactions will reduce the Plans' dependence on the Applicant's ability to pay future minimum required cash contributions.

64. The GFA Report suggests that the value protection measures resemble features of other in-kind contribution transactions previously approved by the Department. Additionally, the Contribution Agreements limit the transactions' scope to a number of Shares equal in value to not more than 10% of Plan assets for each respective Plan. The GFA Report also notes that the terms of the Contribution Agreements provide for a term certain of ten years for the Commission Agreement, thereby providing for the payment of commissions to RWI on account of the Applicant's foreign sales for a set period. Finally, the Periodic Make-Whole Payment and the Terminal Make-Whole Payment provisions guarantee a minimum return on the Shares of 7.5% per year.

65. As detailed in the GFA Report, GFA will: Negotiate on behalf of the Plans the definitive documentation to memorialize the Contribution Agreements and the value protection provisions featured therein and/or described in this proposed exemption; enforce all of the Plans' rights under the Contribution Agreements; enforce the Plans' rights as shareholders of RWI, including obtaining reports confirming that the Applicant is adhering to the terms of the Commission Agreement; obtain regular valuations of the Shares, vote the Plans' Shares, respond to any corporate actions, and monitor tax and regulatory developments that can affect RWI; and have authority to sell the Shares if and when it determines it to be in the Plans' interest to do so.

Statutory Findings

66. The Applicant represents that the proposed exemption is administratively feasible because the Applicant has retained GFA to represent the Plans' interests with respect to the proposed transactions. As such, the transactions will require no ongoing monitoring by the Department.

67. The Applicant represents that the proposed transactions are in the interests of the Plans and their participants and beneficiaries because the value of the Shares and the expected cash flows from their dividends will substantially improve the Plans' funded status over time and provide additional liquidity each year. The Applicant represents that this liquidity will enhance the Plans' ability to satisfy benefit obligations as they become due. The Applicant represents further that, based on comparative funding projections prepared by Mercer, each Plan's funded status following the Contributions will increase at a faster rate than it would otherwise without the Contributions.

68. The Applicant represents that the Plans will generally continue to receive cash contributions notwithstanding the Contribution of Shares. In this regard, the Applicant explains that for each Plan year in which the Plan holds Shares at the end of the Plan year, Red Wing will make a contribution to such Plan that is the greater of: (1) The minimum required contribution, as determined by section 430 of the Code, or (2) the lesser of: (i) The minimum required contribution, as determined by section 430 of the Code, as of the Plan's valuation date, except that the value of

[49] The Applicant represents that RWI's qualifying DISC revenues decreased 7% to $63 million in 2013.

the assets will be reduced by an amount equal to the value of a Share, multiplied by the number of Shares in the Plan at the end of the Plan year, and (ii) the contribution that would result in the respective Plan attaining a 100% FTAP funded status (reflecting assets reduced by the credit balance) at the valuation date determining the contributions based on the value of all Plan assets, including the Shares. The Applicant represents that any cash contributions in excess of the minimum required contribution described above will not be used to create additional prefunding credit balance.

69. The Applicant represents that the proposed transactions are protective of the rights of the participants and beneficiaries of the Plans. The Applicant represents that the Plans will incur no fees, costs or other charges as a result of their participation in any of the proposed transactions. Furthermore, the Applicant represents that, after each Contribution, the Shares will represent no more than 10% of the value of each Plan's assets.

70. The Applicant represents that GFA will monitor and make all decisions with respect to the Plans' investment in the Shares, including making determinations of their value and monitoring their performance and the applicability of the value protection features. Further, GFA have discretion to negotiate the final terms and conditions of the Contributions, consistent with the conditions and the facts and representations contained in this proposed exemption, and will continue to serve as the Independent Fiduciary and discharge the functions assigned to it until all transactions related to the Shares are concluded, GFA has been replaced by another Independent Fiduciary, or the Plans are terminated.

71. Finally, the Applicant represents that the proposed transactions will also be structured to ensure continued protection of the Plans against the risks of illiquidity of the Shares and adverse business conditions that could impair their value. The value protection features, which GFA negotiated with the Applicant, include a binding long-term Commission Agreement to provide for a continuing stream of commission payments to RWI; Periodic Make-Whole Payments by the Applicant to the Plans for as long as the Plans hold the Shares; a Liquidity Put Option exercisable by GFA in lieu of accepting the Periodic Make-Whole Payment, after a Change of Control, after 10 years, or upon termination of a Plan; and a Terminal Make-Whole Payment from the Applicant to the Plans in the event of the termination of the Commission Agreement.

Summary

72. In summary, the Applicant represents that the proposed exemption, if granted, satisfies the statutory criteria of section 408 of the Act for the following reasons:

(a) The Plans acquire the Shares solely through one or more Contributions by Red Wing;

(b) GFA, will act on behalf of the Plans with respect to the acquisition, management and disposition of the Shares;

(c) An Independent Appraiser selected by GFA will determine the fair market value of the Shares contributed to each Plan for all purposes under the proposed exemption;

(d) Immediately after any Contribution, the aggregate fair market value of the Shares held by any Plan will represent no more than 10% of the fair market value of such Plan's assets.

(e) The Plans incur no fees, costs or other charges in connection with any of the transactions described herein;

(f) For as long as the Plans hold the Shares, Red Wing makes the Periodic Make-Whole Payments and Terminal Make-Whole Payment to the Plans in accordance with the terms thereof;

(g) The Liquidity Put Option and the Terminal Put Option will be exercisable by the Independent Fiduciary in its sole discretion in accordance with the terms thereof; and

(h) Each year, Red Wing will make a cash contribution to each Plan that is the greater of: (1) The minimum required contribution, or (2) the lesser of: (i) The minimum required contribution (without taking into account the value of the Shares in the Plan at the end of the respective Plan year), and (ii) the contribution that would result in the respective Plan attaining a 100% FTAP funded status (reflecting assets reduced by the credit balance) at the valuation date determining the contributions based on the value of all Plan assets, including the Shares.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Interested Persons in the manner agreed to with the Department within 20 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. 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 50 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: Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Frank Russell Company and Affiliates (Russell), Located in Seattle, WA

[Application No. D–11781]

Proposed Exemption

The Department is considering granting an exemption under the authority of 408(a) of the Act and section 4975(c)(2) of the Code, in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011).

Section I. Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act and the taxes resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code,[50] shall not apply, effective June 1, 2014, to:

(a) The receipt of a fee by Russell, as Russell is defined below in Section IV(a), from an open-end investment company or open-end investment companies (Affiliated Fund(s)), as defined below in Section IV(e), in connection with the direct investment in shares of any such Affiliated Fund, by an employee benefit plan or by employee benefit plans (Client Plan(s)) as defined below in Section IV(b), where Russell serves as a fiduciary with respect to such Client Plan, and where Russell:

(1) Provides investment advisory services, or similar services to any such Affiliated Fund; and

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

(2) Provides to any such Affiliated Fund other services (Secondary Service(s)), as defined below in Section IV(i); and

(b) In connection with the indirect investment by a Client Plan in shares of an Affiliated Fund through investment in a pooled investment vehicle or pooled investment vehicles (Collective Fund(s)),[51] as defined below in Section IV(j), where Russell serves as a fiduciary with respect to such Client Plan, the receipt of fees by Russell from:

(1) An Affiliated Fund for the provision of investment advisory services, or similar services by Russell to any such Affiliated Fund; and

(2) An Affiliated Fund for the provision of Secondary Services by Russell to any such Affiliated Fund; provided that the conditions, as set forth below in Section II and Section III, are satisfied, as of June 1, 2014 and thereafter.

Section II. Specific Conditions

(a)(1) Each Client Plan which is invested directly in shares of an Affiliated Fund *either:*

(i) Does not pay to Russell for the entire period of such investment any investment management fee, or any investment advisory fee, or any similar fee at the plan-level (the Plan-Level Management Fee), as defined below in Section IV(m), with respect to any of the assets of such Client Plan which are invested directly in shares of such Affiliated Fund; *or*

(ii) Pays to Russell a Plan-Level Management Fee, based on total assets of such Client Plan under management by Russell at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any investment advisory fee and any similar fee (the Affiliated Fund Level Advisory Fee), as defined below in Section IV(o), paid by such Affiliated Fund to Russell.

