

Shipyards, and the construction industry. In accordance with the Paperwork Reduction Act (PRA-95) (44 U.S.C. 3501-3520), OMB

has renewed its approval for these information collection requirements and issue control numbers. Below is a listing of the title of the information collection

requirements, the date OSHA requested public comment via the **Federal Register** the OMB control numbers, and the expiration dates for the approvals.

Title	Federal Register date	OMB Control No.	Expiration date
Portable Fire Extinguishers Annual Maintenance Record .....	12/29/97	1218-0238	5/31/2001
Acrylonitrile .....	1/21/98	1218-0126	5/31/2000
4,4 Methylene-dianiline for Construction .....	1/30/98	1218-0183	4/30/2000
4,4 Methylene-dianiline for General Industry .....	1/30/96	1218-0184	4/30/2000
Cotton Dust .....	2/27/98	1218-0061	4/30/2000
Personal Protective Equipment .....	4/20/98	1218-0205	3/31/2000
Welding, Cutting, and Brazing .....	4/20/98	1218-0207	7/31/2001
Commercial Diving Operations .....	4/20/98	1218-0069	11/30/2001
Fire Brigades .....	5/19/98	1218-0075	11/30/2001
Logging Operations .....	5/21/98	1218-0198	6/30/2001
Powered Platforms for Exterior Building Maintenance .....	6/19/98	1218-0121	6/30/2001
Grain Handling Facilities .....	6/26/98	1218-0206	7/31/2001
Walking/Working Surfaces .....	6/26/98	1218-0199	11/30/2001
Storage & Handling of Anhydrous Ammonia .....	6/26/98	1218-0208	6/30/2001
Accident Prevention Tags .....	7/28/98	1218-0132	6/30/2001
Electrical Standards for Construction .....	8/6/98	1218-0130	1/31/2002
Presence Sensing Device Initiation .....	8/13/98	1218-0143	1/31/2002
Control of Hazardous Energy Lockout/Tagout .....	8/13/98	1218-0150	2/28/2002
Confined Spaces, Shipyards Employment .....	9/9/98	1218-0011	1/31/2002

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number and the Agency informs respondents that they are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Authority and Signature**

This notice was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Signed at Washington, D.C., this 15th day of April 1999.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

[FR Doc. 99-10070 Filed 4-21-99; 8:45 am]

BILLING CODE 4510-26-M

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

[Application No. D-10021, et al.]

**Proposed Exemptions; First Security Corporation (FSC) et al.**

**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.

**First Security Corporation (FSC)  
Located in Salt Lake City, UT**

[Application No. D-10021]

**Proposed Exemption**

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 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).<sup>1</sup>

*Section I. Proposed Exemption for the In-Kind Transfer of Assets*

If the exemption is granted the restrictions of section 406(a) and section 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) shall not apply to the in-kind transfers, that occurred on December 28, 1994, to any open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the Investment Company Act) to which FSC or any of its affiliates (collectively, First Security) serves as investment adviser and/or may provide other services, of the assets of various employee benefit plans (the Plan or Plans) that are held in certain collective investment funds (the CIF or CIFs) maintained by First Security, in exchange for shares of such Funds, provided that the following conditions were met:

(a) A fiduciary (the Second Fiduciary) which was acting on behalf of each affected Plan and which was independent of and unrelated to First Security, as defined in paragraph (g) of Section II below, received advance written notice of the in-kind transfer of assets of the CIFs in exchange for shares of the Funds, a full and detailed written disclosure of information concerning any such Fund including, but not limited to—

(1) A current prospectus for each of the Funds in which such Plan considered investing;

(2) A statement describing the fees for investment management, investment advisory, or other similar services, any fees for secondary services (Secondary Services), as defined in paragraph (h) of Section II below, and all other fees charged to or paid by the Plan and by the Funds to First Security, including

the nature and extent of any differential between the rates of such fees;

(3) The reasons why First Security considered such investment to be appropriate for the Plan;

(4) A statement describing whether there were any limitations applicable to First Security with respect to which assets of a Plan may be invested in the Funds, and, if so, the nature of such limitations; and

(5) When available, upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted.

(b) On the basis of the information described above in paragraph (a) of this Section I, the Second Fiduciary authorized in writing—

(1) The investment of assets of the Plans in shares of the Fund, in connection with the transactions set forth in Section I;

(2) the investment portfolios of the Funds in which the assets of the Plans were invested; and

(3) the fees received by First Security in connection with its services to the Funds. Such authorization by the Second Fiduciary was consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) All transferred assets were securities for which market quotations were readily available, or cash.

(d) No sales commissions or redemption fees, including fees that are payable pursuant to Rule 12b-1 of the Investment Company Act (the 12b-1 Fees), were paid by the Plans in connection with the in-kind transfers of the assets of the CIFs in exchange for shares of the Funds.

(e) Neither First Security nor its affiliates, including any officers or directors, would be permitted to purchase from or sell to any of the Plans shares of any of the Funds.

(f) The Plans were not sponsored or maintained by First Security.

(g) The transferred assets in exchange for shares of such Funds constituted the Plan's pro rata portion of all assets that were held by the CIFs prior to the transfer. A Plan not electing to invest in the Fund received a cash payment representing a pro rata portion of the assets of the terminating CIF before the final liquidation took place.

(h) The CIFs received shares of the Funds that had a total net asset value equal to the value of the transferred assets of the CIFs exchanged for such shares on the date of transfer.

(i) The current market value of the assets of the CIFs transferred in-kind in exchange for shares of the Funds was determined in a single valuation

performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a-7(b) (Rule 17a-7) under the Investment Company Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established pursuant to Rule 17a-7 for the valuation of such assets. Such procedures required that all securities for which a current market price could not be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ were to be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of First Security.

