State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 24th day of January, 1997.

Margaret Washington,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–2094 Filed 1–30–97; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–10341, et al.]

Proposed Exemptions; Orders Distributing Co., Inc. Profit Sharing Plan and 401(k) Retirement Savings Plan (the Plan)

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 restriction 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 request 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. 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, N.W., Washington, D.C. 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, N.W., Washington, D.C. 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.

Orders Distributing Co., Inc. Profit Sharing Plan and 401(k) Retirement Savings Plan (the Plan) Located in Greenville, South Carolina

[Application No. D–10341]

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). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan of certain units of limited partnership interests (the Units) to Orders Distributing Co., Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(1) The terms of the sale were at least as favorable to the Plan as those the Plan could have obtained in a comparable arm's length transaction with an unrelated party; (2) the sale was a one-time transaction for cash; (3) the Plan paid no commissions nor other expenses relating to the sale; (4) the Plan received an amount no less than the fair market value of the Units as of the date of the sale, as determined by an independent appraisal; and (5) within 30 days of publication in the Federal Register of the notice of the grant of this exemption, the Employer makes an additional cash contribution to the Plan to make up for opportunity costs attributable to the Units.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of January 1, 1995.

Summary of Facts and Representations

1. The Plan is a profit sharing/401(k) plan sponsored by the Employer. The Employer, a South Carolina corporation, is engaged in the business of marketing and selling products for the floor covering industry, including carpeting, vinyl, wood and tile flooring, and installation materials, and is located in Greenville, South Carolina. As of September 5, 1996, the Plan had approximately 155 participants and beneficiaries and total assets of approximately $3,525,785. The trustees of the Plan are William H. Orders, the chairman of the board of directors and a shareholder of the Employer, and C. Michael Smith, an officer, director, and shareholder of the Employer.

2. Among the assets of the Plan were the Units, which were two shares in GolfSouth 1994, L.P. (GolfSouth) purchased in May 1994 by the Plan directly from GolfSouth in a private offering (the Offering) for a total of $95,000.[1] GolfSouth is a limited partnership that owns and operates three golf courses. On January 1, 1995,

[1] The Department expresses no opinion herein as to whether the acquisition of the Units by the Plan violated any of the provisions of Part 4 of Title I in the Act.

the Employer purchased the Units from the Plan for $95,000, their cost to the Plan.

3. As documented by the minutes of the Plan's Administrative Committee (the Committee) dated December 15, 1994, the decision to sell the Units was made in anticipation of a proposed modification to the Plan. Effective as of April 1, 1995, the Plan permitted participants to direct the investment of their respective individual accounts. The applicant was a convenient and willing buyer, and Messrs. Orders and Smith, who comprise the members of the Committee, approved a sale of the Units to the Employer.

4. The applicant represents that the Employer's purchase price of $95,000 was not less than the fair market value of the Units as of the date of the sale, as determined by an independent appraisal. By letter dated December 29, 1994, GolfSouth Capital, Inc., the General Partner of GolfSouth, opined that the fair market value of the Units on or near December 31, 1994 remained at $95,000, the price paid for the Units. The Offering for GolfSouth was still in progress at that time. After the First and Second Closings for the Offering had transpired, a Third and Final Closing made investments in GolfSouth available at the same per unit price at which the Units held by the Plan were acquired. The letter dated December 29, 1994 states, ''[T]here is no apparent diminution in value of the investment at this time, but it is too early to assign any increase in value.'' The applicant maintains, therefore, that the terms of the sale were at least as favorable to the Plan as those the Plan could have obtained in a comparable arm's length transaction with an unrelated party. The sale was a one-time transaction for cash, and the Plan paid no commissions nor other expenses relating to the sale.

Because the Plan did not receive a rate of return on its investment in the Units, the Employer will make, within 30 days of publication in the Federal Register of the notice of the grant of this exemption, an additional payment of $3,163 to the Plan for opportunity costs attributable to the Units for the period from May to December, 1994.[2] The costs of this exemption application will be borne by the Employer.

[2] The Department notes the applicant's representation that the figure of $3,163 was calculated based upon the short-term applicable federal rate (AFR) for May 1994, or 4.95%. The AFR is used by the Internal Revenue Service for determining reasonable rates of interest. The applicant represents, therefore, that the AFR is an appropriate measure for calculating opportunity costs attributable to the Units.

5. The applicant represents that selling the Units to the Employer was in the interests of the Plan because the sale enabled the Plan to divest itself of illiquid and indivisible assets that were difficult to value, thus facilitating the implementation of participant-directed accounts.

The applicant represents they were not aware that the sale would constitute a violation of the prohibited transaction provisions of the Act until July 1996, after Ernst and Young, L.L.P., the Employer's accountants, had conducted the annual audit of the Plan. Upon the recommendation of legal counsel, the Employer expeditiously filed an application for a retroactive exemption with the Department.

6. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(1) The terms of the sale were at least as favorable to the Plan as those the Plan could have obtained in a comparable arm's length transaction with an unrelated party; (2) the sale was a one-time transaction for cash; (3) the Plan paid no commissions nor other expenses relating to the sale; (4) the Plan received an amount no less than the fair market value of the Units as of the date of the sale, as determined by the General Partner of GolfSouth; and (5) within 30 days of publication in the Federal Register of the notice of the grant of this exemption, the Employer will make an additional cash contribution to the Plan to make up for opportunity costs attributable to the Units.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by first-class mail within 15 days of the date of publication of the notice of pendency 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/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 45 days of the date of publication of this notice in the Federal Register.