If, during any fee period, in the case of a Client Plan invested directly in shares of an Affiliated Fund, such Client Plan has prepaid its Plan Level Management Fee, and such Client Plan purchases shares of an Affiliated Fund directly, the requirement of this Section II(a)(1)(ii) shall be deemed met with respect to such prepaid Plan-Level Management Fee, if, by a method reasonably designed to accomplish the same, the amount of the prepaid Plan-Level Management Fee that constitutes the fee with respect to the assets of such Client Plan invested directly in shares of an Affiliated Fund:

(A) Is anticipated and subtracted from the prepaid Plan-Level Management Fee at the time of the payment of such fee; *or*

(B) Is returned to such Client Plan, no later than during the immediately following fee period; *or*

(C) Is offset against the Plan-Level Management Fee for the immediately following fee period or for the fee period immediately following thereafter.

For purposes of Section II(a)(1)(ii), a Plan-Level Management Fee shall be deemed to be prepaid for any fee period, if the amount of such Plan-Level Management Fee is calculated as of a date not later than the first day of such period.

(2) Each Client Plan invested in a Collective Fund the assets of which are not invested in shares of an Affiliated Fund:

(i) Does not pay to Russell for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(i) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Russell, based on the assets of such Client Plan invested in such Collective Fund; *or*

(ii) Does not pay to Russell for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(ii) do not preclude the payment of a Plan-Level Management Fee by such Client Plan to Russell, based on total assets of such Client Plan under management by Russell at the plan-level; *or*

(iii) Such Client Plan pays to Russell a Plan-Level Management Fee, based on total assets of such Client Plan under management by Russell at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee (the ''Net'' Plan-Level Management Fee), where the amount subtracted represents such Client Plan's *pro rata share* of any Collective Fund-Level Management Fee paid by such Collective Fund to Russell.

The requirements of this Section II(a)(2)(iii) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Russell, based on the assets of such Client Plan invested in such Collective Fund.

(3) Each Client Plan invested in a Collective Fund, the assets of which are invested in shares of an Affiliated Fund:

(i) Does not pay to Russell for the entire period of such investment any Plan-Level Management Fee (including any ''Net'' Plan-Level Management Fee, as described, above, in Section II(a)(2)(ii)), and does not pay directly to Russell or indirectly to Russell through the Collective Fund for the entire period of such investment any Collective Fund-Level Management Fee with respect to the assets of such Client Plan which are invested in such Affiliated Fund; *or*

(ii) Pays indirectly to Russell a Collective Fund-Level Management Fee, in accordance with Section II(a)(2)(i) above, based on the total assets of such Client Plan invested in such Collective Fund, from which a credit has been subtracted from such Collective Fund-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Russell by such Affiliated Fund; and does not pay to Russell for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; *or*

(iii) Pays to Russell a Plan-Level Management Fee, in accordance with Section II(a)(2)(ii) above, based on the total assets of such Client Plan under management by Russell at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Russell by such Affiliated Fund; and does not pay directly to Russell or indirectly to Russell through the Collective Fund for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; *or*

(iv) Pays to Russell a ''Net'' Plan-Level Management Fee, in accordance with Section II(a)(2)(iii) above, from which a *further credit* has been subtracted from such ''Net'' Plan-Level Management Fee, where the amount of such *further credit* which is subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Russell by such Affiliated Fund.

[51] The Department, herein, is expressing no opinion in this proposed exemption regarding the reliance of the Applicants on the relief provided by section 408(b)(8) of the Act with regard to the purchase and with regard to the sale by a Client Plan of an interest in a Collective Fund and the receipt by Russell, thereby, of any investment management fee, any investment advisory fee, and any similar fee (a Collective Fund-Level Management Fee), as defined below in Section IV(n)), where Russell serves as an investment manager or investment adviser with respect to such Collective Fund and also serves as a fiduciary with respect to such Client Plan, nor is the Department offering any view as to whether the Applicants satisfy the conditions, as set forth in section 408(b)(8) of the Act.

Provided that the conditions of this proposed exemption are satisfied, the requirements of Section II(a)(1)(i)–(ii) and Section II(a)(3)(i)–(iv) do not preclude the payment of an Affiliated Fund-Level Advisory Fee by an Affiliated Fund to Russell under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the Investment Company Act). Further, the requirements of Section II(a)(1)(i)–(ii) and Section II(a)(3)(i)–(iv) do not preclude the payment of a fee by an Affiliated Fund to Russell for the provision by Russell of Secondary Services to such Affiliated Fund under the terms of a duly adopted agreement between Russell and such Affiliated Fund.

For the purpose of Section II(a)(1)(ii) and Section II(a)(3)(ii)–(iv), in calculating a Client Plan's *pro rata share* of an Affiliated Fund-Level Advisory Fee, Russell must use an amount representing the ''gross'' advisory fee paid to Russell by such Affiliated Fund. For purposes of this paragraph, the ''gross'' advisory fee is the amount paid to Russell by such Affiliated Fund, including the amount paid by such Affiliated Fund to sub-advisers.

(b) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly, and the purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold indirectly through a Collective Fund, is the net asset value per share (NAV), as defined below in Section IV(f), at the time of the transaction, and is the same purchase price that would have been paid and the same sales price that would have been received for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time.[52]

(c) Russell, including any officer and any director of Russell, does not purchase any shares of an Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Client Plan which invests directly in such Affiliated Fund, and Russell, including any officer and director of Russell, does not purchase any shares of any Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Collective Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund.

(d) No sales commissions, no redemption fees, and no other similar fees are paid in connection with any purchase and in connection with any sale by a Client Plan directly in shares of an Affiliated Fund, and no sales commissions, no redemption fees, and no other similar fees are paid by a Collective Fund in connection with any purchase, and in connection with any sale, of shares in an Affiliated Fund by a Client Plan indirectly through such Collective Fund. However, this Section II(d) does not prohibit the payment of a redemption fee, if:

(1) Such redemption fee is paid only to an Affiliated Fund; and

(2) The existence of such redemption fee is disclosed in the summary prospectus for such Affiliated Fund in effect both at the time of any purchase of shares in such Affiliated Fund and at the time of any sale of such shares.

(e) The combined total of all fees received by Russell is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act, for services provided:

(1) By Russell to each Client Plan;

(2) By Russell to each Collective Fund in which a Client Plan invests;

(3) By Russell to each Affiliated Fund in which a Client Plan invests directly in shares of such Affiliated Fund; and

(4) By Russell to each Affiliated Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund through a Collective Fund.

(f) Russell does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act in connection with the transactions covered by this proposed exemption;

(g) No Client Plan is an employee benefit plan sponsored or maintained by Russell.

(h)(1) In the case of a Client Plan investing directly in shares of an Affiliated Fund, a second fiduciary (the Second Fiduciary), as defined below in Section IV(h), acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan directly in shares of such Affiliated Fund, a full and detailed disclosure via first class mail or via personal delivery of (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below) information concerning such Affiliated Fund, including but not limited to the items listed below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Russell by each Affiliated Fund;

(B) Secondary Services to be paid to Russell by each such Affiliated Fund; and

(C) All other fees to be charged by Russell to such Client Plan and to each such Affiliated Fund and all other fees to be paid to Russell by each such Client Plan and by each such Affiliated Fund;

(iii) The reasons why Russell may consider investment directly in shares of such Affiliated Fund by such Client Plan to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Russell with respect to which assets of such Client Plan may be invested directly in shares of such Affiliated Fund, and if so, the nature of such limitations; and

(v) Upon the request of the Second Fiduciary acting on behalf of such Client Plan, a copy of the Notice of Proposed Exemption (the Notice), a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption.

