

EFFECTIVE DATE: This exemption, if granted, is effective as of December 10, 1996.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the applications for exemption are true and complete and accurately describe all material terms of the transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 93-40, refer to the proposed exemption and grant notice which are cited above.

Signed at Washington, DC, this 2nd day of September, 1997.

Ivan L. Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10464 et al.]

Proposed Exemptions; NatWest Securities Corporations

AGENCY: Pension and Welfare Benefits 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 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) 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.

NatWest Securities Corporation, NatWest Securities Limited, Located in New York, New York

[Application Nos. D-10464, D-10465]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set

forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. Effective May 22, 1997, the restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975 (c)(1) (A) through (D) of the Code, shall not apply to any purchase or sale of a security between an employee benefit plan and a broker-dealer affiliated with NatWest Securities Corporation and subject to British law (NatWest/UK Affiliate), if the following conditions, and the conditions of Section II, are satisfied:

(1) The NatWest/UK Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer.

(2) Such transaction is on terms at least as favorable to the plan as those which the plan could obtain in an arm's length transaction with an unrelated party.

(3) Neither the NatWest/UK Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets, and the NatWest/UK Affiliate is a party in interest or disqualified person with respect to the plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the NatWest/UK Affiliate shall not be deemed to be a fiduciary with respect to a plan solely by reason of providing securities custodial services for a plan.

B. Effective May 22, 1997, the restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the lending of securities that are assets of an employee benefit plan to an NatWest/UK Affiliate if the following conditions, and the conditions of Section II, are satisfied:

(1) Neither the NatWest/UK Affiliate (the Borrower) nor an affiliate of the Borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR

2510.3-21(c)) with respect to those assets;

(2) The plan receives from the Borrower, either by physical delivery or by book entry in a securities depository located in the United States, by the close of business on the day on which the securities lent are delivered to the Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a person other than the Borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day, a market value (or, in the case of letters of credit, a stated amount) equal to not less than 100 percent of the then market value of the securities lent. The collateral referred to in this Section I(B)(2) must be held in the United States;

(3) Prior to the making of any such loan, the Borrower shall have furnished the following items to the fiduciary for the plan who is making decisions on behalf of the plan with respect to the lending of securities (the Lending Fiduciary): (1) The most recent available audited statement of the Borrower's financial condition, (2) the most recent available unaudited statement of the Borrower's financial condition (if more recent than such audited stated), and (3) a representation that, at the time the loan is negotiated, there has been no material adverse change in the Borrower's financial condition since the date of the most recent financial statement furnished to the plan that has not been disclosed to the Lending Fiduciary. Such representation may be made by the Borrower's agreement that each such loan shall constitute a representation by the Borrower that there has been no such material adverse change;

(4) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as those which the plan could obtain in an arm's-length transaction with an unrelated party. Such agreement may be in the form of a master agreement covering a series of securities-lending transactions;

(5) The plan (1) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the Borrower, if such fee is not greater than

the plan would pay an unrelated party in an arm's-length transaction;

(6) The plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities;

(7) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of trading on that day, the Borrower shall deliver, by the close of business on the following business day, an additional amount of collateral (as described in paragraph (2)) the market value of which, together with the market value of all previously delivered collateral, equals at least 100 percent of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to the Borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities;

(8) The loan may be terminated by the plan at any time, whereupon the Borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) three business days, or (3) the time negotiated for such delivery by the plan and the Borrower, whichever is lesser; and

(9) In the event the loan is terminated and the Borrower fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (8) above, then (i) the plan may, under the terms of the loan agreement, purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Borrower under the agreement, and any expenses associated with the sale and/or purchase, and (ii) the Borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the plan, the amount of any remaining obligations and expenses not covered by the collateral plus interest at a reasonable rate. Notwithstanding the foregoing, the Borrower may, in the event the Borrower fails to return borrowed securities as described above,

replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the Lending Fiduciary.

(10) If the Borrower fails to comply with any condition of this exemption, in the course of engaging in a securities-lending transactions, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1) (A) through (D) of the Act solely by reason of the Borrower's failure to comply with the conditions of the exemption.