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

Thompson, Siegel and Walmsley, Inc. (TS&W) Located in Richmond, Virginia

[Application No. D–10369]

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

If the exemption is granted, the restrictions of section 406(a) and 406(b) 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 (F) of the Code, shall not apply to the following transactions which occurred between April 16, 1996 and August 26, 1996, provided that the conditions set forth in Section II below were met:

(a) The acquisition by the Lewis-Gale Clinic, Inc. Profit Sharing Plan (the Plan) on April 16, 1996, of shares of the TS&W Equity Portfolio and Fixed Income Portfolio (the TS&W Portfolios), each a series of the UAM Funds, Inc. (the UAM Funds), an open-end investment company registered under the Investment Company Act of 1940 (the '40 Act), with respect to which TS&W serves as the investment adviser, through the in-kind transfer of assets of a separate account known as ''Fund E'' managed by TS&W as a fiduciary for the Plan;

(b) The subsequent sale of shares of the TS&W Portfolios by Fund E of the Plan on a cash basis;

(c) The acquisition and sale of shares of the DSI Money Market Portfolio (the DSI Portfolio), another series of the UAM Funds whose investment adviser—Dewey Square Investors Corporation (DSI)—is an affiliate of TS&W, by Fund E of the Plan on a cash basis;

(d) The receipt of fees from the TS&W Portfolios and the DSI Portfolio (collectively, the Portfolios) by TS&W and DSI, respectively, for acting as an investment adviser for the Portfolios; and

(e) The receipt of fees from the Portfolios by UAM Fund Services, Inc. (UAM Fund Services), an affiliate of TS&W and DSI, for performing secondary services for the Portfolios (e.g. administrative, fund accounting, dividend disbursing and transfer agent services).

Section II—Conditions

(a) The Plan's in-kind acquisition of shares of the TS&W Portfolios were one-time transactions; the initial cash acquisition of shares of the DSI Portfolio was a one-time transaction; and all subsequent cash acquisitions and sales of the Portfolios were the result of routine contributions and withdrawals by Plan participants and beneficiaries which were not subject to the control or influence of TS&W and the routine reallocation of assets of Fund E by TS&W pursuant to its responsibility to allocate assets of Fund E between the TS&W Portfolios, the TS&W International Portfolio and the DSI Portfolio.

(b) No sales commissions or other fees were paid by the Plan in connection with the acquisition of shares of the Portfolios and no redemption fees were paid by the Plan in connection with the sale by the Plan of such shares.

(c) A fiduciary of the Plan who was independent of and unrelated to TS&W (the Second Fiduciary) received advance notice of the transactions and full disclosure of information concerning the Portfolios which included, but was not limited to, the following:

(1) A current prospectus for each Portfolio;

(2) The fees for investment advisory and other services charged to and paid by the Plan (and by the Portfolios) to TS&W, DSI, UAM Fund Services or an affiliate, including the nature and extent of any differential between the rates of the fees; and

(3) The reasons why TS&W considered investments in the Portfolios to be appropriate for the Plan.

(d) On the basis of the information described in paragraph (c) above, the Second Fiduciary approved the transactions, including the initial in-kind transfer of Fund E's assets to the TS&W Portfolios in exchange for shares of such Portfolios, prior to the transactions.

(e) The Second Fiduciary acknowledged in a writing dated August 26, 1996, that it received the information described in paragraph (c) above prior to the transactions and that it approved all of the subject transactions involving the Portfolios in advance. In addition, the Second Fiduciary adopted resolutions approving, ratifying and affirming the in-kind transfer of assets of Fund E to the TS&W Equity and Fixed Income Portfolios (in exchange for shares of such Portfolios) and the cash purchases of the shares of the DSI Portfolio as of April 15, 1996.

(f) With respect to the in-kind transfer of securities from Fund E to the TS&W Portfolios, the Plan received shares of each of the Portfolios which had a total net asset value equal to the value of all of the Plan's assets transferred in-kind to such Portfolio on the date of the transfer (i.e. April 16, 1996).

(g) The assets of the Plan transferred to the TS&W Portfolios were publicly-traded securities that were valued at their closing prices on the day they were accepted by the Portfolios (i.e. April 16, 1996), as determined by independent market sources in accordance with Rule 17a–7(b), issued by the Securities and Exchange Commission (SEC) under the '40 Act, by a party unrelated to TS&W and its affiliates.

(h) The terms of the transactions were no less favorable to the Plan than those which were obtainable in an arm's-length transaction with an unrelated party at the time of such transactions.

(i) TS&W sent by regular mail to the Second Fiduciary, not more than seven (7) days after the completion of the in-kind transfers to the TS&W Portfolios, a written confirmation which contained the following information: (1) Date of the transfers, (2) the number of shares of each Portfolio acquired by the Plan, (3) the price paid per share in each Portfolio, and (4) the total dollar amount involved in each transfer.

(j) Cash acquisitions and sales of shares of the Portfolios were reported to the Second Fiduciary in the normal course by means of regular transaction statements issued by the UAM Funds.

(k) The combined total of all fees received by TS&W and its affiliates for the provision of services to the Plan, and in connection with the provision of services to the Portfolios in which the Plan invested, was not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(l) The Plan did not pay any plan-level investment management fees, investment advisory fees, or similar fees to TS&W or an affiliate with respect to any of the assets of such Plan which were invested in shares of any of the Portfolios. This condition does not preclude the payment of investment advisory fees or similar fees by the Portfolios to TS&W or an affiliate under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act.