(j) Not later than 30 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, First Security sent by regular mail to the Second Fiduciary, which was acting on behalf of each affected Plan and which was independent of and unrelated to First Security, as defined in paragraph (g) of Section II below, a written confirmation that contained the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4) under the Investment Company Act;

(2) The current market price, as of the date of the transfer, of each such security involved in the purchase of Fund shares; and

(3) The identity of each pricing service or market maker consulted in determining the value of such assets.

(k) Not later than 90 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, First Security sent by regular mail to the Second Fiduciary, which was acting on behalf of each affected Plan and which was independent of and unrelated to First Security, as defined in paragraph (g) of Section II below, a written confirmation that contained the following information:

(1) The number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) the number of shares in the Funds that were held by each affected Plan

<sup>1</sup> For purposes of this proposed exemption, reference to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(l) As to each individual Plan, the combined total of all fees received by First Security for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans hold shares acquired in connection with an in-kind transfer transaction, was not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(m) On an ongoing basis, First Security has provided and will continue to provide a Plan investing in a Fund—

(1) At least annually with a copy of an updated prospectus of such Fund; and

(2) at least annually with 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 Fund to First Security, upon the request of such Second Fiduciary.

(n) All dealings between the Plans and any of the Funds have been and will remain on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(o) First Security has maintained and will maintain for a period of 6 years the records necessary to enable the persons, as described below in paragraph (p)(1) of this Section I, to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of First Security, the records are lost or destroyed prior to the end of the 6 year period; and

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

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

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

Securities and Exchange Commission (the SEC);

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (p)(1)(B) and (p)(1)(C) of this Section I shall be authorized to examine trade secrets of First Security, or commercial or financial information which is privileged or confidential.

### Section II. Definitions

For purposes of this proposed exemption—

(a) The term "First Security" means FSC and any affiliate of FSC, as defined in paragraph (b) of this Section II.

(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, partner, 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 "Fund," "Funds" or "Affiliated Funds" means any open-end management investment company or companies registered under the Investment Company Act for which First Security serves as investment adviser and/or provides any Secondary Service as approved by such Funds. As noted in the Preamble, the Funds are also referred to as the "Affiliated Funds" to distinguish them from certain third party funds (the Third Party Funds) for which First Security and its affiliates provide subadministrative services and which are not involved in conversion transactions that are described herein.

(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 a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each 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 of a plan who is independent of and unrelated to First Security. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to First Security if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with First Security;

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

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

If an officer, director, partner, or employee of First Security (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser or (B) the approval of any purchase or sale by the Plan of shares of the Funds, in connection with the transactions described in Section I, then paragraph (g)(2) of this Section II, shall not apply.

(h) The term "Secondary Service" means a service, other than an investment management, investment advisory, or similar service, which is provided by First Security to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

**EFFECTIVE DATE:** If granted, this proposed exemption will be effective as of December 28, 1994.

### Preamble

First Security initially filed a request for retroactive and prospective exemptive relief (Exemption Application No. D-09916) with the Department to permit the in-kind transfer of Plan assets held in CIFs maintained by First Security to any Affiliated Fund for which First Security might serve as investment adviser and/or provide other fiduciary services. In addition, First Security requested that the exemption cover any fees it might receive from the Affiliated Funds as well as from certain Third Party Funds

for which it might serve as a custodian, subadministrator or other service provider. If granted, the exemption would have been effective as of December 28, 1994.

Upon further consideration, First Security decided to withdraw the fee transaction aspect of its exemption request and continue to rely on its interpretation of Prohibited Transaction Exemption (PTE) 77-4 (42 FR 18732, April 8, 1977) with respect to its receipt of fees from the Affiliated Funds. In pertinent part, PTE 77-4 permits the purchase and sale by an employee benefit plan of shares of a mutual fund when a fiduciary with respect to the plan is also the investment adviser of the investment company. In addition, Section II(c) of PTE 77-4 requires, in part, that a plan may pay an investment advisory fee to the plan fiduciary 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 plan to the mutual fund.

The Department expresses no opinion herein on whether interim and subsequent fee arrangements adopted by First Security comply with the relevant provisions of PTE 77-4. As a result of the uncertainty regarding the application of PTE 97-41<sup>2</sup> to the original exemption request, the Department has made a determination to propose the exemption and limit the scope of exemptive relief to the three conversion transactions described below.

### Summary of Facts and Representations

1. The parties involved in the in-kind transfer transactions that are discussed herein are described as follows:

(a) *FSC* is a national association bank holding company/financial services corporation incorporated under the laws of the State of Delaware and headquartered in the State of Utah. *FSC's* affiliates include the following banks: First Security Bank of New Mexico, N.A.; First Security Bank of Oregon; First Security Bank of Utah, N.A. (FSB Utah); First Security Bank of Idaho, N.A. (FSB Idaho); First Security

<sup>2</sup> PTE 97-41 is a class exemption which permits an employee benefit plan (the Client Plan) to purchase shares of one or more open-end management investment companies (i.e., Funds) registered under the Investment Company Act, the investment adviser for which is a bank (the Bank) or a plan adviser (the Plan Adviser) registered under the Investment Advisers Act of 1940 (the Advisers Act), that also serves as a fiduciary of the Client Plan, in exchange for plan assets transferred in-kind to the Fund from a CIF maintained by the Bank or the Plan Adviser, in connection with the complete withdrawal of a Client Plan's assets from the CIF.

Trust Company of Nevada (FSB Nevada); First Security Bank of Wyoming; and First Security Investment Management, Inc. (FSIM), an indirect, wholly owned subsidiary registered as an investment adviser under the Advisers Act. As of December 31, 1997, First Security had aggregate assets under management of approximately \$5.2 billion. FSB Utah formerly served as trustee with respect to the CIFs described herein and FSIM serves as investment adviser to the Funds also described herein.

