

Class A Common Stock at the time for exercise (in which case an attempt will be made to sell the Stock Rights instead, although the Stock Rights likely will have no value in such a case and thus would expire without value).

Approximately three (3) calendar days before the expiration of the Stock Rights offering, the Trustee will liquidate an amount sufficient to pay a Plan participant's exercise price by selling a pro-rata portion of the amounts held in such participant's various investment funds (other than the Common Stock Fund) and transfer such funds to the subscription agent in order to participate in the Stock Rights offering on behalf of Plan participants who elect to exercise some or all of their Stock Rights. No Stock Rights under the Plan will be exercised before this date. The shares of Class A Common Stock purchased upon the consummation of the Stock Rights offering will be allocated to the accounts of Plan participants as soon as practicable thereafter.

8. In summary, it is represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts; (b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering made available on the same terms available to all shareholders of common stock of Revlon; (c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the Stock Rights offering; (d) The Plan's acquisition of the Stock Rights resulted from an independent act of Revlon as a corporate entity; and (e) The price received by the Plan for the Stock Rights was no less than the fair market value of the Stock Rights on the date of the Stock Rights offering.

*Notice to Interested Persons:* Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Khalif Ford of the Department, 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 of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

### Ivan Strasfeld,

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

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### DEPARTMENT OF LABOR

#### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2006-07; [Exemption Application No. D-11281] et al.]

#### Grant of Individual Exemptions; Harris Nesbitt Corporation (Harris Nesbitt)

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

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

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.

**Harris Nesbitt Corporation (Harris Nesbitt) and Its Affiliates (the Affiliates) Located in New York, NY**

[Prohibited Transaction Exemption 2006-07; Exemption Application No. D-11281]

*Exemption*

Section I. Covered Transactions

A. Effective for transactions occurring on or after October 15, 2004, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan.

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.<sup>1</sup>

B. Effective for transactions occurring on or after, October 15, 2004, the restrictions of section 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between

the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan; (ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group, and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Security does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.<sup>2</sup> For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transactions occurring on or after October 15, 2004, the restrictions of sections 406(a), 406(b), and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code by reason of Code section 4975(c), shall not apply to the transactions in connection with the servicing, management and operation of an Issuer, including the use of the any eligible swap transaction; or the defeasance of a mortgage obligation held

as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed designated transaction (the Designated Transaction), provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;<sup>3</sup> and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring after October 15, 2004, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary), with respect to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F),

<sup>3</sup> In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

<sup>1</sup> Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act and regulation 29 CFR 2510.3-21(c).

<sup>2</sup> For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

(G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

## Section II. General Conditions

A. The relief provided under Section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as such terms would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories.

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as a result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the Closing Date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and

retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations as specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders (the Securityholders) or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency, upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the

Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred on the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust, will enforce all the rights created in favor of Securityholders of the Issuer, including employee benefit plans subject to the Act.

(8) In order to ensure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent Swap or a Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Security:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan Securityholders will be notified in the immediately following Trustee's periodic report which is provided to Securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan Securityholders be notified

any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in Section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon the underwriter exemptions (the Underwriter Exemptions) only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer, nor any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under Section I., if the provision in subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation of each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a

representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

### Section III. Definitions

For purposes of this exemption:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent; or

(2) A Certificate denominated as a debt instrument that represents an interest in either a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of the section 860D(a) or section 860L of the Code; and that is issued by and is an obligation of a Trust, with respect to Certificates defined in Section III.A. (1) and (2) above, for which the Underwriter is either (i) the sole Underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "Certificates representing an interest in a Trust" include Certificates denominated as debt, which are issued by a Trust.

B. "Issuer" means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a REMIC or a FASIT within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consists solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential and commercial real property (including obligations secured by leasehold interest on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3-101(1)(2)<sup>4</sup>; and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1);<sup>5</sup>

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that (i) the rights and interests evidenced by Securities issued in such Designated Transactions (as defined in Section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Trust and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

<sup>4</sup> In ERISA Advisory Opinion 99-05A (February 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3-101(i)(2).

<sup>5</sup> It is the Department's view that the definition of "Issuer" contained in Section III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemptions generally provide relief for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to Securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to Securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement, and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraph (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to Securityholders occurring after the end of the Pre-Funding Period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which: (i) Are either (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States, or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in section III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in paragraph (a)–(f) of subsection III.B.(1) which have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of

Securities pursuant to this exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to the Underwriter Exemptions.

C. "Underwriter" means:

(1) Harris Nesbitt;

(2) Any U.S.-domiciled person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and

(3) Any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(1) or (2) above is a manager or co-manager with respect to the Securities.