(m) Within 10 days of the date that this proposed exemption is granted, TS&W pays the Plan an amount equal to the additional net fees attributable to Fund E which TS&W and its affiliates received during the period covered by this proposed exemption (i.e., April 17, 1996 until August 26, 1996) as a result of the investment of Fund E's assets in the Portfolios, plus a reasonable rate of interest on such amount which is at least equal to the rate of return such assets would have earned as assets held in Fund E during this period.

(n) Neither TS&W, DSI nor any affiliate thereof received fees payable pursuant to Rule 12b–1 under the '40 Act in connection with the transactions involving the Portfolios.

(o) All dealings between the Plan and the Portfolios were on a basis no less favorable to the Plan than dealings with other shareholders of the Portfolios.

(p) TS&W provides the Second Fiduciary of the Plan with the following:

(1) A copy of the proposed exemption and/or the final exemption, if granted, when such documents become available;

(2) A copy of an updated prospectus of each Portfolio at least annually; and

(3) A report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other written statement) which contains a description of all fees paid by the Portfolios to TS&W, DSI or any affiliate thereof, upon the request of the Second Fiduciary.

(q) All acquisitions and sales of shares of the Portfolios on and after August 26, 1996 are made in compliance with the terms and conditions of Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977).[3]

(r) TS&W and its affiliates maintain for a period of six years the records necessary to enable the persons described below in paragraph (s) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of TS&W or an affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than TS&W or an affiliate 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

[3] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that certain conditions are met.

4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (s) below.

(s) (1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (r) 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,

(ii) Any fiduciary of the Plan who has authority to acquire or dispose of shares of the Portfolios owned by the Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (s)(1)(ii) and (iii) shall be authorized to examine trade secrets of TS&W or its affiliates, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''TS&W'' means Thompson, Siegel and Walmsley, Inc. and any affiliate thereof as defined below in paragraph (b) of this section.

(b) 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.

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

(d) The term ''Portfolios'' means the TS&W Equity and Fixed Income Portfolios and the DSI Money Market Portfolio, each a series of the UAM Funds, Inc., an open-end series investment company registered under the '40 Act, with respect to which TS&W and DSI, respectively serve as the investment adviser and for which UAM Fund Services provides certain ''secondary services'' as defined below in paragraph (h).

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

(f) 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.

(g) The term ''Second Fiduciary'' means a fiduciary acting for the Plan who is independent of and unrelated to TS&W and its affiliates.[4] For purposes of this proposed exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to TS&W if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with TS&W or an affiliate;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of TS&W or an affiliate (or is a relative of such persons);

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

(h) The term ''Secondary Service'' means a service other than an investment management, investment advisory, or similar service, which was provided by TS&W's affiliate, UAM Fund Services, to the Portfolios.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective for the subject transactions from April 16, 1996 until August 26, 1996.

Summary of Facts and Representations

1. TS&W is an investment adviser registered under the Investment Advisers Act of 1940. TS&W is a wholly-owned subsidiary of United Asset Management Corporation (UAM). Several of UAM's wholly-owned subsidiaries, including TS&W, serve as investment advisers to series of UAM Funds, Inc. (the UAM Funds),[5] an open-end, series management investment company registered under the '40 Act. Another wholly-owned subsidiary of UAM Funds, UAM Fund Distributors, Inc. (UAM Distributors) serves as sole distributor of shares of the UAM Funds.

TS&W serves as an investment adviser to several individual and institutional clients, including employee benefit plans covered under the Act. Another of UAM's wholly-owned subsidiaries, Dewey Square Investors Corporation (i.e. DSI), is the investment adviser for additional series of the UAM Funds. As discussed further below, the transactions which are the subject of this proposed exemption involve the acquisition and sale of shares of a series of the UAM Funds by a single employee benefit plan—the Lewis-Gale Clinic, Inc. Profit Sharing Plan (i.e. the Plan)—for which TS&W serves as a fiduciary under the Act.

2. The UAM Funds, for which TS&W acts as an investment adviser, that are involved in the transactions covered by this proposed exemption, are the TS&W Equity Portfolio, the TS&W Fixed Income Portfolio, and the TS&W International Equity Portfolio (referred to hereafter collectively as ''the Portfolios'' or individually as a ''TS&W Portfolio'').

TS&W is paid an asset-based annual fee for its investment advisory services to each of the Portfolios. These fees, which are a specified percentage of the net asset value of the particular Portfolio, are as follows: (i) 0.75 percent for the TS&W Equity Portfolio; (ii) 1.00 percent for the TS&W International Equity Portfolio; and (iii) 0.45 percent for the TS&W Fixed Income Portfolio.

Each TS&W Portfolio is sold on a completely no-load basis. The applicant states that there are no redemption fees or exchange fees, and no distribution costs or ''12b–1 fees'' (fees payable pursuant to a distribution plan described in SEC Rule 12b–1 under the '40 Act) incurred by the Portfolios.

Each TS&W Portfolio may issue shares to investors in exchange for securities—i.e. on an in-kind basis—if such securities are eligible for acquisition by that Portfolio. Securities acquired by a TS&W Portfolio on an in-kind basis must be valued at the closing price for such securities as determined by independent market sources on the day on which they are accepted by the Portfolio. All valuations of such securities must be made in accordance with SEC Rule 17a–7(b).