(b) *The Plans* consist of retirement plans qualified under section 401(a) of the Code, pension plans as defined in section 3(2) of the Act, "plans" as defined in section 4975(e)(1) of the Code, including certain individual retirement accounts (the IRAs) that are subject to section 408(a) of the Code and certain Keogh Plans that are qualified under section 401(a) of the Code. For these Plans, First Security serves as a directed trustee, a discretionary trustee, an investment manager or a fiduciary. The Plans also include participant-directed plans subject to the provisions of section 404(c) of the Act<sup>3</sup> but they do not include any plans sponsored by First Security.<sup>4</sup> Whether a Plan would be an investor in a CIF at the time of a conversion transaction or elect to invest in any Fund depended solely on the decision of a Plan fiduciary which was independent of First Security.

(c) *The CIFs* consisted of certain portfolios of the Affiliated Banks of First Security Corporation Investment Trust for Employee Benefit Plans. These portfolios were the Common Stock Trust, the Two Year Bond Trust and the Intermediate Corporate/Government Bond Trust. As of September 30, 1994, the aggregate fair market value of these

<sup>3</sup> The Department is not providing exemptive relief to such Plans to the extent such transactions are covered under section 404(c) of the Act.

<sup>4</sup> The applicants have not requested exemptive relief with respect to any investment in the Funds by Plans sponsored by First Security. The applicants note that First Security-sponsored plans might acquire or redeem shares in the Funds pursuant to Prohibited Transaction Exemption (PTE) 77-3 (42 FR 18734, April 8, 1977). PTE 77-3 permits the acquisition or sale of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any transactions with the Funds by First Security-sponsored Plans would be covered by PTE 77-3.

Similarly, First Security has not requested exemptive relief with respect to future purchases or sales of shares of a Fund by Plans since it believes such transactions would be covered by PTE 77-4.

CIFs was approximately \$66 million. Participation in the CIFs was open to any Plan with respect to which a First Security bank was a fiduciary. As described below, the three CIFs were terminated as of December 28, 1994 following the conversion transactions.

(d) *The Funds* consist of separate portfolios of open-end investment companies registered under the Investment Company Act. The Funds constitute part of the Achievement Funds Trust, a registered, open-end series management investment company which has been organized under Massachusetts law as an unincorporated business trust. The Funds are identified as follows: the Short Term Bond Fund, the Intermediate Bond Fund, the Equity Fund, the Balanced Fund, the Idaho Municipal Bond Fund and the Short Term Municipal Fund.<sup>5</sup>

FSIM serves as investment adviser to the Funds. In this capacity, FSIM makes investment decisions with respect to the assets of each Fund and reviews, supervises and administers each Fund's investment program. In the future, First Security proposes to serve as the subadministrator for the Funds and will provide Secondary Services to the Funds.

Two classes of beneficial interests (i.e., shares) in the Funds have been issued. Retail Class A Shares are offered primarily to individuals (including certain non-fiduciary IRA and Keogh accounts). Retail Class D Shares are offered to individuals, Plans and IRAs through intermediaries such as banks or investment managers. Except for their fee structures, the two classes are identical and hold interests in the same underlying Fund assets.

2. First Security represents that it has maintained CIFs as investment options for Plans in accordance with requirements under Federal or state banking laws that apply to collective investment trusts. However for business reasons, it decided to terminate the Common Stock Trust, the Two Year Bond Trust and the Intermediate Corporate/Government Bond Trust and to offer Plans formerly participating in such CIFs alternative investments in certain Funds. Because interests in CIFs generally must be liquidated or withdrawn to effect distributions, First Security believed that the interests of the Plans investing in CIFs would be better served by in-kind transfers to the Funds. Overall, First Security believed that the Funds would offer Plans

<sup>5</sup> Although the Idaho Municipal Fund and the Short Term Municipal Fund are included within the Achievements Fund Trust, these Funds are not offered to Plan investors.

numerous advantages as pooled investment vehicles, including daily valuations reported in newspapers of general circulation, increased liquidity, portability, investment consolidation, voting and other shareholder rights. Further, First Security wished to expand the range of investment options available to Plans by offering other Funds (i.e., the Balanced Fund, the International Equity Portfolio and the Small Cap Growth Portfolio) that did not correspond to its existing CIFs.

3. First Security also noted that Plans investing in the Funds would periodically receive certain disclosures concerning the Funds. Such disclosures would include, but would not be limited to, (a) an updated copy of the prospectus provided on an annual basis; and (b) an annual report containing audited financial statements of the Funds and information regarding such Funds' performance (unless such information is included in the prospectus of the Funds) and the fees paid to First Security, depending upon the type of Plan account that was established. Further, First Security represented that it would report all transactions in shares of the Funds in periodic account statements provided to the Second Fiduciary of each of the Plans.

4. Thus, to avoid the potentially large brokerage expenses, on December 28, 1994, First Security transferred the assets of the three affected CIFs, which assets consisted of cash and marketable securities, to corresponding portfolios of the Funds, in exchange for shares of such Funds. First Security represents that the in-kind transfers were ministerial transactions performed in accordance with pre-established, objective procedures which were approved by the board of trustees of each Fund. Such procedures require that assets transferred to a Fund (a) be consistent with the investment objectives, policies, and restrictions of the corresponding portfolios of such Fund, (b) satisfy the applicable requirements of the Investment Company Act and the Code, and (c) have a readily ascertainable market value established by independent sources. In addition, any assets that were transferred were required to be liquid and would not be subject to restrictions on resale. Assets which did not meet these criteria were required to be sold in the open market through an unaffiliated brokerage firm prior to any transfer in-kind. Further, prior to entering into and following an in-kind transfer transaction, each affected Plan would be required to receive certain disclosures from First Security and

approve such transactions in writing. Accordingly, First Security requests retroactive exemptive relief from the Department.