(2) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund *after* such Collective Fund has begun investing in shares of an Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below) of information concerning such Collective Fund and information concerning each such Affiliated Fund in which such Collective Fund is invested, including but not limited to the items listed, below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Russell by each Affiliated Fund;

(B) Secondary Services to be paid to Russell by each such Affiliated Fund; and

(C) All other fees to be charged by Russell to such Client Plan, to such Collective Fund, and to each such Affiliated Fund and all other fees to be paid to Russell by such Client Plan, by

[52] The selection of a particular class of shares of an Affiliated Fund as an investment for a Client Plan indirectly through a Collective Fund is a fiduciary decision that must be made in accordance with the provisions of section 404(a) of the Act.

such Collective Fund, and by each such Affiliated Fund;

(iii) The reasons why Russell may consider investment by such Client Plan in shares of each such Affiliated Fund indirectly through such Collective Fund to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Russell with respect to which assets of such Client Plan may be invested indirectly in shares of each such Affiliated Fund through such Collective Fund, and if so, the nature of such limitations;

(v) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(vi) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(3) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund *before* such Collective Fund has begun investing in shares of any Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below) of information, concerning such Collective Fund, including but not limited to, the items listed below:

(i) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for all fees to be charged by Russell to such Client Plan and to such Collective Fund and all other fees to be paid to Russell by such Client Plan, and by such Collective Fund;

(ii) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(iii) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(i) On the basis of the information, described above in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan:

(1) Authorizes in writing the investment of the assets of such Client Plan, as applicable:

(i) Directly in shares of an Affiliated Fund;

(ii) Indirectly in shares of an Affiliated Fund through a Collective Fund where such Collective Fund has already invested in shares of an Affiliated Fund; and

(iii) In a Collective Fund which is not yet invested in shares of an Affiliated Fund but whose organizational document expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund; and

(2) Authorizes in writing, as applicable:

(i) The Affiliated Fund-Level Advisory Fee received by Russell for investment advisory services and similar services provided by Russell to such Affiliated Fund;

(ii) The fee received by Russell for Secondary Services provided by Russell to such Affiliated Fund;

(iii) The Collective Fund-Level Management Fee received by Russell for investment management, investment advisory, and similar services provided by Russell to such Collective Fund in which such Client Plan invests;

(iv) The Plan-Level Management Fee received by Russell for investment management and similar services provided by Russell to such Client Plan at the plan-level; and

(v) The selection by Russell of the applicable fee method, as described, above, in Section II(a)(1)–(3).

All authorizations made by a Second Fiduciary pursuant to this Section II(i) must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(j)(1) Any authorization, described above in Section II(i), and any authorization made pursuant to negative consent, as described below in Section II(k) and in Section II(l), made by a Second Fiduciary, acting on behalf of a Client Plan, shall be terminable at will by such Second Fiduciary, without penalty to such Client Plan (including any fee or charge related to such penalty), upon receipt by Russell via first class mail, via personal delivery, or via electronic email of a written notification of the intent of such Second Fiduciary to terminate any such authorization.

(2) A form (the Termination Form), expressly providing an election to terminate any authorization, described above in Section II(i), or to terminate any authorization made pursuant to negative consent, as described below in Section II(k) and in Section II(l), with instructions on the use of such Termination Form, must be provided to such Second Fiduciary at least annually, either in writing via first class mail or via personal delivery (or if such Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below). However, if a Termination Form has been provided to such Second Fiduciary pursuant to Section II(k) or pursuant to Section II(l) below, then a Termination Form need not be provided pursuant to this Section II(j), until at least six (6) months, but no more than twelve (12) months, have elapsed, since the prior Termination Form was provided;

(3) The instructions for the Termination Form must include the following statements:

(i) Any authorization, described above in Section II(i), and any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l), is terminable at will by a Second Fiduciary, acting on behalf of a Client Plan, without penalty to such Client Plan, upon receipt by Russell via first class mail or via personal delivery or via electronic email of the Termination Form, or some other written notification of the intent of such Second Fiduciary to terminate such authorization;

(ii) Within 30 days from the date the Termination Form is sent to such Second Fiduciary by Russell, the failure by such Second Fiduciary to return such Termination Form or the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate any authorization, described in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary;

(4) In the event that a Second Fiduciary, acting on behalf of a Client Plan, at any time returns a Termination Form or returns some other written notification of intent to terminate any authorization, as described above in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l);

(i)(A) In the case of a Client Plan which invests directly in shares of an Affiliated Fund, the termination will be implemented by the withdrawal of all investments made by such Client Plan in the affected Affiliated Fund, and such withdrawal will be effected by Russell within one (1) business day of the date that Russell receives such Termination Form or receives from the Second Fiduciary, acting on behalf of such Client Plan, some other written notification of intent to terminate any such authorization;

(B) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests directly in shares of an Affiliated Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Affiliated Fund, such Client Plan will not be subject to pay a *pro rata share* of any Affiliated Fund-Level Advisory Fee and will not be subject to pay any fees for Secondary Services paid to Russell by such Affiliated Fund, or any other fees or charges;

(ii)(A) In the case of a Client Plan which invests in a Collective Fund, the termination will be implemented by the withdrawal of such Client Plan from all investments in such affected Collective, and such withdrawal will be implemented by Russell within such time as may be necessary for withdrawal in an orderly manner that is equitable to the affected withdrawing Client Plan and to all non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Russell more than five business (5) days after the day Russell receives from the Second Fiduciary, acting on behalf of such withdrawing Client Plan, a Termination Form or receives some other written notification of intent to terminate the investment of such Client Plan in such Collective Fund, unless such withdrawal is otherwise prohibited by a governmental entity with jurisdiction over the Collective Fund, or the Second Fiduciary fails to instruct Russell as to where to reinvest or send the withdrawal proceeds; and

(B) From the date Russell receives from a Second Fiduciary, acting on behalf of a Client Plan, that invests in a Collective Fund, a Termination Form or receives some other written notification of intent to terminate such Client Plan's investment in such Collective Fund, such Client Plan will not be subject to pay a *pro rata share* of any fees arising from the investment by such Client Plan in such Collective Fund, including any Collective Fund-Level Management Fee, nor will such Client Plan be subject to any other charges to the portfolio of such Collective Fund, including a *pro rata share* of any Affiliated Fund-Level Advisory Fee and any fee for Secondary Services arising from the investment by such Collective Fund in an Affiliated Fund.

(k)(1) Russell, at least thirty (30) days in advance of the implementation of each fee increase (Fee Increase(s)), as defined below in Section IV(l), must provide in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below), a notice of change in fees (the Notice of Change in Fees) (which may take the form of a proxy statement, letter, or similar communication which is separate from the summary prospectus of such Affiliated Fund) and which explains the nature and the amount of such Fee Increase to the Second Fiduciary of each affected Client Plan. Such Notice of Change in Fees shall be accompanied by a Termination Form and by instructions on the use of such Termination Form, as described above in Section II(j)(3);

(2) Subject to the crediting, interest-payback, and other requirements below, for each Client Plan affected by a Fee Increase, Russell may implement such Fee Increase without waiting for the expiration of the 30-day period, described above in Section II(k)(1), provided Russell does not begin implementation of such Fee Increase before the first day of the 30-day period, described above in Section II(k)(1), and provided further that the following conditions are satisfied:

(i) Russell delivers, in the manner described in Section II(k)(1), to the Second Fiduciary for each affected Client Plan, the Notice of Change of Fees, as described in Section II(k)(1), accompanied by the Termination Form and by instructions on the use of such Termination Form, as described above in Section II(j)(3);

(ii) Each affected Client Plan receives from Russell a credit in cash equal to each such Client Plan's *pro rata* share of such Fee Increase to be received by Russell for the period from the date of the implementation of such Fee Increase to the *earlier of:*

(A) The date when an affected Client Plan, pursuant to Section II(j), terminates any authorization, as described above in Section II(i), or, terminates any negative consent authorization, as described in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Russell delivers to the Second Fiduciary of each affected Client Plan the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and by the instructions on the use of such Termination Form, as described above in Section II(j)(3).