DSI also acts as the investment adviser to a series of the UAM Funds known as the DSI Money Market Portfolio (i.e. the DSI Portfolio). DSI is paid an asset-based annual fee for its investment advisory services to the DSI Portfolio. This fee is currently 0.18 percent of the net asset value of the DSI

[4] The Second Fiduciary which acted for the Plan was the Lewis-Gale Clinic, Inc. (the Plan Sponsor) and the individuals who acted for the Plan Sponsor in carrying out its responsibilities as the named fiduciary for the Plan.

[5] The UAM Funds were formerly known as ''The Regis Fund, Inc.''

Portfolio.[6] The DSI Portfolio is also sold on a no-load basis, and there are no redemption fees or exchange fees, and no distribution costs or ''12b–1 fees'' incurred for the Portfolio.

3. Prior to April 15, 1996, the administrator of the UAM Funds was Chase Global Funds Service Company (Chase Global), a subsidiary of Chase Manhattan Bank, the UAM Funds' custodian. Chase Global and Chase Manhattan Bank are not related to TS&W or UAM. In its capacity as administrator, Chase Global provided administrative, fund accounting, dividend disbursing and transfer agent services to the UAM Funds. Since April 15, 1996, UAM Fund Services, Inc. (i.e. UAM Fund Services), a wholly-owned subsidiary of UAM, has been responsible for performing and overseeing these ''secondary services'' for the UAM Funds. UAM Fund Services has subcontracted the performance of certain of the ''secondary services'' to Chase Global. TS&W states that the decision to engage UAM Fund Services to provide these ''secondary services'' to the UAM Funds, including the Portfolios, as well as the decision to subcontract certain of such services to Chase Global, was made by the Board of Directors of the UAM Funds—the majority of whose members are independent of TS&W.

Each TS&W Portfolio pays a fee for administrative services to UAM Fund Services which is comprised of two parts: (i) A Portfolio-specific asset-based fee which is retained by UAM Fund Services, and (ii) a sub-administration asset-based fee which UAM Fund Services pays to Chase Global. The Portfolio-specific fees which are retained by UAM Fund Services are .06 percent for the TS&W Equity and International Equity Portfolios and .04 percent for the TS&W Fixed Income Portfolio. Chase Global's fee is based on a sliding scale that is applied to the total assets of the UAM Funds, which is allocated to the various series of the UAM Funds, including the Portfolios, on the basis of their relative assets.

The applicant represents that the combined total of all fees received by TS&W and its affiliates for the provision of services to the Plan, and in connection with the provision of services to the Portfolios in which the Plan invests, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.[7]

4. The Plan is a defined contribution, profit sharing plan maintained by the Lewis-Gale Clinic, Inc. (the Plan Sponsor). The Plan Sponsor is a provider of medical services located at 1802 Braeburn Drive in Salem, Virginia. As of September 1, 1996, there were approximately 935 Plan participants, 555 of whom were invested in Fund E through their Plan accounts. The value of the Plan's assets was approximately $69,442,775, as of April 1, 1996. Approximately 30.8 percent of the value of the Plan's total assets (i.e. $21,368,628) was held in Fund E as of such date. The Plan's trustee and custodian was and continues to be First Union National Bank of North Carolina (First Union).

5. The applicant represents that since 1979 TS&W has been retained by the Plan Sponsor to manage a balanced portfolio of Plan assets on a separate account basis, known as ''Fund E'' for Plan administration purposes, consisting of a mix of equity and fixed income securities and cash equivalents. The most recent version of the investment management agreement between the Plan Sponsor and TS&W was executed on March 23, 1992 (the Management Agreement). Pursuant to the Management Agreement, TS&W has full power to supervise and direct the investment of the assets comprising Fund E, in its discretion, in accordance with such objectives as the Plan Sponsor may, from time to time, furnish TS&W in writing. Consistent with the Plan Sponsor's objectives, TS&W invested the assets of Fund E in a mix of equity and fixed income securities and cash equivalents. TS&W has met and continues to meet with the Plan Sponsor twice a year to report on the performance of Fund E and other matters relating to its administration, and to discuss the Plan Sponsor's objectives for Fund E and any changes thereto.

Pursuant to the Management Agreement, TS&W receives an asset-based annual fee from the Plan that is based on a sliding scale. This fee schedule is as follows:

Assets under management	Fee (percent)
first $500,000	1.00
next $500,000	0.75
next $4,000,000	0.60
next $10,000,000	0.50
next $15,000,000	0.40
next $20,000,000	0.30
next $50,000,000	0.25

Pursuant to a letter agreement dated September 13, 1993 (the Letter Agreement), the Plan Sponsor authorized TS&W to invest a portion of the assets of Fund E in shares of the TS&W International Equity Portfolio. The applicant states that it was the intention of the parties that by executing the Letter Agreement, and by the disclosures made by TS&W relating thereto, that the subsequent investments of Fund E assets in the TS&W International Equity Portfolio would comply with the conditions of PTE 77–4.[8] Since September 13, 1993, various cash purchases and sales of shares of the TS&W International Equity Portfolio have been made on behalf of the Plan. TS&W represents that these transactions have been made in compliance with the terms and conditions of PTE 77–4. Therefore, the applicant is not requesting an individual exemption for such transactions.[9]

6. The applicant states that at all times relevant to the transactions by the Plan to which this proposed exemption relates, the Plan permitted participants to self-direct the investment of their respective account balances among various investment choices made available by the Plan Sponsor, one of which is Fund E. The Plan Sponsor is the named fiduciary responsible for designating the investment options made available to participants and beneficiaries and for hiring and firing

[6] As disclosed in the prospectus for the DSI Portfolio, DSI's gross fee is actually 0.40 percent. However, since July 1, 1995 and until further notice, DSI has voluntarily agreed to waive a portion of its fee such that its actual fee, taking into account the waiver, is only 0.18 percent.