5. In accordance with the criteria described above in Representation 4, First Security stated that it conducted the in-kind transfer transactions as follows:

Prior to each in-kind transfer, the assets of the three CIFs were reviewed to confirm that they were appropriate investments for the corresponding portfolios of the Funds. If any of the assets of such CIFs were not appropriate for the Funds, First Security sold the assets in the open market through an unaffiliated brokerage firm.

Participants in the affected CIFs who did not elect to participate in the conversion transactions received distributions of the value of their interests therein. However, with respect to participants in the CIFs who elected to participate in the in-kind transfers and transfer their interests to the Funds, the transferred assets constituted the participants' and Plans' *pro rata* portion of all assets that were held by the CIF immediately prior to the transfer. Further, the Funds had investment objectives and policies that were substantially identical to those of the CIFs. Following the in-kind transfers, the affected CIFs were terminated.

No brokerage commissions, redemption fees, 12b-1 Fees or expenses (other than customary transfer charges paid to parties other than First Security or its affiliates) were charged to the Plans or the CIFs in connection with the in-kind transfers of assets into the Funds or would be charged with respect to the redemption of shares of such Funds. Further, neither First Security nor its affiliates, including any officers or directors, were (nor would be) permitted to purchase from or sell to any of the Plans shares of the Funds.

6. First Security provided the Second Fiduciary, as defined in Section II(g), for each affected Plan with disclosures announcing the termination of the CIFs, summarized the transaction, and otherwise complied with provisions of Section I of this proposed exemption. Based on these disclosures, the Second Fiduciary from each Plan approved, in writing, the in-kind transfer of the CIFs assets to the corresponding Funds, in exchange for shares of the Funds, and the receipt by First Security of fees for services provided to such Funds.

7. The assets transferred by the affected CIFs to the Funds consisted entirely of cash and securities for which market quotations were readily available. The value of the securities in each of the three CIFs was determined

based on market values as of the close of business on December 27, 1994, the last business date prior to the transfer. Such values were determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures described in Rule 17a-7 under the Investment Company Act, as amended from time to time or any successor rule, regulation or similar pronouncement and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets.<sup>6</sup> In this regard, First Security represents that the "current market price" for specific types of CIF securities involved in the transactions was determined as follows:

(a) If the security was a "reported security" as the term is defined in Rule 11Aa3-1 under the Securities Exchange Act of 1934 (the 1934 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for December 27, 1994; or if there were no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1-1 under the 1934 Act), as of the close of business on December 27, 1994.

(b) If the security was not a reported security, and the principal market for such security was an exchange, then the last sale on such exchange on December 27, 1994; or if there were no reported transactions on such exchange that day, the average of the highest current independent bid and lowest current independent offer on such exchange as of the close of business on December 27, 1994.

(c) If the security was not a reported security and was quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on December 27, 1994.

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer as of the close of business on December 27, 1994, determined on the basis of reasonable inquiry. (For securities in this category, First Security represents that it obtained quotations from at least three sources that were either broker-dealers or pricing services independent of and unrelated to First Security and used the average of the quotations to value the securities, in

<sup>6</sup>Rule 17a-7 provides an exemption from section 17(a) of the Investment Company Act, which prohibits, among other things, principal transactions between an investment company and its investment adviser or affiliates of the investment adviser. Among the conditions of Rule 17a-7 is the requirement that the transaction be effected at the "independent current market price" for specific types of CIF or Plan assets involved in the in-kind transfer.

conformance with interpretations by the SEC and practice under Rule 17a-7.)

8. The securities received by the corresponding portfolios of the Funds were valued by each such portfolio for purposes of the in-kind transfers in the same manner and on the same day as such securities were valued by the CIFs. The per share value of the shares of each portfolio of the Funds issued to the CIFs was based on the corresponding portfolio's then current net asset value. As a result of this procedure, the aggregate value of the shares of the corresponding Fund issued to the CIF was equal to the value of the assets (cash and marketable securities) transferred to such portfolio as of the opening of business on December 28, 1994. In addition, the value of a Plan's investment in shares of a corresponding portfolio, as of the opening of business on the date of the transactions (December 28, 1994), was equal to the value of such Plan's investment in the corresponding CIFs as of the close of business on the last business day prior to the transaction (December 27, 1994).

9. Not later than 30 days after completion of the in-kind transfer transaction, First Security sent by regular mail a written confirmation of the transaction to each affected Plan. Such confirmation contained: (a) the identity of each security that was valued in accordance with Rule 17a-7(b)(4), as described above; (b) the price of each such security for purposes of the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such securities.

In addition, not later than 90 days after completion of each in-kind transfer transaction, First Security sent, by regular mail to the Second Fiduciary of each affected Plan, a written confirmation containing the following information: (a) the number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred); and (b) the number of shares in the Funds that were held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

10. The requested exemption is also subject to the satisfaction of certain general conditions. For example, the transactions are subject to the prior authorization of a Second Fiduciary, acting on behalf of each of the Plans, who has been provided with full written disclosure by First Security. The Second Fiduciary is generally the administrator,

sponsor or a committee appointed by the sponsor to act as a named fiduciary for a Plan.

With respect to disclosures, the Second Fiduciary of such Plan received, in writing, in advance of the investment by a Plan in any of the Funds: (a) a current prospectus for each of the Funds in which such Plan might invest; (b) a statement describing the fees for investment management, investment advisory, or other similar services, any fees for Secondary Services, and all other fees to be charged to or paid by the Plan and by such Funds to First Security, including the nature and extent of any differential between the rates of such fees, (c) the reasons why First Security considered such investment to be appropriate for the Plan, (d) a statement describing whether there were any limitations applicable to First Security with respect to which assets of a Plan may be invested in the Funds, and, if so, the nature of such limitations. Upon written request, the Second Fiduciary will be provided with a copy of the proposed exemption and/or the final exemption, if granted.

