4. Recordkeeping guidelines
5. Federal Worker 2000 results
6. New business
7. Adjournment

Written data, views, or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs at the address provided below. All such submissions, received by September 17, 2002, will be provided to the Federal Advisory Council members and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business September 17, 2002. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Persons who request the opportunity to address the Federal Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson. Individuals with disabilities who wish to attend the meeting should contact Tom Marple at the address indicated below, if special accommodations are needed.

For additional information, please contact Thomas K. Marple, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3112, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 28th day of August 2002.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 02–22525 Filed 9–3–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–11050 *et al.*]

Prohibited Transaction Exemption 2002–42; Grant of Individual Exemptions; Provident Mutual Life Insurance Company (Provident)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

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).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type 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 exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Provident Mutual Life Insurance Company (Provident) Located in Berwyn, PA

[Prohibited Transaction Exemption 2002–42; Exemption Application No. D–11050]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,[1] shall not apply to (1) the initial issuance, by Provident, of its common stock (Provident Shares) to the conversion agent (the Conversion Agent), as stockholder of record, on behalf of any eligible policyholder of Provident (the Eligible Member), including any Eligible Member which is an employee benefit plan (within the meaning of section 3(3) of the Act), an individual retirement annuity (within the meaning of section 408 or 408A of the Code) or a tax sheltered annuity (within the meaning of section 403(b) of the Code) (each, a Plan), including a Plan sponsored by Provident for Provident employees (a Provident Plan); or (2) the exchange, by the Conversion Agent, of Provident Shares for common stock (Sponsor Class A Shares) issued by Nationwide Financial Services, Inc., (the Sponsor), or, the receipt of cash (Cash) or policy credits (Policy Credits) by an Eligible Member, in exchange for such Eligible Member's membership interest in Provident or in connection with the merger (the Merger) between Provident and the Eagle Acquisition Corporation, a wholly-owned subsidiary of the Sponsor, in accordance with the terms of a plan of conversion (the Plan of Conversion) and merger agreement (the Merger Agreement), adopted by Provident and implemented pursuant to the Pennsylvania Insurance Company Mutual-to-Stock Conversion Act, as amended, codified at 40 P.S. sections 911–A to 929–A (the Conversion Act) and the applicable provisions of the Pennsylvania Business Corporation Law of 1998.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by a Provident Plan, of Sponsor Class A Shares, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

This exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion, including the Merger Agreement, is subject to approval, review and supervision by the Commissioner of Insurance of the Commonwealth of Pennsylvania (the Commissioner) and is implemented in accordance with procedural and substantive safeguards that are imposed

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

under the laws of the Commonwealth of Pennsylvania.

(b) The Commissioner reviews the terms of the options that are provided to Eligible Members of Provident as part of such Commissioner's review of the Plan of Conversion and Merger, and approves the Plan of Conversion and Merger following a determination that such Plan of Conversion is fair and equitable to all Eligible Members. The New York Superintendent of Insurance (the Superintendent) may object to the Plan of Conversion if he or she finds that such Plan of Conversion is not fair or equitable to all New York policyholders.

(c) As part of their separate determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Conversion.

(d) Each Eligible Member has an opportunity to vote at a special meeting to approve the Plan of Conversion and Merger after full written disclosure is given to the Eligible Member by Provident.

(e) Any determination to receive Sponsor Class A Shares, Cash, or Policy Credits by an Eligible Member which is a Plan, pursuant to the terms of the Plan of Conversion, is made by one or more Plan fiduciaries that are independent of Provident and its affiliates and neither Provident nor any of its affiliates exercises any discretion or provides investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(f) After each Eligible Member is allocated a fixed component equivalent to approximately 20% of Provident Shares, additional consideration is allocated to Eligible Members based on actuarial formulas that take into account each policy's contributions to the surplus and asset valuation reserve of Provident, which formulas have been approved by the Commissioner.

(g) In the case of an Eligible Member who is entitled to receive Provident Shares only upon consummation of the Merger, such Provident Shares are exchanged for Sponsor Class A Shares, Cash or Policy Credits in accordance with an election made by such Eligible Member.