C. Effective May 22, 1997, the restrictions of sections 406(a)(1) (A) through (D) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code shall not apply to any extension of credit to an employee benefit plan by an NatWest/UK Affiliate to permit the settlement of securities transactions or in connection with the writing of options contracts provided that the following conditions are met:

(a) The NatWest/UK Affiliate is not a fiduciary with respect to any assets of such plan, unless no interest or other consideration is received by such fiduciary or any affiliate thereof in connection with such extension of credit; and

(b) Such extension of credit would be lawful under the Securities Exchange Act of 1934 and any rules or regulations thereunder if such act, rules or regulations were applicable.

Section II—General Conditions

A. The NatWest/UK Affiliate is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom (the S.F.A.)

B. The NatWest/UK Affiliate is in compliance with all requirements of Rule 15a-6 (17 CFR 240.15a-6) under the Securities and Exchange Act of 1934, which provides for foreign broker-dealers a limited exemption from U.S. registration requirements;

C. Prior to the transaction, the NatWest/UK Affiliate enters into a written agreement with the plan in which the NatWest/UK Affiliate consents to the jurisdiction of the courts of the United States with respect to the transactions covered by this exemption;

D. (1) The NatWest/UK Affiliate maintains or causes to be maintained within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in this section to determine whether the conditions of this exemption have been met; except that a

party in interest with respect to an employee benefit plan, other than the NatWest/UK Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the NatWest/UK Affiliate, such records are lost or destroyed prior to the end of such six year period;

(2) The records referred to in subsection (1) above are unconditionally available for examination during normal business hours by duly authorized employees of (a) the Department of Labor, (b) the Internal Revenue Service, (c) plan participants and beneficiaries, (d) any employer of plan participants and beneficiaries, and (e) any employee organization any of whose members are covered by such plan; except that none of the persons described in (c) through (e) of this subsection shall be authorized to examine trade secrets of NatWest Securities Corporation or the NatWest/UK Affiliate or any commercial or financial information which is privileged or confidential.

III—Definitions

Affiliate of a person shall include: (i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Security shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term "security" does not include swap agreements or other notional principal contracts.

Summary of Facts and Representations

1. NatWest Securities Corporation (NatWest) is a securities firm operating primarily in the United States, with additional activities in the major markets worldwide. It engages primarily in securities brokerage activities on an agency basis. Clients include major corporations, pension funds, investment

funds including mutual funds, and financial institutions.

2. NatWest has foreign affiliates worldwide who are in the business of trading securities, including a broker-dealer affiliate in London, England (the NatWest/UK Affiliate), currently NatWest Securities Limited. NatWest represents that in the ordinary course of their business as broker-dealers, these foreign affiliates customarily operate as traders in dealers markets wherein the broker-dealer purchases and sells securities for its own account and engages in purchases and sales of securities with its clients, and that such trades are referred to as principal transactions. NatWest states that in issuing Prohibited Transaction Class Exemption 75-1 (PTCE 75-1, 40 FR 50845, October 31, 1975) the Department has recognized the functions of registered broker-dealers in principal transactions on behalf of clients which are employee benefit plans covered by the Act. Part II of PTCE 75-1 provides exemptive relief from section 406(a) of the Act for principal transactions between plans and broker-dealers which are registered under the Securities Exchange Act of 1934, provided all requirements stated in Part II are satisfied. NatWest represents that, like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals. In the absence of an exemption for principal transactions, such as PTCE 75-1, those responsible for trading activities on behalf of plan investors would be prevented from engaging in transactions with those broker-dealers and banks that provide the markets for the securities and are most capable of handling such transactions.

3. NatWest represents that over the past decade, plans have increasingly invested in foreign equity and debt securities, including foreign government securities. NatWest states that plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with foreign broker-dealers such as the NatWest/UK Affiliate. However, where NatWest provides services to such plans which are covered by the Act, principal transactions with the NatWest/UK Affiliate would be prohibited by the Act. The exemptive relief afforded U.S. broker-dealers by PTCE 75-1 would not be available with respect to the NatWest/UK Affiliate because that class exemption is limited to broker-dealers registered with the U.S. Securities and Exchange Commission (S.E.C.) under the