On the basis of the information disclosed, the Second Fiduciary of a Plan authorized, in writing, the investment of assets of the Plan in shares of a Fund in connection with the transactions set forth herein, the investment portfolios of the Funds in which the assets of the Plans may be invested and the compensation received by First Security in connection with its services to the Funds. In addition, the Second Fiduciary received each Fund's current prospectus and the written disclosures referred to above which specifically referenced the Fund and afforded such fiduciary the opportunity to select the Fund for its prior authorization. Having obtained the authorization of the Second Fiduciary, First Security invested the assets of a Plan among the portfolios and in the manner covered by the authorization, subject to the satisfaction of the other terms and conditions of the proposed exemption.

In addition to the above, as to each individual Plan, the combined total of all fees received by First Security for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans hold shares acquired in connection with the in-kind transfers, were required not to be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act. Further, all dealings by or between the Plans and the Funds were required to remain on a basis which would be at least as favorable to the Plans as such

dealings are with other shareholders of the Funds.

11. Besides the disclosures provided to the Plan prior to investment in any of the Funds, First Security represents that it will routinely provide, at least annually to the Second Fiduciary, updated prospectuses of the Funds in accordance with the requirements of the Investment Company Act and the SEC rules promulgated thereunder. Further, the Second Fiduciary will be supplied, at least annually, with a report or statement (which may take the form of the most recent financial report of such Funds, the current statement of additional information, or some other written statement) containing a description of all fees paid by the Fund.

12. In summary, First Security represents that the in-kind transfer transactions satisfied the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The CIFs did not pay sales commissions or redemption fees in connection with the in-kind transfer of assets to the Funds in exchange for shares of the Funds.

(b) With respect to any in-kind transfer of assets, the CIFs received shares of the Funds that were equal in value to the assets of the CIFs exchanged for such shares, the latter values determined in a single valuation performed in the same manner and at the close of business on the same day in accordance with the procedures set forth in Rule 17a-7 under the Investment Company Act, as amended from time to time or any successor rule, regulation, or similar pronouncement.

(c) Not later than 30 days after completion of each in-kind transfer of assets in exchange for shares of the Funds, the Second Fiduciaries of the affected Plans received written confirmation of the assets involved in the exchange which were valued by a third-party source (e.g., pricing service or market maker) in accordance with Rule 17a-7(b)(4), the price of such assets and the identity of the pricing service or market maker consulted.

(d) Not later than 90 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, First Security mailed to each affected Plan a written confirmation of the number of CIF units held by such Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred), and the number of shares in the Funds that were held by the Plan following the conversion (and the related per share net asset value or the aggregate dollar value of the shares received).

(e) The price paid or received by the Plans for shares in the Funds was the net asset value per share at the time of the transaction and was the same price for the shares which would have been paid or received by any other investor at that time.

(f) First Security, its affiliates, and officers or directors would not be permitted to purchase or sell to any of the Plans shares of any of the Funds.

(g) As to each individual Plan, the combined total of all fees received by First Security for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans may invest, was not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) Prior to investment by a Plan in any of the Funds, in connection with transactions, the Second Fiduciary received a full and detailed written disclosure of information concerning such Fund.

(i) Subsequent to the investment by a Plan in any of the Funds, First Security would provide the Second Fiduciary of such Plan with an updated copy of the prospectus for each of the Funds in which the Plan invests, at least annually as well as other pertinent information.

(j) All dealings between the Plans and any of the Funds would remain on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**San Diego Electrical Pension Trust, (the Pension Plan); and San Diego Joint Apprenticeship and Training Trust (the Training Plan; collectively, the Plans) Located in San Diego, California**

[Application Nos. D-10581 and L-10582]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the proposed purchase by the Training Plan from the Pension Plan of a minority interest (the Minority Interest) in certain improved real property (the Property) jointly owned by the Plans, provided that the following conditions are satisfied:

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

(2) The terms and conditions of the transaction are not less favorable to either Plan than those each could obtain in a comparable arm's length transaction with an unrelated party;

(3) The Training Plan pays no more, and the Pension Plan receives no less, than the fair market value of the Minority Interest, as of the date of the transaction, as determined by a qualified, independent appraiser;

(4) Neither the Pension Plan nor the Training Plan pays any commissions or fees in connection with the transaction;

(5) The trustees of the Plans (other than their common trustees), the Pension Plan's investment manager, and a qualified, independent fiduciary that has been retained to represent the Training Plan, have reviewed the terms and conditions of the transaction and determined that such terms and conditions are in the best interests of, and appropriate for, their respective Plans; and

(6) The independent fiduciary for the Training Plan monitors the proposed transaction and takes whatever actions necessary to safeguard the interests of the Training Plan.

**Summary of Facts and Representations**

1. The Plans are multiple employer, jointly trustee employee benefit plans, established pursuant to collective bargaining agreements between Local 569, the International Brotherhood of Electrical Workers, and the National Electrical Contractors Association, San Diego Chapter, Inc. The Plans cover members of Local 569.

The Pension Plan is a defined benefit plan and, as of January 9, 1998, had approximately 2,790 participants and beneficiaries. As of September 30, 1997, the fair market value of the assets of the Pension Plan was \$181,250,000.

The Training Plan is a welfare plan that operates a five-year apprenticeship program approved and regulated by the Division of Industrial Relations, State of California. As of January 9, 1998, the approximate number of apprentices participating in the Training Plan was 230. As of December 31, 1997, the fair market value of the assets of the Training Plan was \$2,930,680.

Each of the Plans is managed by a board of trustees, with eight trustees on each board. Currently, there are three trustees who serve on both boards: Mr. Michael Sparks, Mr. Ronald Cooper, and Mr. James Aylsworth. These individuals have each signed a sworn affidavit removing themselves from all considerations in connection with the purchase of the Minority Interest by the Training Plan from the Pension Plan.

2. The Property consists of a two-story commercial office building located at 4675 Viewridge Avenue, San Diego, California. The Property consists of a land area of 77,101 gross sq. ft. and a building area of 31,435 gross sq. ft.