[7] The Department is not providing any opinion in this proposed exemption as to whether the fees received by TS&W and its affiliates were reasonable in connection with the services provided to the Plan, during the period covered by the proposed exemption, nor whether the conditions of section 408(b)(2) of the Act and the regulations thereunder were met (see 29 CFR 2550.408b–2).

[8] As noted in footnote 1 above, PTE 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that certain conditions are met. Such conditions require, among other things, that the plan may not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. However, Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act. In addition, Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[9] The Department is expressing no opinion in this proposed exemption regarding whether any transactions with the TS&W International Equity Portfolio under the circumstances described herein were covered by PTE 77–4.

the Plan's investment managers. The applicant states further that neither TS&W, DSI, the UAM Funds, nor any of their affiliates, is related to the Plan Sponsor and its affiliates. Therefore, for purposes of the conditions of this proposed exemption, the applicant maintains that the Plan Sponsor acted as a Second Fiduciary which was independent of and unrelated to TS&W and its affiliates (see Section III(g) and footnote 2 above).

7. The circumstances which prompted the prohibited transactions that would be covered by the requested exemption, if granted, are described in the following paragraphs.

In June 1995, the Plan Sponsor informed TS&W that it was considering a change in the self-direction feature of the Plan whereby participants would be able to make investment elections and changes thereto on a daily basis, in lieu of the quarterly election procedures then in place, and that it wished to retain Fund E as an investment option after the shift to a daily election format was achieved. Specifically, the Plan Sponsor wished to retain TS&W to continue to manage a balanced investment fund which would be made available to participants as an investment option, provided that such investment fund could be structured to accommodate daily transactions by participants into and out of that Fund. TS&W agreed to work with First Union to structure Fund E so that it could accommodate daily transactions during 1996.

During the early part of 1996, TS&W met with the Plan Sponsor to propose a restructuring of Fund E to accommodate the Plan's daily transaction format. The essence of the proposal was that this accommodation would be achieved by converting the individual equity and fixed income securities held by Fund E to shares of the TS&W Equity and Fixed Income Portfolios. The applicant states that the primary basis for this proposal was that the TS&W Equity and Fixed Income Portfolios (as well as the TS&W International Equity Portfolio, shares of which were already held by Fund E) were already subject to daily valuation requirements under the '40 Act, and that nearly all of the securities held by Fund E were held by the TS&W Equity and Fixed Income Portfolios. In addition, TS&W proposed that the conversion of the equity and fixed income securities held by Fund E to shares of the TS&W Equity and Fixed Income Portfolios would be accomplished by transferring those securities to such Portfolios on an in-kind basis. The in-kind transfer was proposed in order to avoid the brokerage costs and market risk [10] that would result if the securities in Fund E were sold for cash and the cash used to purchase shares of the Portfolios, which cash would then be used by the Portfolios to purchase additional securities.

The applicant states that after further discussions between TS&W, First Union and Chase Global over the following two months (i.e. February and March 1996), TS&W also proposed that the cash equivalent holdings of Fund E, which had been invested in the Federated Treasury Obligation Fund, should be invested in the DSI Portfolio upon the conversion of Fund E's equity and fixed income holdings as described above. The rationale for this aspect of TS&W's proposal was that the use of the DSI Portfolio would facilitate the daily valuation of Fund E necessitated by the Plan's daily valuation structure, as well as Fund E's cash management. Such transactions would involve the investment of new money coming into Fund E, the transfer of cash out of Fund E in connection with investments by participants in other Plan investment options or Plan distributions, and the shifting of Fund E's holdings between the Portfolios. These goals would be facilitated in this manner because the TS&W Portfolios and the DSI Portfolio, all being series of the UAM Funds, shared a single mutual fund custodian (i.e. Chase Manhattan Bank) and a single mutual fund administrator (i.e. UAM Fund Services).

TS&W also proposed that, in accordance with the Management Agreement, it would continue to exercise authority to maintain the desired balance of equity, fixed income, international and cash equivalent holdings for Fund E by making adjustments to Fund E's holdings of shares of the TS&W Portfolios and the DSI Portfolio, to take into account fluctuations in the relative net asset values of the Portfolios and any changes in the Plan Sponsor's stated objectives with respect to the composition of Fund E. Finally, TS&W proposed that it would not charge a fee for these allocation services, it would not charge any Plan-level advisory fee with respect to assets invested in the TS&W Portfolios or the DSI Portfolio, and it would incur any additional costs required to value Fund E and units thereof on a daily basis.

After receiving copies of current prospectuses for the TS&W Portfolios and the DSI Portfolio, and additional information with respect to the fee structures of the Portfolios, the Plan Sponsor agreed orally to all aspects of TS&W's conversion proposal as described above.[11] Therefore, on April 16, 1996, TS&W directed First Union to transfer the fixed income assets of Fund E to the TS&W Fixed Income Portfolio in exchange for shares of that Portfolio, and directed First Union to transfer the equity assets of Fund E to the TS&W Equity Portfolio in exchange for shares of that Portfolio.