Securities Exchange Act of 1934 (the 1934 Act). NatWest represents that its NatWest/UK Affiliate is not so registered but, instead, is governed by the rules, regulations and registration requirements of the Securities and Futures Authority of the United Kingdom (the S.F.A.). Furthermore, NatWest represents that Rule 15(a)-6 of the 1934 Act offers foreign broker-dealers limited exemption from the S.E.C. registration requirements pursuant to provisions with which the NatWest/UK Affiliate is able to comply. However, NatWest states that because of the S.E.C. registration requirement of PTCE 75-1, the NatWest/UK Affiliate is prevented from engaging in principal transactions with plans with respect to which NatWest is a party in interest, even though such affiliate is registered with the S.F.A., experienced in the markets, and able to satisfy the Rule 15(a)-6 requirements for S.E.C. registration exemption. Accordingly, NatWest is requesting an individual exemption to permit its NatWest/UK Affiliate to engage in principal transactions with plans under the terms and conditions set forth herein, which NatWest represents are equivalent to those set forth in PTCE 75-1, Part II.¹

4. The proposed exemption will be applicable only to transactions affected by an NatWest/UK Affiliate which is registered as a broker-dealer with the S.F.A. and in compliance with Rule 15(a)-6. NatWest represents that the role of a broker-dealer in a principal transaction in the United Kingdom is substantially identical to that of a broker-dealer in a principal transaction in the United States. NatWest further represents that registration of a broker-dealer with the S.F.A. is equivalent to registration of a broker-dealer with the S.E.C. under the 1934 Act. NatWest maintains that the S.F.A. has promulgated rules for broker-dealers which are equivalent to S.E.C. rules, relating to registration requirements, minimum capitalization, reporting requirements, periodic examinations, fund segregation, client protection, and enforcement. NatWest represents that the rules and regulations set forth by the S.F.A. and the S.E.C. share a common objective: The protection of the investor by the regulation of securities markets.

¹ The Department notes that the proposed principal transactions are subject to the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

NatWest explains that under S.F.A. rules, persons who manage investments or give advice with respect to investments must be registered as a "registered representative". If a person is not a registered representative and, as part of his duties, makes commitments in market dealings or transactions, that persons must be registered as a "registered trader". NatWest represents that the S.F.A. rules require each firm which employs registered representatives or registered traders to have positive tangible net worth and be able to meet its obligations as they fall due, and that the S.F.A. rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. In addition to demonstration of capital adequacy, NatWest states that the S.F.A. rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and all records relating to a counterparty, and that all records must be produced at the request of the S.F.A. at any time. NatWest states that S.F.A.'s registration requirements for broker-dealers are backed up by potential fines and penalties, and rules which establish a comprehensive disciplinary system.

5. NatWest represents that in addition to the protections which are afforded by registration with S.F.A., compliance with the requirements of Rule 15a-6 (17 CFR 240.15a-6) under the 1934 Act will offer additional protections in lieu of registration with the S.E.C. NatWest states that Rule 15a-6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "U.S. major institutional investor", provided that the foreign broker dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor", as defined in Rule 15a-6(b)(7), includes an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (the Act) if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment advisor, or (b) the employee benefit plan has total assets in excess of \$5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are *accredited investors* as defined in Rule

501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term *U.S. major institutional investor* is defined as a person that is a U.S. institutional investor that has total assets in excess of \$100 million. NatWest represents that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

NatWest represents that under Rule 15a-6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor in accordance with Rule 15a-6 must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the S.E.C. or any self-regulatory organization

(b) Provide the S.E.C. with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the S.E.C. requests and that relates to transactions effected pursuant to the Rule

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms

(2) Issue all required confirmations and statements

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a-3 (Records to be Made by Certain Exchange Members) and 17a-4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3-3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); and

(6) Participate in all oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not

the U.S. major institutional investor), and accompany the foreign associated person on all visits with both U.S. institutional and major institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

6. NatWest represents that a normal part of the execution of securities transactions by broker-dealers on behalf of customers, including employee benefit plans, is the extension of credit to customers to permit the settlement of transactions in the customary settlement period, and that such extensions of credit are also customary activities of broker-dealers in connection with the writing of option contracts. NatWest notes that exemptive relief for such transactions is provided under Part V of PTCE 75-1. However, the exemptive relief under Part V of PTCE 75-1, like that under Part II, is available only with respect to broker-dealers which are registered with the S.E.C. under the 1934 Act. Accordingly, NatWest requests that the exemption include relief for extensions of credit by the NatWest/UK affiliate in the ordinary course of the purchase or sale of securities, regardless of whether they are effected on an agency or a principal basis. The proposed exemption provides relief for extensions of credit by the NatWest/UK Affiliate to a plan to permit the settlement of securities transactions or in connection with the writing of options contracts, provided that the NatWest/UK Affiliate is not a fiduciary with respect to any assets of the plan, unless no interest or other consideration is received by the NatWest/UK Affiliate in connection with such extension of credit. The proposed exemption also requires that the extension of credit would be lawful under the 1934 Act and any rules or regulations thereunder if such act, rules, or regulations were applicable.