Title to the Property is jointly held, with the Training Plan having a 77.6475% interest and the Pension Plan having a 22.3525% interest.<sup>7</sup> The land relating to the Property was purchased by the Plans in August, 1981, from Booth Enterprises, Inc., an unrelated party, for a total of \$810,168. The Pension Plan and the Training Plan subsequently held the land as tenants-in-common, with a view to developing the land to provide administrative offices for both Plans, as well as training facilities for the Training Plan. The building was constructed in 1983, with the majority of the cost ultimately paid by the Training Plan, based upon its percentage interest in the Property.

The Property is the location of the classrooms and administrative offices of the Training Plan, as well as the administrative offices for the Pension Plan and the San Diego Electrical Health and Welfare Trust (the Health Plan). The Health Plan, like the Pension Plan and the Training Plan, is a multiple employer plan that covers members of Local 569. The Pension Plan has been leasing office space in the Property to its sister plans (i.e., the Training Plan and the Health Plan).<sup>8</sup>

3. The Property has been appraised by Lipman Stevens Marshall & Thene, Inc. (Lipman, Inc.), a qualified, independent appraiser. Mr. Walter J. Stevens, MAI and Vincent G. Ferrer, of Lipman, Inc., are both certified real estate appraisers in the State of California. Utilizing the sales comparison and the income capitalization approaches to value the Property, Messrs. Stevens and Ferrer concluded that the fair market value of the Property was \$2,000,000, as of August 1, 1997.

The Minority Interest in the Property has been appraised by American Realty

<sup>7</sup>The Department expresses no opinion herein as to whether the joint ownership of the Property by the Pension Plan and the Training Plan may have violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

<sup>8</sup>Prohibited Transaction Class Exemption (PTCE) 77-10 (42 FR 33918, July 1, 1977) provides an exemption, under certain conditions, from section 406(b)(2) of the Act for the leasing of office space by a multiple employer plan to another such plan with common trustees. No individual exemptive relief is proposed herein for the leasing of office space in the Property by the Pension Plan to the Training Plan and the Health Plan. It is represented that such leasing has been done in accordance with the conditions of PTCE 77-10. However, the Department expresses no opinion herein as to whether the conditions of PTCE 77-10 have been satisfied.

Advisors (ARA), the Pension Plan's real estate investment manager.<sup>9</sup> ARA concluded that the fair market value of the Minority Interest was \$415,756.50, as of November 11, 1997. ARA first determined a value of \$2,000,000 for the Property overall, utilizing the following approaches (but giving greatest weight to the first as most accurate): (1) Discounted cash flow analysis; (2) direct capitalization analysis; and (3) sales comparison analysis. With respect to the Minority Interest, ARA applied a 7% discount factor to reflect its illiquidity and derived a value for the Minority Interest as follows.

Property Value .....	\$2,000,000
Less: 7% Discount .....	(140,000)
	1,800,000
22.3525% Minority Interest ..	415,756.50

In its report, ARA explains that a discount factor must be applied because investors typically wish to purchase a controlling interest in real estate, not minority positions, and the majority owner is the most logical purchaser of a minority interest. Thus, ARA concludes that the 7% discount is appropriate in a purchase of the Minority Interest by the Training Plan, as the majority owner of the Property, and no premium would be associated with such purchase.

Mr. Stevens, of Lipman, Inc., reviewed ARA's report and, in a letter to the Department dated March 20, 1998, confirmed that the valuation methodology used and the fair market value arrived at by ARA for the Minority Interest was fair and reasonable.

4. It is proposed that the Pension Plan and the Training Plan enter into a transaction wherein the Training Plan will purchase for cash all of the Minority Interest in the Property held by the Pension Plan. The purchase price will be an amount equal to the fair market value of the Minority Interest (\$415,756.50, as of November 11, 1997) as of the date of the sale, based on an updated independent appraisal. Neither the Pension Plan nor the Training Plan will pay any commissions or fees in connection with the transaction.

The trustees of both Plans, other than their common trustees, have reviewed the terms and conditions of the transaction and determined that such

terms and conditions are in the best interests of, and appropriate for, their respective Plans. The Pension Plan trustees desire to divest the Pension Plan of its otherwise illiquid Minority Interest, while the Training Plan trustees desire to acquire the Minority Interest so that the Training Plan will have total ownership and control of the Property, over 80% of whose space the Training Plan occupies.

5. The Pension Plan's real estate investment manager, ARA, not only has appraised the fair market value of the Minority Interest but, in its report dated November 11, 1997, has expressed its approval of the proposed sale, which is consistent with ARA's investment strategy of ultimately liquidating all of the Pension Plan's direct real estate investments. ARA has determined that due to the size of the Pension Plan and its ongoing need for liquidity, direct investments in real estate are not appropriate for the Pension Plan in the long term. ARA is monitoring the three major real estate assets that it manages for the Pension Plan to time their disposition. Given the even greater illiquidity of a minority interest in real estate, ARA has concluded that the Training Plan should take advantage of this opportunity to sell its Minority Interest in the Property at fair market value to the majority owner.

6. Amresco Advisors, Inc. (Amresco), a registered investment advisor, has been retained to act as an independent fiduciary to represent the Training Plan's interests with respect to the proposed purchase. Amresco represents that it has extensive experience as a fiduciary under the Act and that it is knowledgeable as to the subject transaction. Amresco acknowledges and accepts its duties, liabilities, and responsibilities in acting as a fiduciary with respect to the Training Plan.

Amresco, in its report dated March 27, 1998, has expressed its approval of the proposed purchase because, as explained in detail below, it will immediately provide the Training Plan with an excellent return on its investment, as well as securing the additional space in the Property that will be needed in the future for expansion.