(h) In the case of a Provident Plan, the independent Plan fiduciary —

(1) Votes on whether to approve or not to approve the proposed demutualization;

(2) Elects between consideration in the form of Sponsor Class A Shares, Cash or Policy Credits on behalf of such Plans;

(3) Reviews and approves Provident's allocation of Sponsor Class A Shares, Cash or Policy Credits received for the benefit of the participants and beneficiaries of the Provident Plans;

(4) Votes on Sponsor Class A Shares that are held by the Provident Plans and disposes of such shares held by the Retirement Pension Plan for Certain Home Office, Managerial and Other Employees of Provident Mutual Life Insurance Company, which exceeds the limitation of section 407(a)(2) of the Act, as soon as it is reasonably practicable, but in no event later than six months after the effective date (the Effective Date) of the Plan of Conversion and Merger;

(5) Provides the Department with a complete and detailed final report as it relates to the Provident Plans prior to the Effective Date of the demutualization; and

(6) Takes all actions that are necessary and appropriate to safeguard the interests of the Provident Plans and their participants and beneficiaries.

(i) All Eligible Members that are Plans participate in the transactions on the same basis as all Eligible Members that are not Plans.

(j) No Eligible Member pays any brokerage commissions or fees in connection with the receipt of Sponsor Class A Shares or Policy Credits or in connection with the implementation of the commission-free purchase and sale program.

(k) All of Provident's policyholder obligations remain in force and are not affected by the Plan of Conversion or Merger.

(l) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Section III. Definitions

For purposes of this exemption:

(a) The term ''Provident'' means Provident Mutual Life Insurance Company and any of its affiliates as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Provident includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Provident. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term ''Allocable Provident Shares'' means the number of Provident Shares determined in accordance with Section 3.1(c) of the Merger Agreement, representing the total number of Provident Shares that will be notionally allocated to Eligible Members in accordance with the Plan of Conversion and the ''Actuarial Contribution Memorandum'' (for purposes of allocating among Eligible Members the consideration that is actually to be distributed to Eligible Members in the form of Sponsor Class A Shares, Cash or Policy Credits). The Actuarial Contribution Memorandum sets forth the principles, assumptions and methodologies for the calculation of the Actuarial Contribution of Eligible Policies, which is the estimated past contribution of such Eligible Policy to Provident's statutory surplus and asset valuation reserve, plus the contribution that such policy is expected to make in the future, as calculated according to the principles, assumptions and methodologies set forth in the Plan of Conversion and its exhibits.

(d) The term ''Eligible Member'' means the owner of an ''eligible policy,'' as provided by the records of Provident and by its articles of incorporation and bylaws, on the adoption date of the Plan of Conversion. (An ''Eligible Policy'' is defined as a policy that is in force on the adoption date.) Provident and any of its subsidiaries will not be Eligible Members with respect to any policy that entitles the policyholder to receive consideration, unless the consideration is to be utilized in whole or in part for a plan or program funded by that policy for the benefit of participants or employees who have coverage under that plan or program. Provident may deem a person to be an Eligible Member in order to correct any immaterial administrative errors or oversights.

(e) With respect to the conversion of Provident from a mutual life insurance company to a stock insurance company (the Conversion), the term ''Policy Credit'' means consideration to be paid in the form of an increase in cash value, account value, dividend accumulations, face amount, extended term period or benefit payment, as appropriate, depending on the policy, or extension of the policy's expiration date. With respect to the Merger, the term ''Policy Credit'' means consideration to be paid in the form of an adjustment of policy values for certain policies under the Plan of Conversion.

(f) The ''Effective Date'' means the date the actual Conversion and Merger will transpire. It is expected to occur in the latter part of the third quarter in 2002, however the exact date is not known at this time.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of

proposed exemption published on June 18, 2002 at 67 FR 41506.

Written Comments

The Department received one written comment with respect to the proposed exemption. The comment, which was submitted by Provident, is intended to inform the Department of certain developments in connection with the insurer's proposed demutualization. In this regard, Provident has provided the following additional information in order to update the proposed exemption:

1. *Number of Plan Policyholders*. Representation 3 of the Summary of Facts and Representations (the Summary) states, in relevant part, that, as of December 31, 2000, Provident had over 1,050 outstanding policies and contracts held in connection with Plans. Provident explains that the number of benefit plan policyholders has been determined to be higher than the 1,050 originally estimated, and it indicates that the present estimate is approximately 3,500 benefit plan policyholders.