(iii) Russell pays to each affected Client Plan the cash credit, described above in Section II(k)(2)(ii), with interest thereon, no later than five (5) business days following the *earlier of:* (A) The date such affected Client Plan, pursuant to Section II(j), terminates any authorization, as described above in Section II(i), or terminates, any negative consent authorization, as described in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Russell delivers to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and instructions on the use of such Termination Form, as described above in Section II(j)(3);

(iv) Interest on the credit in cash is calculated at the prevailing Federal funds rate plus two percent (2%) for the period from the day Russell first implements the Fee Increase to the date Russell pays such credit in cash, with interest thereon, to each affected Client Plan;

(v) An independent accounting firm (the Auditor) at least annually audits the payments made by Russell to each affected Client Plan, audits the amount of each cash credit, plus the interest thereon, paid to each affected Client Plan, and verifies that each affected Client Plan received the correct amount of cash credit and the correct amount of interest thereon;

(vi) Such Auditor issues an audit report of its findings no later than six (6) months after the period to which such audit report relates, and provides a copy of such audit report to the Second Fiduciary of each affected Client Plan; and

(3) Within 30 days from the date Russell sends to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees and the Termination Form, the failure by such Second Fiduciary to return such Termination Form and the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(i), or to terminate the negative consent authorization, as described in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary of such Fee Increase.

(l) Effective upon the date that the final exemption is granted, in the case of (a) a Client Plan which has received the disclosures detailed in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), II(h)(2)(v), and II(h)(2)(vi), and which has authorized the investment by such Client Plan in a Collective Fund in accordance with Section II(i)(1)(ii) above, and (b) a Client Plan which has received the disclosures detailed in Section II(h)(3)(i), II(h)(3)(ii), and II(h)(3)(iii), and which has authorized investment by such Client Plan in a Collective Fund, in accordance with Section II(i)(1)(iii) above, the authorization pursuant to negative consent in accordance with this Section II(l), applies to:

(1) The purchase, as an addition to the portfolio of such Collective Fund, of shares of an Affiliated Fund (a New Affiliated Fund) where such New Affiliated Fund has not been previously authorized pursuant to Section II(i)(1)(ii), or, as applicable, Section II(i)(1)(iii), and such Collective Fund may commence investing in such New Affiliated Fund without further written authorization from the Second Fiduciary of each Client Plan invested in such Collective Fund, provided that:

(i) The organizational documents of such Collective Fund expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund, and such documents were disclosed in writing via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q)) to the Second Fiduciary of each such Client Plan invested in such Collective Fund, in advance of any investment by such Client Plan in such Collective Fund;

(ii) At least thirty (30) days in advance of the purchase by a Client Plan of shares of such New Affiliated Fund indirectly through a Collective Fund, Russell provides, either in writing via first class or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q)) to the Second Fiduciary of each Client Plan having an interest in such Collective Fund, full and detailed disclosures about such New Affiliated Fund, including but not limited to:

(A) A notice of Russell's intent to add a New Affiliated Fund to the portfolio of such Collective Fund. Such notice may take the form of a proxy statement, letter, or similar communication that is separate from the summary prospectus of such New Affiliated Fund to the Second Fiduciary of each affected Client Plan;

(B) Such notice of Russell's intent to add a New Affiliated Fund to the portfolio of such Collective Fund shall be accompanied by the information described in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), and II(2)(v) with respect to each such New Affiliated Fund proposed to be added to the portfolio of such Collective Fund; and

(C) A Termination Form and instructions on the use of such Termination Form, as described in Section II(j)(3); and

(2) Within 30 days from the date Russell sends to the Second Fiduciary of each affected Client Plan, the information described above in Section II(l)(1)(ii), the failure by such Second Fiduciary to return the Termination Form or to provide some other written notification of the Client Plan's intent to terminate the authorization described in Section II(i)(1)(ii), or, as appropriate, to terminate the authorization, described in Section II(i)(1)(iii), or to terminate any authorization, pursuant to negative consent, as described in this Section II(l), will be deemed to be an approval by such Second Fiduciary of the addition of a New Affiliated Fund to the portfolio of such Collective Fund in which such Client Plan invests, and will result in the continuation of the authorization of Russell to engage in the transactions which are the subject of this proposed exemption with respect to such New Affiliated Fund.

(m) Russell is subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Second Fiduciary of such Client Plan requests Russell to provide.

(n) All dealings between a Client Plan and an Affiliated Fund, including all such dealings when such Client Plan is invested directly in shares of such Affiliated Fund and when such Client Plan is invested indirectly in such shares of such Affiliated Fund through a Collective Fund, are on a basis no less favorable to such Client Plan, than dealings between such Affiliated Fund and other shareholders of the same class of shares in such Affiliated Fund.

(o) In the event a Client Plan invests directly in shares of an Affiliated Fund, and, as applicable, in the event a Client Plan invests indirectly in shares of an Affiliated Fund through a Collective Fund, if such Affiliated Fund places brokerage transactions with Russell, Russell will provide to the Second Fiduciary of each such Client Plan, so invested, at least annually a statement specifying:

(1) The total, expressed in dollars of brokerage commissions that are paid to Russell by each such Affiliated Fund;

(2) The total, expressed in dollars, of brokerage commissions that are paid by each such Affiliated Fund to brokerage firms unrelated to Russell;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Russell by each such Affiliated Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each such Affiliated Fund to brokerage firms unrelated to Russell.

(p)(1) Russell provides to the Second Fiduciary of each Client Plan invested directly in shares of an Affiliated Fund with the disclosures, as set forth below, and at the times set forth below in Section II(p)(1)(i), II(p)(1)(ii), II(p)(1)(iii), II(p)(1)(iv), and II(p)(1)(v), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q) as set forth below);

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund which contains a description of all fees paid by such Affiliated Fund to Russell;

(iii) With regard to any Fee Increase received by Russell pursuant to Section II(k)(2), a copy of the audit report referred to in Section II(k)(2)(v) within sixty (60) days of the completion of such audit report;

(iv) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise; and

(v) Annually, with a Termination form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), then a Termination Form need not be provided again pursuant to this Section II(p)(1)(v) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided.

(2) Russell provides to the Second Fiduciary of each Client Plan invested in a Collective Fund, with the disclosures, as set forth below, and at the times set forth below in Section II(p)(2)(i), II(p)(2)(ii), II(p)(2)(iii), II(p)(2)(iv), II(p)(2)(v), II(p)(2)(vi), II(p)(2)(vii), and II(p)(2)(viii), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of

delivery, through electronic email, in accordance with Section II(q);

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund through each such Collective Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund through each such Collective Fund which contains a description of all fees paid by such Affiliated Fund to Russell;

(iii) Annually, with a statement of the Collective Fund-Level Management Fee for investment management, investment advisory or similar services paid to Russell by each such Collective Fund, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund;

(iv) A copy of the annual financial statement of each such Collective Fund in which such Client Plan invests, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund, within sixty (60) days of the completion of such financial statement;

(v) With regard to any Fee Increase received by Russell pursuant to Section II(k)(2), a copy of the audit report referred to in Section II(k)(2)(v) within sixty (60) days of the completion of such audit report;

(vi) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan as such inquiries arise;

(vii) For each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, a statement of the approximate percentage (which may be in the form of a range) on an annual basis of the assets of such Collective Fund that was invested in Affiliated Funds during the applicable year; and

(viii) Annually, with a Termination Form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), then a Termination Form need not be provided again pursuant to this Section II(p)(2)(viii) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided.

(q) Any disclosure required herein to be made by Russell to a Second Fiduciary may be delivered by electronic email containing direct hyperlinks to the location of each such document required to be disclosed, which are maintained on a Web site by Russell, provided:

(1) Russell obtains from such Second Fiduciary prior consent in writing to the receipt by such Second Fiduciary of such disclosure via electronic email;

(2) Such Second Fiduciary has provided to Russell a valid email address; and

(3) The delivery of such electronic email to such Second Fiduciary is provided by Russell in a manner consistent with the relevant provisions of the Department's regulations at 29 CFR 2520.104b–1(c) (substituting the word ''Russell'' for the word ''administrator'' as set forth therein, and substituting the phrase ''Second Fiduciary'' for the phrase ''the participant, beneficiary or other individual'' as set forth therein).