7. In addition to exemptive relief for principal transactions and extensions of credit in connection with the purchase or sale of securities, NatWest is also requesting exemptive relief for the lending of securities, equivalent to that provided under the terms and conditions of Prohibited Transaction Class Exemption 81-6 (PTCE 81-6, 46 FR 7527, January 23, 1981, amended at 52 FR 18754, May 19, 1987), a class exemption to permit certain loans of securities by employee benefit plans. NatWest represents that in PTCE 81-6 the Department has recognized that securities lending represents a low-risk means of enhancing the investment return of plans with respect to securities that would otherwise be idle. NatWest

represents that the conditions of Section I(B) of the proposed exemption will subject the NatWest/UK Affiliate to all of the conditions imposed on broker-dealers under PTCE 81-6, other than registration under the 1934 Act. NatWest notes that such conditions include requirements relating to daily marking to market, setting collateral at 100 percent of the market value of the securities, the rules for termination of the loan, and return of the borrowed securities. In addition, NatWest notes that the collateral will be in U.S. dollars and will be held in the United States.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) With respect to principal transactions affected by the NatWest/UK Affiliate, the exemption will enable plans to realize the same benefits of efficiency and convenience which derive from principal transactions executed pursuant to Part II of PTCE 75-1 by broker-dealers registered in the United States; (2) With respect to extensions of credit by the NatWest/UK Affiliate in connection with purchases or sales of securities, the exemption will enable the NatWest/UK to extend credit in the ordinary course of business to affect the transactions within the customary settlement period or in connection with the writing of options contracts; (3) With respect to securities lending transactions affected by the NatWest/UK Affiliate, the exemption will enable plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions executed pursuant to PTCE 81-6 by broker-dealers registered in the United States; and (4) The proposed exemption generally imposes terms and conditions upon the transactions executed by the NatWest/UK Affiliate which are the same as those imposed on U.S. broker-dealers under PTCE 75-1 and PTCE 81-6.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Carl M. Callaway Individual Retirement Account (IRA) Located in Huntington, West Virginia

[Application No. D-10469]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847,

August 10, 1990). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed transaction involving a sale or exchange of certain securities (the Sale) by the IRA to Carl M. Callaway and his wife, Marianna F. Callaway, both disqualified persons with respect to the IRA; provided the following conditions are satisfied: (a) The sale or exchange is a one-time transaction constituting an exchange of securities approximately equal in value and any difference in value occurring is immediately eradicated with cash payments by either the Callaways or the IRA, in order to equalize the value of the exchanged assets, (b) the IRA incurs no commissions or other expenses in connection with the transaction, (c) the transaction involves only securities that have a fair market value on the date of the exchange which is objectively determinable through independently and regularly published market prices and quotations, and (d) the IRA tenders as consideration stock valued at an amount equal to the reported closing price of the stock on the date of the Sale and the IRA receives U.S. Treasury notes valued at the reported closing bid on the date of the Sale, plus the accrued interest the notes earned to the date of the Sale.

Summary of Facts and Representations

1. The IRA is an individual retirement account as described under 408(a) of the Code. The IRA was established by Carl M. Callaway who is the sole participant. The custodian of the assets of the IRA is Hilliard-Lyons Inc., a registered broker/dealer headquartered in Louisville, KY, which has an office in Huntington, WV serving the IRA. As of June 27, 1997, the total assets of the IRA were \$1,213,813, of which 2.65 percent consists of U.S. Treasury notes and 6.14 percent are corporate notes. There are 53.37 percent of the total assets invested in common stocks and 19.09 percent in mutual funds and 18.66 percent of the total assets is held in cash.

2. Mr. Callaway is semi-retired and presently taking distributions from the IRA. Mr. Callaway desires to reduce the amount of common stock in the IRA and increase its investments in quality corporate bonds and U.S. Treasury securities. Mr. Callaway is concerned that the distributions he is receiving will be adversely affected because, in his opinion, the current holdings of the IRA lack diversification and expose the IRA to the risk inherent in holding thinly traded stocks and other

investments that are subject to fluctuations in the stock markets.