Amresco has reviewed the appraisal of Lipman, Inc. and concurs with their conclusion as to the fair market value of \$2,000,000 for the Property. Amresco has also reviewed the ARA report and concurs with their valuation methodology and their conclusion as to the fair market value of \$415,756.50 for the Minority Interest.

Amresco notes that with real estate, the whole is more than the sum of its

parts. Because of the extremely limited marketability of an undivided interest (as opposed to an outright, or whole interest) in real estate, the Training Plan is able to purchase the Pension Plan's Minority Interest at a 7% discount from its proportionate value of the total fee interest in the Property, an economic value that would immediately accrue to the Training Plan.

In addition, Amresco notes that the Training Plan's space requirements exceed its approximately 78% proportionate share of the Property. Thus, the Training Plan currently must lease an additional 1,900 sq. ft. in the Property from the Pension Plan<sup>10</sup> at the rate of \$1,400/mo., or \$16,800/yr. This lease rate is projected to increase soon to approximately \$2000/mo., or \$24,000/yr. The Training Plan will require even more space in the future to accommodate an expanding student body, at ever-increasing rents.

Following the Training Plan's purchase of the Minority Interest, no immediate change will occur with respect to occupancy of space in the Property. The Training Plan has no re-development plans for the Property and, thus, will incur no significant additional expenses, in connection with the proposed transaction. It is intended that the Training Plan will lease approximately 4,800 sq. ft. of the Property to the Pension Plan until such time as the Training Plan needs to fully utilize this space. The Pension Plan, in turn, will sublease a portion of its space to the Health Plan.<sup>11</sup> At rental rates of approximately \$1.05/sq. ft./mo. and \$.35/sq. ft./mo., the lease will generate approximately \$3,350/mo., or \$40,320/yr., in net rental income to the Training Plan.

Thus, Amresco states that the combination of a projected \$24,000/yr. savings in rent, plus \$40,320/yr. in net rental income, or \$64,320/yr., will provide an immediate 15% return on the Training Plan's \$415,756.50 investment. In addition, the Training Plan, instead of being a renter, will enjoy the benefits of equity ownership in real estate, such as any appreciation in value.

In anticipation of the proposed transaction, the collective bargaining parties have designated new money of \$0.37 per hour worked to fund the purchase price for the Minority Interest. Since the purchase price is being

<sup>10</sup> See Footnote 1 regarding PTCE 77-10.

<sup>11</sup> It is represented that the proposed lease of office space in the Property by the Training Plan to the Pension Plan, if the exemption is granted, as well as the sublease of office space by the Pension Plan to the Health Plan, will meet the conditions for exemptive relief under PTCE 77-10.

<sup>9</sup> It is represented that ARA is a "qualified professional asset manager" (QPAM), as defined in PTCE 84-14 (49 FR 9494, March 13, 1984), for the Pension Plan. PTCE 84-14, a/k/a the QPAM Class Exemption, permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are managed by persons, defined for purposes of the exemption as QPAMs, which are independent of the parties in interest (with certain limited exceptions) and which meet specified financial standards.

specially funded by an increase in the contribution rate to the Training Plan required to be met by contributing employers, Amresco states that the Training Plan will have sufficient cash available to purchase the Minority Interest without affecting the ordinary operational costs and liquidity needs of the Training Plan.

Amresco, as the independent fiduciary for the Training Plan, will monitor the proposed transaction and take whatever actions necessary to safeguard the interests of the Training Plan.

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

(a) The purchase will be a one-time transaction for cash; (b) the terms and conditions of the transaction will not be less favorable to either Plan than those each could obtain in a comparable arm's length transaction with an unrelated party; (c) the Training Plan will pay no more, and the Pension Plan will receive no less, than the fair market value of the Minority Interest, as of the date of the transaction, as determined by a qualified, independent appraiser; (d) neither the Pension Plan nor the Training Plan will pay any commissions or fees in connection with the transaction; (e) the trustees of the Plans (other than their common trustees), the Pension Plan's real estate investment manager (i.e., ARA), and a qualified, independent fiduciary (i.e., Amresco) representing the Training Plan, have reviewed the terms and conditions of the transaction and determined that such terms and conditions are in the best interests of, and appropriate for, their respective Plans; and (f) Amresco will monitor the proposed transaction and take whatever actions necessary to safeguard the interests of the Training Plan.

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

**Hanson Operating Company, Inc.  
Defined Benefit Pension Plan (the Plan)  
Located in Roswell, New Mexico**

[Application No. D-10702]

**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 sections 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 proposed sale by the Plan of certain closely-held stock (the Stock) to Douglas L. McBride and Basil R. Willis, parties in interest with respect to the Plan, provided that the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) the Plan pays no commissions nor other expenses relating to the sale; and (c) the Plan receives an amount that is no less than the fair market value of the Stock as of the date of the sale, as determined by a qualified, independent appraiser.

**Summary of Facts and Representations**

1. The Plan is a defined benefit pension plan established by Hanson Operating Company, Inc. (the Employer). The Employer, a New Mexico corporation, is engaged in the business of oil and gas exploration and is located in Roswell, New Mexico. As of June 30, 1998, the Plan had 12 participants and beneficiaries and total assets of approximately \$808,183.01. The trustees of the Plan are Mr. McBride and Mr. Willis (the Applicants), who are also officers of the Employer.

2. Among the assets of the Plan is the Stock, which consists of 7,500 shares of common stock of Commerce Bankshares of Roswell Inc. (CBR), a closely-held one-bank holding company organized under the laws of the State of New Mexico. CBR's subsidiary bank is the Valley Bank of Commerce (the Bank), a state-chartered commercial bank. The Applicants represent that they acquired 7,500 shares of the Stock for the Plan in 1992 in a limited offering at \$20 per share, for a total cost of \$150,000. Neither of the Applicants was or is related to CBR or the Bank.