(r) The authorizations described in paragraphs II(k) or II(l) may be made affirmatively, in writing, by a Second Fiduciary, in a manner that is otherwise consistent with the requirements of those paragraphs.

(s) All of the conditions of PTE 77–4, as amended and/or restated, are met. Notwithstanding this, if PTE 77–4 is amended and/or restated, the requirements of paragraph (e) therein will be deemed to be met with respect to authorizations described in section II(l) above, but only to the extent the requirements of section II(l) are met. Similarly, if PTE 77–4 is amended and/or restated, the requirements of paragraph (f) therein will be deemed to be met with respect to authorizations described in section II(k) above, if the requirements of section II(k) are met.

(t) *Standards of Impartial Conduct.* If Russell is a fiduciary within the meaning of section 3(21)(A)(i) or (ii) of the Act, or section 4975(e)(3)(A) or (B) of the Code, with respect to the assets of a Client Plan involved in the transaction, Russell must comply with the following conditions with respect to the transaction: (1) Russell acts in the Best Interest of the Client Plan; (2) all compensation received by Russell in connection with the transaction is reasonable in relation to the total services the fiduciary provides to the Client Plan; and (3) Russell's statements about recommended investments, fees, material conflicts of interest,[53] and any other matters relevant to a Client Plan's investment decisions are not misleading.

For purposes of this section, Russell acts in the ''Best Interest'' of the Client Plan when Frank Russell acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or IRA, without regard to the financial or other interests of the fiduciary, any affiliate or other party.

Section III. General Conditions

(a) Russell maintains for a period of six (6) years the records necessary to enable the persons, described below in Section III(b), to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of circumstances beyond the control of Russell, the records are lost or destroyed prior to the end of the six-year period; and

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

(b)(1) Except as provided in Section III(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service, or the Securities & Exchange Commission;

(ii) Any fiduciary of a Client Plan invested directly in shares of an Affiliated Fund, any fiduciary of a Client Plan who has the authority to acquire or to dispose of the interest in a Collective Fund in which a Client Plan invests, any fiduciary of a Client Plan invested indirectly in an Affiliated Fund through a Collective Fund where such fiduciary has the authority to acquire or to dispose of the interest in such Collective Fund, and any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Client Plan invested directly in shares of an Affiliated Fund or invested in a

[53] A ''material conflict of interest'' exists when a *fiduciary has a financial interest that could affect the* exercise of its best judgment as a fiduciary in rendering advice to a Client Plan. For this purpose, Russell's failure to disclose a material conflict of interest relevant to the services it is providing to a Client Plan Plan, or other actions it is taking in relation to a Client Plan's investment decisions, is deemed to be a misleading statement.

Collective Fund, and any participant or beneficiary of a Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and any representative of such participant or beneficiary; and

(2) None of the persons described in Section III(b)(1)(ii) and (iii) shall be authorized to examine trade secrets of Russell, or commercial or financial information which is privileged or confidential.

Section IV. Definitions

For purposes of this proposed exemption:

(a) The term ''Russell'' means Frank Russell Company and any affiliate thereof, as defined below in Section IV(c).

(b) The term ''Client Plan(s)'' means a 401(k) plan(s), an individual retirement account(s), other tax-qualified plan(s), and other plan(s) as defined in the Act and Code, but does not include any employee benefit plan sponsored or maintained by Russell.

(c) An ''affiliate'' of a person 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.

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

(e) The term ''Affiliated Fund(s)'' means any diversified open-end investment company or companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended, established and maintained by Russell now or in the future for which Russell serves as an investment adviser.

(f) The term ''net asset value per share'' and the term ''NAV'' mean the amount for purposes of pricing all purchases and sales of shares of an Affiliated Fund, calculated by dividing the value of all securities, determined by a method as set forth in the summary prospectus for such Affiliated Fund and in the statement of additional information, and other assets belonging to such Affiliated Fund or portfolio of such Affiliated Fund, less the liabilities charged to each such portfolio or each such Affiliated Fund, by the number of outstanding shares.

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

(h) The term ''Second Fiduciary'' means the fiduciary of a Client Plan who is independent of and unrelated to Russell. For purposes of this proposed exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Russell if:

(1) Such Second Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Russell;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner, or employee of Russell (or is a relative of such person); or

(3) Such Second Fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of Russell (or relative of such person) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The decision of a Client Plan to invest in and to remain invested in shares of an Affiliated Fund directly, the decision of a Client Plan to invest in shares of an Affiliated Fund indirectly through a Collective Fund, and the decision of a Client Plan to invest in a Collective Fund that may in the future invest in shares of an Affiliated Fund;

(ii) Any authorization in accordance with Section II(i), and any authorization, pursuant to negative consent, as described in Section II(k) or in Section II(l); and

(iii) The choice of such Client Plan's investment adviser, then Section IV(h)(2) above shall not apply.

(i) The term ''Secondary Service(s)'' means a service or services other than an investment management service, investment advisory service, and any similar service which is provided by Russell to an Affiliated Fund, including but not limited to custodial, accounting, administrative services, and brokerage services. Russell may also serve as a dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Service, as defined in this Section IV(i).

(j) The term ''Collective Fund(s)'' means a separate account of an insurance company, as defined in section 2510.3–101(h)(1)(iii) of the Department's plan assets regulations,[54] maintained by Russell, and a bank-maintained common or collective investment trust maintained by Russell.

(k) The term ''business day'' means any day that

(1) Russell is open for conducting all or substantially all of its business; and

(2) The New York Stock Exchange (or any successor exchange) is open for trading.

(l) The term ''Fee Increase(s)'' includes any increase by Russell in a rate of a fee previously authorized in writing by the Second Fiduciary of each affected Client Plan pursuant to Section II(i)(2)(i)–(iv) above, and in addition includes, but is not limited to:

(1) Any increase in any fee that results from the addition of a service for which a fee is charged;

(2) Any increase in any fee that results from a decrease in the number of services and any increase in any fee that results from a decrease in the kind of service(s) performed by Russell for such fee over an existing rate of fee for each such service previously authorized by the Second Fiduciary, in accordance with Section II(i)(2)(i)–(iv) above; and

(3) Any increase in any fee that results from Russell changing from one of the fee methods, as described above in Section II(a)(1)–(3), to using another of the fee methods, as described above in Section II(a)(1)–(3).

(m) The term ''Plan-Level Management Fee'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Client Plan to Russell for any investment management services, investment advisory services, and similar services provided by Russell to such Client Plan at the plan-level. The term ''Plan-Level Management Fee'' does not include a separate fee paid by a Client Plan to Russell for asset allocation service(s) (Asset Allocation Service(s)), as defined below in Section IV(p), provided by Russell to such Client Plan at the plan-level.

(n) The term ''Collective Fund-Level Management Fee'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Collective Fund to Russell for any investment management services, investment advisory services, and any similar services provided by Russell to such Collective Fund at the collective fund level.

(o) The term ''Affiliated Fund-Level Advisory Fee'' includes any investment advisory fee and any similar fee paid by an Affiliated Fund to Russell under the terms of an investment advisory

[54] 51 FR 41262 (November 13, 1986).

agreement adopted in accordance with section 15 of the Investment Company Act.

(p) The term ''Asset Allocation Service(s)'' means a service or services to a Client Plan relating to the selection of appropriate asset classes or target-date ''glidepath'' and the allocation or reallocation (including rebalancing) of the assets of a Client Plan among the selected asset classes. Such services do not include the management of the underlying assets of a Client Plan, the selection of specific funds or manager, and the management of the selected Affiliated Funds or Collective Funds.

Effective Date: If granted, this proposed exemption will be effective as of June 1, 2014.

Summary of Facts and Representations

The Parties

1. Russell is a global asset management firm providing investment management products and services to individuals and institutions in 47 different countries. Frank Russell and its U.S. affiliates offer a broad range of financial products and services to businesses, individuals, and institutional clients, including portfolio management, transition strategies and cash management. As of March 31, 2014, Russell had approximately $259.7 billion in assets under management. In addition, Russell is the creator of a family of global equity indices that allow investors to track the performance of distinct market segments. These include the broad market Russell 3000 Index, the small cap Russell 2000 Index and the global equity Russell Global Index.