Mr. Callaway represents that in order to alleviate this concern, the IRA needs to acquire fixed income investments that are recognizably sound and publicly traded and will generate sufficient cash flows which are able to make the distributions in a timely fashion. To accomplish this portfolio change without the IRA incurring extensive commissions or possible losses from the bid-ask spreads on the securities markets, Mr. Callaway proposes the sale or exchange of certain stocks in the IRA for U.S. Treasury notes owned individually by himself and his wife. Mr. Callaway further represents that the proposed exchange will involve only securities approximately equal in value and the parties to the exchange will provide for cash payments to equalize the value of the securities exchanged. Also Mr. Callaway represents that the value of all investments in this transaction are determinable through regularly published, objective, and independent market prices and quotations.

3. Mr. Callaway proposes that the IRA will exchange with Mrs. Callaway the following shares of stock and receive the following U.S. Treasury notes at closing market values reported on the date of the Sale:

| Company | Ticker symbol & exchange |
|------------------------------------|--------------------------|
| (a) 850 shares, Hewlett Packard. | HWP (NYSE) |
| (b) 4,970 shares, Horizon Bancorp. | HZWV (NASDAQ) |
| (c) 500 shares, IBM | IBM (NYSE) |
| (d) 575 shares, Motorola | MOT (NYSE) |
| (e) 650 shares, Nokia | NOKA (NYSE) |

U.S. Treasury Notes

- (a) \$25,000 U.S. Treasury note, 7 $\frac{1}{8}$ %—due 10/15/98
- (b) \$215,000 U.S. Treasury note, 7 $\frac{1}{4}$ %—due 08/15/04
- (c) \$50,000 U.S. Treasury note, 7 $\frac{7}{8}$ %—due 11/15/04

In addition Mr. Callaway proposes that the IRA will exchange with himself the following shares of stock for the following U.S. Treasury note:

- (a) 2,000 shares, Horizon Bancorp—HZWV (NASDAQ)
- (b) \$50,000 U.S. Treasury note, 7 $\frac{3}{4}$ %—due 2/15/01

4. Mr. Callaway represents that the Sale would permit the custodian of the IRA to make the proposed exchanges with the Callaways and promptly document the transaction and publish it in the monthly statement for the IRA. Furthermore it is represented that the

Sale enables the IRA diversify its portfolio. Mr. Callaway represents that Sale will occur only with the utilization of the fair market values of the involved securities based on the closing prices on the date of the Sale for the stock and the bid prices for the U.S. Treasury notes.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 4975(c)(2) of the Code because (a) the sale and exchange will be a one-time transaction involving securities for which market values are readily ascertainable; (b) the IRA will incur no commissions or other expenses from the Sale; (c) the IRA will receive not less than the fair market value of its securities involved in the Sale; and (d) the participant of the IRA has determined that the proposed transaction is appropriate for and in the best interest of his IRA and he desires that the transaction be consummated.

Notice to Interested Persons

Because Mr. Callaway is the only participant in his IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219-8881. (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 of 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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 2nd day of September, 1997.

Ivan Strasfeld,

*Director of Exemption Determinations
Pension and Welfare Benefits Administration,
Department of Labor.*

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INTERNATIONAL BOUNDARY AND WATER COMMISSION, U.S. SECTION

Privacy Act of 1974; System of Records

AGENCY: International Boundary and Water Commission.

ACTION: Amendment of system of records to include new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the International Boundary & Water Commission is issuing notice of our intent to amend the system of records to include new routine uses. We invite public comment on this publication.

DATES: The changes will become effective as proposed, on October 1, 1997, unless comments which would warrant our preventing the changes from taking effect are received on or before 30 days from the date of this notice.

ADDRESSES: Interested individuals may comment on this publication by writing to (Richard L. Livengood, IBWC, 4171 N. Mesa, Suite C-310, El Paso, TX 79902). All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: (Richard L. Livengood, IBWC, 4171 N. Mesa, Suite C-310, El Paso, TX 79902).

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Additions to Routine Use

Pursuant to the Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the International Boundary and Water Commission will disclose data from its payroll system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09-90-0074. Information on this system was last published at 61 FR 38754, July 25, 1996.

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support. Effective October 1, 1997, the FPLS will be enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. Effective October 1, 1998, the FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State Child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The data to be disclosed by The International Boundary and Water Commission to the FPLS include: Wages earned, income taxes paid both state and federal.