2. *The Commissioner's Review of the Plan of Conversion*. Representation 8 of the Summary states, in part, that the Plan of Conversion, including the Merger, must be approved by the Commissioner who will approve it if, after holding a public hearing, he or she determines that the Plan of Conversion complies with all provisions of Pennsylvania law and is fair and equitable to the company and the policyholders. Provident explains that the Commissioner approved the Plan of Conversion on July 31, 2002, pursuant to the Conversion Act, following a public hearing which was held on May 23, 2002.

3. *Consultants Hired to Assist the Commissioner*. Representation 9 of the Summary provides that the Commissioner may hire additional consultants to assist in making his determination on Provident's demutualization. Provident notes that the Commissioner has hired Stevens & Lee as legal advisers and The Blackstone Group as financial consultants.

4. *Limitation on Payment of Cash or Policy Credits*. Representation 14 of the Summary states that ''[u]nder the current terms of the Merger Agreement, the amount of Cash or Policy Credits that may be paid or funded with Cash supplied by the Sponsor is limited so that no more than 20 percent of the total number of Eligible Members receiving consideration provided or funded by the Sponsor (including Eligible Members receiving Sponsor Class A Shares) will receive Cash of Policy Credits.'' Representation 14 also states that ''the parties to the Merger have agreed to waive this limitation if the Internal Revenue Service (the Service) issues certain tax rulings.'' Provident explains that the Service has issued such favorable rulings.

In response to Provident's comment letter, the Department notes the foregoing clarifications and updates to the proposed exemption. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11050) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption subject to the modifications described above.

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

Chiquita Processed Foods 401(k) Retirement Savings Plan (the 401(k) Plan) and the Chiquita Savings and Investment Plan (the Savings Plan; collectively the Plans) Located in New Richmond, WI and Cincinnati, OH, Respectively

[Prohibited Transaction Exemption 2002–43; Exemption Application Nos. D–11063 and D–11064]

Exemption

The restrictions of sections 406(a), 406(b) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code,[2] by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective March 19, 2002, to (1) the acquisition and holding by the Plans of certain new warrants (the Warrants) to purchase new common stock (the New Common Stock) issued by Chiquita Brands International, Inc. (the Employer), a party in interest with respect to the Plans; and (2) the subsequent exercise of the Warrants, as directed by participants in the Plans.

This exemption is subject to the following conditions:

(a) The Plans had little, if any, ability to affect the negotiation or confirmation of either the Plan of Reorganization of Chiquita filed by the Employer on November 28, 2001 under Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code), the First Amended Plan of Reorganization of Chiquita, subsequently filed under the Bankruptcy Code by the Employer on January 18, 2002, or the Second Amended Plan of Reorganization of Chiquita (the Second Amended POR), subsequently filed under the Bankruptcy Code by the Employer on March 7, 2002.

(b) The acquisition and holding of the Warrants did not occur until the Second Amended POR had been confirmed.

(c) The Plans acquired the Warrants automatically in connection with the Employer's bankruptcy proceedings and without any unilateral action on their part.

(d) All shareholders, including the Plans, were treated in a like manner with respect to the issuance of the Warrants.

(e) The Warrants represented less than 25 percent of the assets of either Plan.

(f) Any decision to exercise the Warrants acquired by the Plans in connection with the Employer's bankruptcy will be made by the participants in accordance with the terms of a warrant agreement, as well as in accordance with the Plan provisions for individually-directed investment of participant accounts.

(g) The Plans did not pay any fees or commissions in connection with the receipt of the Warrants, nor will the Plans pay any fees or commissions in connection with the holding or exercise of the Warrants.

(h) The trustees of the Plans will not allow participants to exercise the Warrants held by their individual accounts in the Plans unless the fair market value of the New Common Stock exceeds the exercise price of the Warrants.

EFFECTIVE DATE: This exemption is effective as of March 19, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 18, 2002 at 67 FR 41513.

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

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

Goldman Sachs & Co. (Located in New York, NY) and its Affiliates

[Prohibited Transaction Exemption 2002–44; Application No. D–11084]

Exemption

Section I—Transactions

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,[3] shall not apply as of March 22, 2002, to:

(a) The lending of securities, under certain exclusive borrowing arrangements, to:

(1) Goldman, Sachs & Co. (Goldman) and any affiliate of Goldman that, now or in the future, is a U.S. registered broker-dealer, a government securities broker or dealer or U.S. bank (together with Goldman, the ''U.S. Broker-Dealers'');

(2) Goldman Sachs Canada Inc., which is subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association;