2. Russell has numerous direct or indirect subsidiaries, including Russell Investment Management Company (RIMCo); Russell Implementation Services, Inc.; Russell Capital, Inc.; Russell Real Estate Advisors, Inc.; Russell Institutional Funds Management, LLC; Russell Institutional Funds, LLC; Russell Trust Company (Russell Trust), and many other entities. Several of these entities operate under the trade name/registered trademark ''Russell Investments.'' Russell and the various other affiliates controlled or under common control with Russell (the ''Affiliates'') are collectively referred to herein as ''Russell.''

3. Russell makes investments available to Client Plans, either directly or indirectly through Collective Funds. Russell has requested that the proposed exemption apply to any Client Plan for which Russell serves as investment fiduciary and for which Russell causes such Client Plan to invest in shares of Affiliated Funds, either directly or indirectly through a Collective Fund. It is represented that Russell places no limits on the minimum or maximum portion of the total assets of each Client Plan that may be invested directly in shares of an Affiliated Fund or invested indirectly in an Affiliated Fund through a Collective Fund.

4. Section 3(14)(A) and (B) of the Act defines the term ''party in interest'' to include, respectively, any fiduciary of a plan and any person providing services to a plan. Section 3(21)(A) of the Act provides, in relevant part, that a person is a fiduciary with respect to a plan to the extent that the person (i) exercises any discretionary authority or control respecting management of the Plan or any authority or control respecting management or disposition of its assets, or (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan or has any authority or responsibility to do so.

Russell entities may currently serve, and may in the future serve, as investment advisers, investment managers, trustees, or other fiduciaries with respect to Client Plans. Accordingly, pursuant to section 3(21)(A)(i) and (ii) of the Act, Russell and various other Russell affiliates may currently be, or may in the future be, fiduciaries with respect to Client Plans which engage in the proposed transactions. As fiduciaries, Russell and various other Russell affiliates may currently be, or may in the future be parties in interest with respect to Client Plans which engage in the transactions described in Section I of this proposed exemption.

Section 406(a)(l)(D) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if such fiduciary knows or should know, that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan. Where Russell or its affiliates, as investment adviser or manager to a Client Plan, recommends the investment of plan assets, directly or indirectly, in shares of a collective fund or a mutual fund that is managed or advised by Russell or its affiliates, the investment purchase transaction by a Client Plan could be viewed as a transfer to, or use by or for the benefit of, the assets of such Client Plan by Russell or its affiliates in violation of section 406(a)(1)(D) of the Act.

Under section 406(b) of the Act, a fiduciary with respect to a plan may not: (a) deal with the assets of a plan in his own interest or for his own account, (b) act, in his individual or in any other capacity in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of such plan or the interests of its participants or beneficiaries, or (c) receive any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving the assets of such plan.

Under section 406(b)(1) of the Act, Russell or its affiliates, as investment manager or investment adviser to a Client Plan, may recommend the investment of plan assets, or cause the investment of plan assets, directly or indirectly, in shares of a collective fund or mutual fund, from which Russell or its affiliates receive compensation. Under such circumstances, due to the fact that the investment of plan assets in such collective fund or mutual fund may increase Russell's or its affiliates' compensation in connection with services provided to such fund, Russell, directly or indirectly through its affiliates, would be dealing with the assets of such Client Plan for its own interest or personal account in violation of section 406(b)(1) of the Act.

With respect to section 406(b)(2) of the Act, Russell, acting in its capacity as investment manager or investment adviser, could cause a Client Plan to invest in, or could recommend that a Client Plan invest in, directly or indirectly, shares of a collective fund or a mutual fund that is managed or advised by Russell or its affiliates. In effect, Russell or its affiliates may be increasing their own compensation with respect to such collective fund or mutual fund. As such, at the Plan-level, Russell or its affiliates may be acting with interests that are divergent from those of the Plan, thus potentially violating section 406(b)(2) of the Act.

With respect to section 406(b)(3) of the Act, Russell or its affiliates, as investment manager or investment adviser to a Client Plan, may receive investment advisory fees and ''secondary services'' fees from one or more collective funds or mutual funds in connection with a Client Plan's investment in such funds, subject to the terms and conditions of this proposed exemption, if granted. The Applicant notes that the fund is a third party and such payments may implicate 406(b)(3) of ERISA.

Thus, in the absence of an administrative exemption, the covered transactions described in Section I of this proposed exemption would violate sections 406(a)(1)(D) and (b) of the Act. If granted, this exemption would be effective as of June 1, 2014.

The Collective Funds and the Affiliated Funds

5. Russell's Collective Funds currently include various bank-maintained collective investment trusts and insurance company pooled separate accounts. Currently, to the extent that the investment of Client Plan assets into Russell Collective Funds may involve one or more prohibited transactions, Russell believes that the exemption afforded by section 408(b)(8) of the Act should apply.[55]

6. The Affiliated Funds are a series of mutual funds managed by RIMCo, and may include other Affiliated Funds to be established in the future by Russell. The Affiliated Funds are open-end investment companies registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended. Russell may also serve as dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Services, including brokerage services, to an Affiliated Fund.

Prohibited Transaction Exemption 77–4 (PTE 77–4)

7. It is represented that all of the Russell entities to which the proposed exemption, if granted, would apply are currently part of the same controlled group. In this regard, Russell maintains that—if and to the extent that Russell invests Client Plan assets (directly or indirectly via Collective Funds) in Affiliated Funds, such Russell entities can rely on the relief provided pursuant to PTE 77–4 (42 FR 18732 (April 8, 1977))3.[56]

PTE 77–4 provides an exemption from section 406 of the Act and section 4975 of the Code for the purchase and for the sale by a plan of shares of a registered, open-ended investment company where the investment adviser of such fund: (a) Is a plan fiduciary or affiliated with a plan fiduciary; and (b) is not an employer of employees covered by the plan. The conditions of PTE 77–4 do not permit the payment by a plan of commissions, 12b–1 fees, redemption fees, and similar fees. PTE 77–4 also requires the provision of prior disclosures (*e.g.,* fee information and a current prospectus) to a second fiduciary, as well as written authorization from such second fiduciary for any changes in the fund fee rates. Finally, PTE 77–4 prohibits the payment of double investment advisory fees and similar fees with respect to plan assets invested in such shares for the entire period of such investment.

8. Russell represents that the requested relief is essentially the same as that afforded by PTE 77–4, with the exception of the use of a ''negative consent'' procedure, as discussed below for: (1) Approving Fee Increases with respect to Affiliated Funds, and (2) approving in advance the addition of Affiliated Funds (not previously authorized) as investments ''inside'' a Russell Collective Fund, subject to notice and a right to terminate the original approval at the time a new Affiliated Fund is proposed to be added.

With respect to the PTE 77–4 requirement of ''affirmative'' consent, Russell maintains that obtaining advance written approval from a Second Fiduciary can be difficult, particularly in the case of a Collective Fund, where a Second Fiduciary from every investing Client Plan must provide written approval before fees payable to Russell by an Affiliated Fund in which such Client Plans invest indirectly via a Collective Fund can be increased, or before a new investment in an Affiliated Fund that was not previously authorized can be made. Affirmative consent may also be difficult to obtain in a timely fashion in the context of smaller Client Plans. If advance written approval is not obtained from the Second Fiduciary of each affected Client Plan, then PTE 77–4 may not apply and Russell may violate the restrictions of section 406(a) and 406(b) of the Act.

Negative Consent for Fee Increases

9. With respect to fee increases, in order to avoid the delays associated with obtaining advance written approval from the Second Fiduciary of each affected Client Plan, Russell requests an individual administrative exemption which would allow for a negative consent procedure. Fee Increases are defined in Section IV(l) and include: (a) Any increase in the rate of a fee previously authorized in writing by the Second Fiduciary of an affected Client Plan, (b) any increase in any fee that results from an addition of services for which a fee is charged, (c) any increase in any fee that results from a decrease in the number or kind of services performed for such fee over an existing rate for such service previously authorized by the Second Fiduciary, and (d) any increase in a fee that results from Russell changing from one of the fee methods to another of the fee methods.