3. The Stock was appraised by Patten, MacPhee & Associates, Inc. (Patten, MacPhee), a qualified, independent appraiser located in Denver, Colorado that performs annual valuations of the Stock. In a cover letter dated August 25, 1998, accompanying the appraisal report, Ms. E. Jayne MacPhee and Mr. Gary M. Schwartz state that their firm has performed over 200 common stock and intangible asset valuations for clients nationwide.

The appraisal states that as of June 30, 1998, the 151,218 shares of common stock of CBR issued and outstanding were held by 60 shareholders, and the Plan owned 7,500 shares of the Stock, or approximately 4.96%. As of June 30, 1998, the 7,500 shares of the Stock had an estimated fair market value of

approximately \$76.30 per share, or a total value of \$572,250, which represents approximately 71% of the assets of the Plan.<sup>12</sup>

Patten, MacPhee performed another appraisal of the Stock's value, as of December 31, 1998, for purposes of the Plan's annual report. As of December 31, 1998, there were 149,208 shares of common stock of CBR issued and outstanding, which were held by 57 shareholders. As of that date, the 7,500 shares of the Stock had an estimated fair market value of approximately \$80.95 per share, or a total value of \$607,125.

Each appraisal states, in regard to the valuation methodology, that a number of documents and information sources were considered, as well as the elements for the valuation of corporate stock as set forth in the Internal Revenue Service's Revenue Ruling 59-60. Such valuation elements included: the financial condition of both the Bank and CBR; strengths of current management, market share, economic conditions, and competitive factors; the fair market value of the underlying assets and liabilities of the Bank and CBR; historical and projected earnings; and sales of other banks and bank holding company stock within the southwestern United States. The appraisals state that, inasmuch as the Bank represents the only significant asset and activity of CBR, many of the foregoing factors were considered solely in regard to the Bank. In addition, since much of the published information utilized in valuation relates to the transfer of control, the appraisals focussed on those issues which influence the market values of minority interests, namely marketability, liquidity risk, and lack of control.

4. The Applicants propose to purchase 5,500 of the 7,500 shares of the Stock held by the Plan for the fair market value of the Stock as of the date of the sale, based upon an updated independent appraisal. Mr. McBride proposes to purchase 3,000 shares of the Stock, and Mr. Willis proposes to purchase 2,500 shares of the Stock. Based upon an appraised value for the Stock, as of December 31, 1998, of

<sup>12</sup> The Department expresses no opinion herein as to whether the Plan's acquisition and holding of the Stock violated any of the general fiduciary responsibility provisions of Part 4 of Title I of the Act. However, the Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries when making investment decisions on behalf of the plan. Section 404(a) of the Act also requires that a plan fiduciary diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

\$80.95 per share, 5,500 shares of the Stock have a total value of \$445,225. The sale will be a one-time transaction for cash, and the Plan will pay no commissions nor other expenses relating to the sale.

The Applicants represent that following a large benefit distribution made by the Plan in 1993, the proportion of Plan assets represented by the Stock rose to 28%. At that time, the Applicants, as trustees of the Plan, determined that future contributions due to the Plan from the Employer, plus dividends paid on the Stock, would keep the assets of the Plan diversified and provide the liquidity needed to make benefit payments. However, the Stock has appreciated so much over the last few years that the Plan has been fully funded, and no additional Employer contributions have been allowed.

Although the Stock has been a good investment for the Plan, the Applicants, as Plan trustees, have determined that the proposed sale of 5,500 shares of the Stock is in the best interests of, and appropriate for, the Plan because such sale will enhance the liquidity and diversification of the assets of the Plan. In addition, the sale will reduce the risk of loss to the Plan in the event that the market value of the Stock should decline in the future, or in the event that the Stock, because it is not publicly traded, cannot be sold expeditiously when the Plan requires the funds to make benefit payments, forcing a distress sale in order to generate cash. Finally, the Applicants, as Plan trustees, have determined that the continued holding by the Plan of the remaining 2,000 shares of the Stock will not adversely affect the Plan's liquidity needs.

5. In summary, the Applicants represent that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the sale will be a one-time transaction for cash; (b) the Plan will pay no commissions nor other expenses relating to the sale; (c) the Plan will receive an amount that is no less than the fair market value of the Stock as of the date of the sale, as determined by a qualified, independent appraiser; and (d) the sale will enhance the liquidity and diversification of the assets of the Plan, as well as reduce the risk of loss to the Plan, in the event that the market value of the Stock should decline in the future.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng 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 19th day of April, 1999.

**Ivan Strasfeld,**

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

[FR Doc. 99-10104 Filed 4-21-99; 8:45 am]

BILLING CODE 4510-29-P

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veterans' Employment and Training; Homeless Veterans' Reintegration Project Competitive Grants for Rural Areas

**AGENCY:** Office of the Assistant Secretary for Veterans' Employment and Training.

**ACTION:** Notice of availability of funds and solicitation for grant applications for Rural Homeless Veterans Reintegration Projects (SGA 99-02).

**SUMMARY:** This notice contains all of the necessary information and forms needed to apply for grant funding. All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) announces a grant competition for Rural Homeless Veterans Reintegration Projects (HVRP) authorized under the Stewart B. McKinney Homeless Assistance Act. Such projects will assist eligible veterans who are homeless by providing employment, training, supportive and transitional housing assistance where possible. Under this solicitation, VETS expects to award up to five grants in FY 1999.

This notice describes the background, the application process, description of program activities, evaluation criteria, and reporting requirements for Solicitation of Grant Applications (SGA) 99-02. VETS anticipates that up to \$300,000 will be available for grant awards under this SGA.

The information and forms contained in the Supplementary Information Section of this announcement constitute the official application package for this Solicitation. In order to receive any amendments to this Solicitation which may be subsequently issued, all applicants must register their name and address with the Procurement Services Center. Please send this information as soon as possible, Attention: Grant Officer, to the following address: U. S. Department of Labor, Procurement Services Center, Room N-5416, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Please reference SGA 99-02.