Each of TS&W's directions to First Union was confirmed in writing the next day (April 17, 1996). TS&W's confirming letter to First Union, and the enclosures thereto, included a listing of all fixed income and equity securities held by Fund E as of April 16, 1996. The trade date for the transfers was April 16, 1996. TS&W's instructions were carried out by First Union on the dates indicated. The value of each security transferred to the TS&W Equity and Fixed Income Portfolios was determined in accordance with SEC Rule 17a-7(b) under the '40 Act. In this regard, the applicant states that the Fund E assets were all publicly and actively traded stocks and debt securities which were readily valued by reference to the closing price for such securities as determined by independent market sources on the date of the transfer.[12] The Plan received shares of each of the TS&W Portfolios which had a total net asset value equal to the value of all of the Plan's assets transferred in-kind to such Portfolio on the date of the transfer (i.e. April 16, 1996). The actual valuation of the securities and the determination of the number of shares

[10] The applicant states that the ''market'' risk is the risk that the securities would appreciate in value during the approximately three-day period following their sale by the Plan and ending upon the purchase of comparable securities by the TS&W Portfolios. In that event, the value of Fund E and each participant's interest in Fund E would drop by an amount roughly equal to the amount by which it would have increased had the securities not been sold.

[11] The applicant has submitted a written statement from Horace Whitworth (Mr. Whitworth), the TS&W investment professional with primary responsibility for the firm's relationship with the Plan Sponsor and the Plan, which summarizes the relevant events leading up to the subject transactions. Mr. Whitworth states that the appropriate representatives of the Plan Sponsor orally approved all aspects of the transactions in advance during the course of numerous telephone conversations and personal meetings with him during February, March and April 1996. Representatives of the Plan Sponsor have also confirmed their approval of the transactions, and the events leading to the transactions, in a separate declaration (see Paragraph 8 above).

[12] The applicant states that for purposes of determining the ''closing price'' for all of the securities on the date of the transfer, the timing of the valuations was based on the close of the market for the New York Stock Exchange (i.e. 4:00 pm EST). At this time, all of the various securities were valued in accordance with the requirements of Rule 17a-7.

of each Portfolio to be issued to Fund E were determined by Chase Global. TS&W's confirmation of the April 16 transfers was dated April 22, 1996 and was delivered by mail to the Plan Sponsor within seven (7) days (see Section II(i) above).

The Plan's holding in the Federated Treasury Obligation Fund were redeemed shortly thereafter. By letter dated April 29, 1996, TS&W directed First Union to purchase shares of the DSI Portfolio for the Plan for cash. This transaction occurred the following day (April 30). A confirmation statement for the transaction dated April 30, 1996, was delivered by mail to the Plan Sponsor within seven (7) days (see Section II(i) above).

The applicant represents that the value of Fund E's investment in the TS&W Equity and Fixed Income Portfolios made on April 16, 1996, taking into account the reinvestment of dividends, increased by 5.2 percent and 2.1 percent, respectively, through September 30, 1996.

The applicant states that after the initial acquisition of shares of the TS&W Equity Portfolio, the TS&W Fixed Income Portfolio, and the DSI Portfolio, TS&W directed certain additional purchases and sales of shares of the Portfolios in connection with routine Fund E administration. These transactions were occasioned by additions to and withdrawals from Fund E attributable to participant-directed investments or distributions, and by the reallocation of Fund E holdings between the TS&W Portfolios and the DSI Portfolio.[13] TS&W is requesting that the proposed exemption cover these subsequent transactions by Fund E with the Portfolios for the period from April 17, 1996 until August 26, 1996, since the Letter Agreement at that time only covered transactions with the TS&W International Equity Portfolio. TS&W states that the appropriate TS&W personnel at this time erroneously believed that all transactions with the Portfolios had been authorized under the Letter Agreement and were covered under PTE 77–4.[14]

8. On August 12, 1996, the Board of Directors of the Plan Sponsor executed by unanimous consent a resolution approving, ratifying and affirming the in-kind transfer of assets of Fund E to the TS&W Equity Portfolio and the TS&W Fixed Income Portfolio, as well as the cash purchases of shares of the DSI Portfolio as of April 15, 1996. Further, in a new letter agreement between the parties dated August 26, 1996 (the New Letter Agreement), the Plan Sponsor acknowledged that it had received the then current prospectuses for the TS&W Equity and Fixed Income Portfolios and the DSI Portfolio prior to the April 1996 transactions, and that the in-kind transfers of securities to the TS&W Equity and Fixed Income Portfolios and the cash transfers to the DSI Portfolio (in exchange for shares of such Portfolios) were carried out with its knowledge and consent. Pursuant to the New Letter Agreement, all future purchases and redemptions of shares of the Portfolios will be effected in accordance with the requirements of PTE 77–4. TS&W represents in the New Letter Agreement that it will provide advance notice to the Plan Sponsor of any increase in the investment advisory or other fees for the Portfolios and, in such event, will attempt to secure the Plan Sponsor's written authorization to continue the investment of the Plan's assets in the corresponding Portfolios, as required by the conditions of PTE 77–4.