To obtain negative consent authorization with regard to a Fee Increase, Russell will have to provide to the Second Fiduciary of any Client Plan invested directly or indirectly in shares of an Affiliated Fund certain disclosures, in writing, thirty (30) days in advance of any proposed Fee Increase, including but not limited to any Fee Increase for Secondary Services, as such services are described below. Such disclosures are to be delivered by regular mail or personal delivery (or if the Second Fiduciary consents by electronic means), and are to be accompanied by a Termination Form and instructions on the use of such form.

Notwithstanding the requirement for thirty (30) days advance notice of a Fee Increase, the proposed exemption would permit Russell to implement a Fee Increase, without waiting until the expiration of the 30 day period, provided that implementation of such Fee Increase does not start before Russell delivers to each affected Client Plan the Notice of Intent of Change of Fees, as described in Section II(k), and provided further that any affected Client Plan receives a cash credit equal to its pro rata share of such Fee Increase, for the period from the date of the implementation of such Fee Increase to the earlier of the date of the termination of the investment or the thirtieth (30th) day after the date Russell delivers the Notice of Change of Fee to the Second Fiduciary of each affected Client Plan. In addition, Russell must pay to each affected Client Plan interest on such cash credit. An independent auditor, on at least an annual basis, will verify the proper crediting of the pro rata share of each such Fee Increase and interest.

An audit report shall be completed by such auditor no later than six (6) months after the period to which it relates.

Failure of the Second Fiduciary to return the Termination Form or to provide some other written notification of the intent to terminate within a certain period of time will be deemed to be approval of the proposed Fee Increase, including but not limited to an increase in the fee for Secondary Services.

Negative Consent for New Affiliated Funds

10. Russell further requests that the proposed exemption permit a Russell Collective Fund holding the assets of a Client Plan, such us a Target Date Fund, to purchase shares of an Affiliated Fund

[55] The Department, herein, is expressing no opinion in this proposed exemption regarding the reliance of Russell on the relief provided in section 408(b)(8) of the Act, nor is the Department offering any view as to whether Russell satisfies the conditions, as set forth in 408(b)(8).

[56] The Department, herein, is expressing no opinion in this proposed exemption regarding the reliance of Russell on the relief provided by PTE 77–4, nor is the Department offering any view as to whether Russell satisfies the conditions, as set forth in PTE 77–4.

not previously affirmatively authorized by the Second Fiduciary of such Client Plan, provided: (a) The organizational document of such Collective Fund expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund and such organizational document is disclosed initially to such Client Plan; and (b) Russell satisfies the requirements of the negative consent procedure for obtaining the approval of the Second Fiduciary for each Client Plan invested in such Collective Fund at the time Russell proposes to add an Affiliated Fund to such Collective Fund's portfolio.

Specifically, the negative consent procedure would entail that the Second Fiduciary of each Client Plan invested in such Collective Fund receives in advance: (a) a notice of Russell's intent to add an Affiliated Fund to the portfolio of such Collective Fund; and (b) certain disclosures in writing, including a summary prospectus of such Affiliated Fund. The disclosures are delivered by regular mail or personal delivery (or if the Second Fiduciary consents, by electronic means), and are accompanied by a Termination Form and instructions on the use of such form.

Failure of the Second Fiduciary to return the Termination Form or to provide some other written notification of the intent to terminate within a certain period of time will be deemed to be approval of the investment by such Collective Fund in such Affiliated Fund.

Authorizations for fee increases and new affiliated funds may also be made affirmatively, in writing, by a Second Fiduciary, in a manner that is otherwise consistent with the requirements of the exemption.

11. Russell represents that the negative consent procedures, described in the paragraphs above, are more efficient, cost effective, and administratively feasible than the advance written approval from the Second Fiduciary, as described in PTE 77–4. It is represented that the negative consent procedure avoids the administrative delays that would result if advance written approval from the Second Fiduciary were required.

It is further represented that because the Second Fiduciary of each Client Plan will receive all of the necessary disclosures and will have an opportunity to terminate the investment in any Affiliated fund without penalty, such Client Plan and its participants and beneficiaries are adequately protected. Further, to the extent that Russell may find it desirable from time to time to create an Affiliated Fund with new investment goals, the negative consent procedure will facilitate the addition of an Affiliated Fund into the portfolios of Russell's Collective Funds.

Electronic Disclosures

12. Russell intends that it may utilize electronic mail with hyperlinks to documents required to be disclosed by this proposed exemption. Russell agrees that it will ''actively'' satisfy the various disclosure requirements of this proposed exemption by transmitting emails, rather than relying on ''passive'' postings on a Web site. It is represented that this method of disclosure will be consistent with the Department's regulations at 29 CPR section 2520.104b–l. Client Plans which do not authorize electronic delivery will receive in advance hard copies of the documents required to be disclosed, and hard copies of documents will also be available on request.

Termination

13. A Client Plan invested directly in shares of an Affiliated Fund or invested indirectly through a Collective Fund will have an opportunity to terminate and withdraw from investment in such Affiliated Fund, and, as applicable, to terminate and withdraw from investment in such Collective Fund in the event of a Fee Increase and in the event of the addition of an Affiliated Fund to the portfolio of a Collective Fund.

In this regard, a Second Fiduciary will be provided with a Termination Form at least annually and may terminate the authorization to invest directly in shares of an Affiliated Fund or indirectly through a Collective Fund, at will, without penalty to a Client Plan. Termination of the authorization by the Second Fiduciary of a Client Plan investing directly in shares of an Affiliated Fund will result in such Client Plan withdrawing from such Affiliated Fund. Termination of the authorization by the Second Fiduciary of a Client Plan investing indirectly in shares of an Affiliated Fund through a Collective Fund will result in such Client Plan withdrawing from such Collective Fund.

Generally, Russell will process timely requests for withdrawal from an Affiliated Fund within one (1) Business day. Withdrawal from a Collective Fund will generally be processed within the same time frame, subject to rules designed to ensure orderly withdrawals and fairness for the withdrawing Client Plans and non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Russell more than five business (5) days after receipt by Russell of a Termination Form or other written notification of intent to terminate investment in such Collective Fund from the Second Fiduciary acting on behalf of the withdrawing Client Plan. Russell will pay interest on the settlement amount for the period from receipt by Russell of a Termination Form or other written notification of intent to terminate from the Second Fiduciary, acting on behalf of the withdrawing Client Plan, to the date Russell pays the settlement amount, plus interest thereon.

From the date a Client Plan terminates its investment in an Affiliated Fund, such Client Plan will not be subject to pay a pro rata share of the fees received by Russell from such Affiliated Fund. Likewise, from the date a Client Plan terminates its investment in a Collective Fund, such Client Plan will not be subject to pay a pro rata share of the fees received by Russell from such Collective Fund, nor will such Client Plan be subject to changes in the portfolio of such Collective Fund, including a pro rata share of any Affiliated Fund-Level Advisory Fee arising from the investment by such Collective Fund in an Affiliated Fund.

Receipt of Fees Pursuant to the Fee Methods

14. The exemption, if granted, includes conditions which detail various methods which ensure that Russell complies with the prohibition against a Client Plan paying double investment management fees, investment advisory, and similar fees for the assets of Client Plans invested directly in shares of an Affiliated Fund or invested indirectly in shares of an Affiliated Fund though a Collective Fund. These methods are described in Section II(a)(l)–(3) of this proposed exemption.

Plan-Level Fees

15. It is represented that currently to the extent that Russell provides discretionary investment management services [57] to any Client Plan that invests directly in shares of an Affiliated Fund or indirectly through a Collective Fund, Russell does not charge any investment management fee, any investment advisory fee, or any similar fee directly to such Client Plan.[58] If, in the future, Russell were to do so, this

[57] Investment management services do not include Asset Allocation Services, as defined above in Section IV(p).