(3) Goldman Sachs International and Goldman Sachs Equity Securities (U.K.), which are subject to regulation in the United Kingdom by the Financial Services Authority (the UK FSA) (formerly, the Securities and Futures Authority (the UK SFA));

(4) Goldman, Sachs & Co. oHG, which is subject to regulation in Germany by the Deutsche Bundesbank and the Federal Banking Supervisory Authority, *e.g.*, der Bundesaufsichtsamt fuür das Kreditwesen (the BAK);

(5) Goldman Sachs (Japan) Ltd., which is subject to regulation in Japan by the Financial Services Agency and the Tokyo Stock Exchange;

(6) Goldman Sachs Australia Pty Limited, which is subject to regulation in Australia by the Australian Securities & Investments Commission (the ASIC);

(7) Goldman, Sachs & Co. Bank, which is subject to regulation in Switzerland by the Swiss Federal Banking Commission; and

(8) Any broker-dealer or bank that, now or in the future, is an affiliate of Goldman which is subject to regulation by the Ontario Securities Commission and the Investment Dealers Association in Canada, the UK FSA in the United Kingdom, the Deutsche Bundesbank and/or the BAK in Germany, the Financial Services Agency and the Tokyo Stock Exchange in Japan, the ASIC in Australia or the Swiss Federal Banking Commission in Switzerland (each such affiliated foreign broker-dealer or bank referred to as a ''Foreign Borrower,'' and, together with the U.S. Broker-Dealers, collectively referred to as the ''Borrowers''), by employee benefit plans, including commingled investment funds holding assets of such plans (Plans) with respect to which Goldman or any of its affiliates is a party in interest; and

(b) The receipt of compensation by Goldman or any of its affiliates in connection with securities lending transactions, provided that the following conditions set forth in Section II, below, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to the Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with a Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to a Borrower are at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives from the Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower pledges cash collateral, any earnings generated by such cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan and/or the Plan may agree to pay the Borrower a rebate fee and retain any earnings on the collateral (the Shared Earnings Compensation). If the Borrower pledges non-cash collateral, any earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the ''Lending Fee'')(the Lending Fee and the Shared Earnings Compensation are referred to herein as the ''Transaction Lending Fee''). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage of portfolio value or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan receives from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than Goldman or an affiliate of Goldman, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6 (46 FR 7527, Jan. 23 1981, as amended at 52 FR 18754, May 19, 1987) (PTE 81–6) (as amended or

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

superseded)[4] having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102 percent of the then market value of the securities lent. Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or a custodian of the Plan. If maintained by an affiliate of the Borrower, the collateral will be segregated from the assets of such affiliate.

(h) If the market value of the collateral at any time falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent. The level of the collateral is monitored daily by the Plan or its designee, which may be Goldman or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The applicable Borrowing Agreement shall give the Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral.

(i) Before entering into a Borrowing Agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, any cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)[5] had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement and paragraph (l) above, the Plan's remedy will be the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. against any losses resulting from its use of the borrowed securities equal to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default together with expenses incurred by the Plan plus applicable interest at a reasonable rate including reasonable attorneys fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, Canada, the United Kingdom, Germany, Japan, Australia, or Switzerland, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrower; provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed

[4] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

[5] The Department notes the Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.

for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrower, a copy of this exemption (and the notice of pendency) is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[6]

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in the following sentence, so that an independent Plan fiduciary may monitor such transactions with the Borrower. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

(r) In addition to the above conditions, all loans involving a Foreign Borrower must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a registered broker-dealer subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, in the United Kingdom by the UK FSA, in Germany by the Deutsche Bundesbank and the BAK, in Japan by the Financial Services Agency and the Tokyo Stock Exchange, in Australia by the ASIC, or in Switzerland by the Swiss Federal Banking Commission;

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides foreign broker-dealers a limited exception from United States registration requirements;

(3) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 (as amended or superseded);

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

(s) Goldman or the Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the 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 Goldman and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Borrower 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 (t)(1).

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

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

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (t)(1)(ii)–(t)(1)(iv) are authorized to examine the trade secrets of Goldman or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) An ''affiliate'' of a person means:

(i) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) any corporation or partnership of which such person is an officer, director or employee, or in which such person is a partner.