9. The applicant represents that the subject transactions for which an individual exemption is requested occurred without TS&W realizing that the requirements of PTE 77–4 had not been met at the time of the transactions. Following the completion of the April 1996 transactions, the applicant states that in May 1996 First Union suggested to TS&W that such transactions raised additional prohibited transaction issues under the Act because the assets of Fund E were transferred in-kind to the TS&W Equity and Fixed Income Portfolios. TS&W states that this was the first time that it had any knowledge that additional prohibited transaction issues were involved with the asset transfers. TS&W consulted with its present legal counsel who then advised that the protections of PTE 77–4 were not applicable for in-kind transfers of assets.[15]

The applicant states that the subject transactions were carried out by TS&W in good faith and that TS&W acted in the best interests of the Plan and its participants and beneficiaries. Specifically, as discussed above, TS&W caused the Plan to engage in the transactions in order to accommodate the Plan Sponsor's dual objectives of: (i) Changing the self-direction feature of the Plan from a quarterly-exchange format to a daily-exchange format, and (ii) retaining the Plan's assets in the same type of equity and fixed income securities as had been chosen by TS&W as the investment manager for Fund E's portfolio. TS&W states that the most practical option to achieve this result was to convert the equity and fixed income holdings of Fund E to shares of the TS&W Equity and Fixed Income Portfolios, an option which the Plan Sponsor endorsed orally prior to the transaction. In this regard, TS&W informed the Plan Sponsor that it would cost the Plan an additional $50,000 per year, at a minimum, to implement a daily valuation and investment format for a separate account portfolio of a size and type comparable to Fund E. This amount would have been approximately $158,225 annually (i.e. a total annual fee of .740 percent), based on the value of Fund E's assets at that time, whereas the investment advisory fees for managing the assets through the Portfolios was approximately $131,840 (i.e. a total annual fee of .617 percent). Moreover, as noted below, virtually all of the equity and debt securities held by Fund E were already held by the TS&W Equity and Fixed Income Portfolios, respectively. Thus, TS&W states that the most efficient and economical method of accomplishing the Plan Sponsor's objectives was to invest the Fund E assets in the TS&W Portfolios on an in-kind basis. Similarly, TS&W believed that daily transfers into and out of, and distributions from and valuations of, Fund E would be facilitated if Fund E's cash equivalent holdings were invested in the DSI Portfolio rather than a non-UAM money market fund.

TS&W represents that by converting Fund E's holdings of individual equity and fixed income securities to shares of the TS&W Equity and Fixed Income Portfolios, respectively, Fund E's investment mix and market exposure were not materially changed. TS&W states that a comparison of TS&W's April 22, 1996 letter to the Plan Sponsor confirming the initial in-kind transfers

[13] Information supplied by TS&W indicates that after the in-kind transfer of Fund E's assets to TS&W Equity and Fixed Income Portfolios, there were no subsequent cash purchases of these Portfolios by Fund E during the period covered by this proposed exemption. However, there were subsequent sales of shares of the TS&W Portfolios and there were both purchases and sales of shares of the DSI Portfolio on a cash basis during this period.

[14] TS&W represents that its compliance officer reviewed TS&W's procedural checklist at the time of such transactions and erroneously assumed that the written authorization required by PTE 77–4 already existed for all of the TS&W Portfolios. In this regard, TS&W states that although the Letter Agreement only specifically authorized investments by Fund E in the TS&W International Equity Portfolio, there was a mutual fund registration form and other information in TS&W's file for the Plan which appeared to indicate that authorization had been made by the Plan Sponsor for all three TS&W Portfolios. Therefore, TS&W states that the transactions were carried out in good faith.

[15] See DOL Opinion Letter 94–35A, n. 3 (November 3, 1994).

to the list of holdings of the TS&W Equity and Fixed Income Portfolios as of April 12, 1996, reveals that the holdings of Fund E and the TS&W Portfolios were almost identical. In this regard, 47 out of 50 of the equity securities transferred in-kind to the TS&W Equity Portfolio, representing approximately 98 percent of the aggregate value of all such securities, were held by the TS&W Equity Portfolio as of April 12, 1996. In addition, 23 out of 25 of the fixed income securities transferred to the TS&W Fixed Income Portfolio, representing approximately 94 percent of the aggregate value of such securities, were held by the TS&W Fixed Income Portfolio as of April 12, 1996. TS&W also notes that the Plan and its participants and beneficiaries have not suffered a loss as a result of the subject transactions and that the investment performance of the assets during the period covered by the proposed exemption was comparable to the performance of the securities markets in general and to TS&W's performance outside of the Portfolios.

Within 10 days of the date that this proposed exemption is granted, TS&W has agreed to pay to the Plan an amount equal to the additional net fees attributable to Fund E which TS&W and its affiliates (i.e. DSI and UAM Fund Services) received during the period from April 17, 1996 until August 26, 1996, as a result of the investment of Fund E assets in the Portfolios. In addition, TS&W has agreed to pay a reasonable rate of interest on such amount which is at least equal to the rate of return such assets would have earned as assets held in Fund E during this period. TS&W estimates that the amount of the additional fees during this 132-day period was approximately $8,150. This estimate is based on the following data:

(i) the total investment management fees that would have been charged by TS&W at the Plan-level (prior to the implementation of a daily valuation arrangement) on an annual basis for the total assets in Fund E (i.e. $21,368,628 as of April 16, 1996) was approximately $108,225;

(ii) the total investment advisory and other fees that would have been received by TS&W and its affiliates from the Portfolios for such assets on an annual basis (less the $12,000 which TS&W paid to Chase Global) was approximately $130,762; and

(iii) the difference between the amounts described above in (i) and (ii) on an annual basis as adjusted for the 132-day period involved.[16]

[16] [132/365] × [$130,762 − $108,225] = $8,150.