[58] The Department, herein, is not providing relief for the receipt by Russell of a Plan-Level Management Fee for investment management services provided at the plan-level by Russell to a Client Plan.

proposed exemption would require Russell to use the methods, as described in Section II(a) of this exemption, as applicable, so as to avoid receiving ''double'' investment management, investment advisory, and similar fees.

The Collective Fund-Level Management Fee

16. With respect to Collective Funds that are collective investment trusts, Russell Trust currently charges a Trustee Fee that would cover non-fiduciary administrative, custody and record keeping services and may also cover fiduciary investment advisory/management services. If and to the extent that, in the future, Russell causes its Collective Funds to invest in Affiliated Funds, Russell will utilize the methods, described in Section II(a)(2) and in Section II(a)(3), as applicable, so as to avoid charging ''double'' investment advisory and similar fees.

The Affiliated Fund-Level Advisory Fee

17. The Affiliated Fund-Level Advisory Fees are described in the summary prospectus for an Affiliated Fund and include fees for investment advisory services and fees for similar services which Russell receives as compensation for the provision of such services to such Affiliated Fund.

Russell may also charge Plan-Level Management Fees and Collective Fund-Level Management Fees with respect to a Client Plan. Where a Client Plan invests in an Affiliated Fund through a Plan-Level and/or a Collective Fund-Level investment management arrangement, in order to avoid receiving double investment management fees with respect to the Client Plan's investment in an Affiliated Fund, Russell must comply with the conditions, as set forth in Section II(a) of this exemption, as applicable.

Receipt of Fees for Secondary Services

18. Russell also receives from an Affiliated Fund various fees and expenses for dividend disbursing agency, transfer agency, and similar services, including brokerage services. It is represented that all such services are treated as ''Secondary Services.'' The term ''Secondary Services'' is defined above in Section IV(i), to mean a service other than an investment management service, an investment advisory service, and any similar service, which is provided by Russell to an Affiliated Fund, including but not limited to, accounting, administrative, brokerage, and other services. It is represented that all fees for Secondary Services received by Russell at this time are paid to Russell directly by the Affiliated Funds. The negative consent procedure applicable for a Fee Increase for Secondary Services is discussed above in Representation 9.

Russell affiliates may receive commissions for the performance of brokerage services for the mutual funds. Under the conditions of this proposed exemption, if an Affiliated Fund places brokerage transactions with Russell, Russell will provide the Second Fiduciary of each such Client Plan, at least annually, the disclosure described in Section II(o) of this proposed exemption.

19. It is represented that the proposed exemption is in the interest of Client Plans, because it will allow Russell to manage or advise with respect to the assets of such Client Plans invested in shares of an Affiliated Fund, either directly or indirectly through a Collective Fund, in an efficient or timely manner and on terms that might not otherwise be available without exemptive relief.

20. It is represented that the proposed exemption contains sufficient safeguards for the protection of the Client Plans invested in shares of an Affiliated Fund, either directly or indirectly, through a Collective Fund. Prior to any investment by a Client Plan directly or indirectly in shares of an Affiliated Fund, such investment must be authorized by the Second Fiduciary of such Client Plan, based on full and detailed written disclosure concerning such Affiliated Fund.

It is further represented that the proposed exemption is protective of the rights of Client Plans, because any Fee Increase or the addition of an Affiliated Fund to the portfolio of a Collective Fund will be on terms monitored and approved by the Second Fiduciary, who will have the ability to avoid the effect of such Fee Increase and the effect of the addition of an Affiliated Fund to the portfolio of a Collective Fund. Additionally, each investment of the assets of a Client Plan in shares of an Affiliated Fund, either directly or indirectly, will be subject to the ongoing ability of the Second Fiduciary of such Client Plan to terminate the investment in such Affiliated Fund and to terminate the investment in such Collective Fund, without penalty to such Client Plan at any time upon written notice of termination to Russell.

It is also represented that the proposed exemption is protective of the rights of Client Plans, because any Fee Increase or the addition of an Affiliated Fund to the portfolio of a Collective Fund will be on terms monitored and approved by the Second Fiduciary who will have the ability to avoid the effect of such Fee Increase and the effect of the addition of an Affiliated Fund to the portfolio of a Collective Fund. Furthermore, each investment of the assets of a Client Plan in shares of an Affiliated Fund, either directly or indirectly through a Collective Fund, will be subject to the ongoing ability of the Second Fiduciary of such Client Plan to terminate the investment in such Affiliated Fund and to terminate the investment in such Collective Fund, without penalty to such Client Plan (including any fee or charge related to such penalty) at any time upon written notice of termination to Russell.

In addition to the initial disclosures, Russell will provide to such Second Fiduciary ongoing disclosures regarding such Affiliated Funds. Moreover, Russell will respond to inquiries from a Second Fiduciary and will provide any other reasonably available information to a Second Fiduciary upon request.

Finally, Russell, in its fiduciary capacity, will:

(a) Act in the Best Interest of the Client Plans; (b) charge fees which are reasonable in relation to the total services it provides to Client Plans; and (c) not make misleading statements to Client Plans regarding recommended investments, fees, material conflicts of interest, and any other matters relevant to a Client Plan's investment decisions.

21. It is represented that the proposed exemption is administratively feasible because the subject transactions will not require continued monitoring or other involvement on behalf of the Department or the Internal Revenue Service. The use of a Termination Form will provide both a record and a regular reminder to the Second Fiduciary of a Client Plan of such plan's rights vis-à-vis investing in Affiliated Funds, either directly or indirectly through a Collective Fund.

22. Importantly, with very narrow exceptions relating to the negative consent authorizations described above, all of the conditions of PTE 77–4, as amended and/or restated, must be met.

23. In summary, Russell represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Affiliated Funds will provide Client Plans with effective investment vehicles;

(b) The receipt by Russell of an Affiliated Fund-Level Advisory Fee, and the receipt of a fee by Russell for Secondary Services will require authorization in writing in advance by a Second Fiduciary for each such Client Plan after receipt of full written disclosure;

(c) Any authorization made by a Second Fiduciary, acting on behalf of a Client Plan will be terminable at will by such Second Fiduciary, without penalty to such Client Plan (including any fee or charge related to such penalty), following receipt by Russell of a Termination Form or any other written notice of termination from such Second Fiduciary of a Client Plan invested directly in shares of an Affiliated Fund or indirectly through a Collective Fund;

(d) The Termination Form will be supplied to such Second Fiduciary at least annually;

(e) No sales commissions will be paid by Client Plans in connection with the acquisition or in connection with the sale of shares of the Affiliated Funds either directly or through a Collective Fund, and only redemption fees disclosed in the summary prospectus of an Affiliated Fund will be paid by a Client Plan;

(f) All dealings among a Client Plan, any Affiliated Fund, and Russell will be on a basis no less favorable to such Client Plan than such dealings with the other shareholders of such Affiliated Fund;

(g) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly, and the purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold indirectly through a Collective Fund, will be the NAV at the time of the transaction, and will be the same purchase price paid and the same sales price received for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time;

(h) A Client Plan investing in shares of an Affiliated Fund, either directly or indirectly, through a Collective Fund, will not pay ''double fees'' for investment management, investment advisory, and similar fees with respect to the assets of such Client Plan so invested; and

(i) An Auditor on at least an annual basis will verify the proper crediting of any Fee Increase and interest, received by a Client Plan, pursuant to Section II(k)(2), and an audit report shall be completed by such Auditor no later than six (6) months after the period to which it relates.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice include each Client Plan invested directly in shares of an Affiliated Fund, each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and each plan for which Russell provides discretionary management services at the time the proposed exemption is published in the **Federal Register**.

It is represented that notification will be provided to each of these interested persons by first class mail, within fifteen (15) calendar days of the date of the 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 such interested persons of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the 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.

FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456 (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 20th day of July, 2015.

Lyssa E. Hall,

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

[FR Doc. 2015–18144 Filed 7–24–15; 8:45 am]

BILLING CODE 4510–29–P