(b) The term ''Foreign Borrower'' or ''Foreign Borrowers'' means Goldman Sachs Canada Inc. or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, Goldman Sachs International and Goldman Sachs Equity Securities (U.K.) or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in the United Kingdom by the UK FSA, Goldman, Sachs & Co. oHG or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Germany by the Deutsche Bundesbank and the BAK, Goldman Sachs (Japan) Ltd. or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Japan by the Financial Services Agency and the Tokyo Stock Exchange, Goldman Sachs Australia Pty Limited or any broker-dealer or bank, now or in the future, that

[6] The Department notes the Applicants' representation that, under the exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, e.g., the Applicants will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Applicants or their affiliates may monitor the level of collateral and the value of the loaned securities.

is an affiliate of Goldman subject to regulation in Australia by the ASIC, Goldman, Sachs & Co. Bank or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Switzerland by the Swiss Federal Banking Commission.

(c) The term ''Borrower'' includes Goldman, the U.S. Broker-Dealers, and the Foreign Borrowers.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 3, 2002 at 67 FR 44633.

EFFECTIVE DATE: This exemption is effective as of March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions 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) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of August, 2002.

Ivan Strasfeld,

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

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MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The Merit Systems Protection Board (MSPB) intends to request approval of a revised information collection from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 and 3507). The currently approved information collection is the MSPB Appeal Form, Optional Form 283 (OMB Control Number 3124–0009). That form has been revised to produce the MSPB Appeal Forms Package, MSPB Form 185. At this time, the MSPB is requesting public comments on the MSPB Appeal Forms Package, which is available for review on the MSPB Web site at *http://www.mspb.gov* on the ''What's New'' page.

DATES: Comments must be received on or before November 4, 2002.

ADDRESSES: Submit comments to the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M St., NW., Washington, DC 20419. Because of possible mail delays, respondents are encouraged to submit comments by e-mail to *mspb@mspb.gov* or by facsimile transmittal to (202) 653–7130.

FOR FURTHER INFORMATION CONTACT: Office of the Clerk of the Board, 1615 M Street, NW., Washington, DC 20419; telephone (202) 653–7200; facsimile (202) 653–7130; e-mail to *mspb@mspb.gov.* Persons without Internet access may request a paper copy of the MSPB Appeals Forms Package from the Office of the Clerk.

SUPPLEMENTARY INFORMATION: The current version of the MSPB Appeal Form was approved by OMB, in accordance with the requirements of the Paperwork Reduction Act, in October 1994. Since that time, the MSPB has obtained extensions of OMB approval several times; the current approval expires on December 31, 2003. (Minor revisions updating the Instructions for the Appeal Form to reflect changes in the Board's regulations were made when the form was reprinted in November 2000.)

While a number of changes were made in the October 1994 revision to update and improve the Appeal Form, it has not undergone a major revision since 1989, when it was revised to reflect enactment of the Whistleblower Protection Act (WPA). The WPA authorized a new kind of appeal—the Individual Right of Action (IRA) appeal—which a whistleblower can file with the Board after first complaining to the Office of Special Counsel and exhausting the procedures of that office. The WPA also authorized the Board to grant requests for stays of agency actions allegedly based on whistleblowing. The enactment of the WPA necessitated revisions to the Board's regulations to require the submission of information the Board needs to adjudicate whistleblower appeals and stay requests. Following the issuance of those regulations, the Appeal Form was revised to include questions asking for the required information.

Since the WPA was enacted in 1989, both the Uniformed Services Employment and Reemployment Rights Act (USERRA), in 1994, and the Veterans Employment Opportunities Act (VEOA), in 1998, have extended the Board's jurisdiction to new appealable matters. The USERRA permits a person covered by that Act to raise a claim before either the Board or the Secretary of Labor that an agency has failed or refused to provide an employment or reemployment right or benefit to which the person is entitled under the Act. The VEOA permits a preference eligible to file a complaint with the Secretary of Labor alleging that an agency has violated a law or regulation relating to veterans' preference and to subsequently file an appeal with the Board if the Secretary does not resolve the matter within 60 days. The enactment of these laws necessitated revisions to the Board's regulations to require the submission of information the Board needs to adjudicate USERRA and VEOA appeals. While the USERRA and VEOA regulations were subsequently issued, the Appeal Form has not previously been revised to include questions asking for the required information. (In the revisions to the Instructions in November 2000, certain references to USERRA and VEOA were added.)

The revised MSPB Appeal Forms Package incorporates new questions to solicit the information required for USERRA and VEOA appeals. It also adds questions related to other changes