10. TS&W represents that the Plan and its participants and beneficiaries were afforded protections comparable to those provided by PTE 77–4 and various individual exemptions granted by the Department for the conversion of collective investment funds maintained by a bank to a mutual fund for which such bank or an affiliate acts as an investment adviser.[17] Such protections include: (i) No commissions or 12b–1 fees were paid by the Plan in connection with the transactions; (ii) TS&W did not collect a Plan-level fee on assets invested in the TS&W Portfolios or the DSI Portfolio; (iii) advance disclosures were made to the Plan Sponsor, which was an independent Plan fiduciary (i.e. a Second Fiduciary); (iv) prior approval was obtained from the Plan Sponsor, as described herein; (v) the securities transferred in-kind were valued in accordance with the requirements of SEC Rule 17a–7(b) under the '40 Act; (vi) the Plan received shares of each of the TS&W Portfolios which had a total net asset value equal to the value of all of the Plan's assets transferred in-kind to such Portfolio on the date of the transfer (i.e. April 16, 1996) and (vii) a written confirmation of the initial in-kind transfers was delivered by TS&W within a matter of a few days after those transfers were completed containing the appropriate information to inform the Plan Sponsor of the essential details regarding the transactions. In addition, pursuant to the New Letter Agreement between TS&W and the Plan Sponsor dated August 26, 1996, all future acquisitions and redemptions of shares of the Portfolios on behalf of the Plan's Fund E assets will be carried out in accordance with the requirements of PTE 77–4.

11. In summary, the applicant represents that the subject transactions met the statutory criteria of section 408(a) of the Act because, among other things: (a) No sales commissions or other fees were paid by the Plan in connection with the acquisition of shares of the Portfolios and no redemption fees were paid by the Plan in connection with the sale by the Plan of such shares; (b) the Plan Sponsor, as an independent Plan fiduciary, received advance notice of the transactions and full disclosure of information concerning the Portfolios; (c) on the basis of the information referred to above, the Plan Sponsor orally approved the transactions, including the initial in-kind transfer of Fund E's assets to the TS&W Portfolios in exchange for shares of such Portfolios, prior to the transactions; (d) the Plan Sponsor has acknowledged and confirmed in writing that it provided advance oral approval of the transactions; (e) the assets of the Plan transferred to the TS&W Portfolios were publicly-traded securities that were valued at their closing prices (determined as of the close of the New York Stock Exchange on the date of the transfer) in accordance with independent market sources pursuant to the procedures described under SEC Rule 17a–7(b); (f) the Plan received shares of each of the TS&W Portfolios which had a total net asset value equal to the value of all of the Plan's assets transferred in-kind to such Portfolio on the date of the transfer; (g) TS&W sent by regular mail to the Plan Sponsor, not more than seven (7) days after the completion of the in-kind transfers to the TS&W Portfolios, a written confirmation which contained the relevant information regarding the transactions; (h) the Plan did not pay any plan-level investment management fees, investment advisory fees, or similar fees to TS&W or an affiliate with respect to any of the assets of such Plan which were invested in shares of any of the Portfolios; (i) the combined total of all fees received by TS&W and its affiliates for the provision of services to the Plan, and in connection with the provision of services to the Portfolios in which the Plan invested, was not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act; (j) TS&W will pay the Plan an amount equal to the additional net fees attributable to Fund E which TS&W and its affiliates received during the period from April 17, 1996 until August 26, 1996, as a result of the investment of Fund E's assets in the Portfolios, plus a reasonable rate of interest on such amount; (k) neither TS&W, DSI nor any affiliate thereof received fees payable pursuant to Rule 12b–1 under the '40 Act in connection with the transactions involving the Portfolios; and (l) all dealings between the Plan and the Portfolios were on a basis no less favorable to the Plan than dealings with other shareholders of the Portfolios.

[17] See, for example, PTE 94–82 involving Marshall & Ilsley Trust Company (59 FR 62422, December 5, 1994); PTE 94–86 involving The Bank of California, N.A. (59 FR 65403, December 19, 1994); PTE 95–33 involving Bank South, N.A. (60 FR 20773, April 27, 1995); PTE 95–48 involving Mellon Bank, N.A. (60 FR 32995, June 26, 1995); and PTE 95–49 involving Norwest Bank (60 FR 33000, June 26, 1995). See also the Proposed Class Exemption for Bank Collective Investment Fund Conversion Transactions, (61 FR 58224, November 13, 1996), submitted on behalf of Federated Investors.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons, including each Plan participant who

had interests in Fund E during the period covered by the proposed exemption. Notice to interested persons shall be provided by first class mail and/or posting in the workplace within sixty (60) days following the publication of the proposed exemption in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within ninety (90) days following the publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (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 28th day of January, 1997.

Ivan Strasfeld,

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

[FR Doc. 97–2387 Filed 1–30–97; 8:45 am]

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[Prohibited Transaction Exemption 97–07; Exemption Application Nos. D–10079 Through D–10082, et al.]

Grant of Individual Exemptions; Pikeville National Bank & Trust Company; Trust Company of Kentucky; and First American Bank (Collectively, the Banks), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pikeville National Bank & Trust Company; Trust Company of Kentucky; and First American Bank (Collectively, the Banks) Located in Pikeville and Ashland, Kentucky

[Prohibited Transaction Exemption 97–07; Application Numbers D–10079 Through D–10082]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The cash sales on December 28, 1994 and January 13, 1995, of certain collateralized mortgage obligations (CMOs) and other mortgage-backed securities (collectively, the Securities) held by eighty-six (86) employee benefit plans, Keogh plans and individual retirement accounts (IRAs) for which the Banks act as trustee (the Plans) to Pikeville National Corporation (PKVL), a party in interest with respect to the Plans; (2) the ''makewhole'' payments made by PKVL to the Plans on January 20, 1995, in connection with the sale of certain Securities by the Plans on the open market on November 2, 1994; and (3) the proposed additional ''makewhole'' and interest payments to be made by PKVL to the Plans, as of the