D. "Sponsor" means the entity that organizes as an Issuer by depositing obligations therein in exchange for Securities.

E. "Master Servicer" means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. "Trust" means an Issuer, which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. "Trustee" means the Trustee of any Trust, which issues Securities, and in the case of Securities which are denominated as debt instruments, also means the Trustee of an Indenture Trust. "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Trust, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

J. "Insurer" means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an Insurer solely because it holds Securities

representing an interest in an Issuer, which are of a class subordinated to Securities representing an interest in the same Issuer.

K. "Obligor" means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Trust. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, "Obligor" shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. "Restricted Group" with respect to a class of Securities means:

- (1) Each Underwriter;
- (2) Each Insurer;
- (3) The Sponsor;
- (4) The Trustee;
- (5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer; or

(7) Each counterparty in an Eligible Swap Agreement;

(8) Any Affiliate of a person described in III.M.(1)–(7) above.

N. "Affiliate" of another person includes:

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

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

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

O. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

Q. "Sale" includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

R. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. "Qualified Equipment Note Secured By a Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as would be the case if the equipment note were secured only by the equipment and not the lease.

V. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. "Pooling and Servicing Agreement" means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. In the case of Securities which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. "Rating Agency" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Fitch, Inc. or any successors thereto.

Y. "Capitalized Interest Account" means an Issuer account: (i) Which is established to compensate Securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the pass-through rate payable under the Securities; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Z. "Closing Date" means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. "Pre-Funding Account" means an Issuer account:

(i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and

(ii) Which meets the requirements of clause (c) of subsection III.B.(3).

BB. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered which is less than or equal to 25 percent.

CC. "Pre-Funding Period" means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or 90 days after the Closing Date.

DD. "Designated Transaction" means a securitization transaction in which the

assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this Section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. "Ratings Dependent Swap" means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Securities rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap." With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. "Eligible Swap" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types

of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. "Eligible Swap Counterparty" means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemptions, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. "Qualified Plan Investor" means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemptions, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),<sup>6</sup> as defined under

<sup>6</sup> PTE 84-14 provides a class exemption for transactions between a party in interest with respect

Part V(a) of Prohibited Transaction Exemption (PTE) 84-14 (49 FR 9494, 9506, March 13, 1984, as amended by 70 FR 49305, August 23, 2005);

(2) An "in-house asset manager" (INHAM),<sup>7</sup> as defined under Part IV(a) of PTE 96-23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least \$100 million at the time of the acquisition of such Securities.

II. "Excess Spread" means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to Securityholders, servicing fees and expenses.

JJ. "Eligible Yield Supplement Agreement" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)-(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to

to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of \$85 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

<sup>7</sup> PTE 96-23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of \$50 million.

which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

**Effective Date:** This exemption is effective October 15, 2004.

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 (the Notice) published on February 13, 2006 in the **Federal Register** at 71 FR 7628.

*Written Comments/Technical Correction to the Notice*

The Department invited all interested persons to submit written comments and requests for a hearing with respect to the Notice within 45 days of the date of its publication in the **Federal Register** on February 13, 2006. Therefore, all comments and requests for a hearing were due by March 14, 2006.

During the comment period, the Department received no comments and no requests for a public hearing. However, upon careful review of the Notice, the Department observed that Footnote 11, which addresses the terms of leasehold interests on residential real property that is pledged to secure certain obligations in residential mortgage investment trusts, does not fully clarify the Department's position with respect to residential leasehold mortgages. In this regard, Footnote 11 states the following:

Trust assets may also include obligations that are secured by leasehold interests on residential real property. *But see* PTE 90-32 involving Prudential-Bache Securities, Inc., 55 FR 23147, 23150 (June 6, 1990). The Department received one comment from an affiliate of the applicant with respect to the notice of proposed exemption for PTE 90-32. The comment requested clarification that the definition of trust in section III.B. would include trusts containing certain obligations secured by leasehold interests on residential real property (Residential Leasehold Mortgages or RLMs). The comment noted that RLMs are originated in jurisdictions such as Hawaii in which they are a "necessary alternative to mortgages secured by fee simple interests" and that these RLMs are "in essence, the same as, and provide substantially the same degree of security to investors as, mortgages secured by fee simple interests."

The comment represented that both the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) have purchase programs for these RLMs and that such RLMs included in pools underlying mortgage pass-through certificates would "generally conform" with either Freddie Mac or Fannie Mae leasehold guidelines. In this

regard, the term of the leasehold underlying such RLMs would extend for at least five years beyond the term of the RLM. The comment noted that the affiliate of the applicant would "comply with the requirement under the Freddie Mac and Fannie Mae leasehold guidelines that such mortgages constitute obligations secured by real property or an interest in real estate."

The Department notes that the proposed exemption underlying PTE 2000-58 (65 FR 67765, Nov. 13, 2000), which amended the Underwriter Exemptions (62 FR 39021, July 21, 1997), contained a limitation concerning leasehold mortgages. Specifically, the Department stated that "[t]he terms of the ground leases pledged to secure leasehold mortgages [would] in all cases be at least ten years longer than the terms of such mortgages." (65 FR 51454, 51455, August 23, 2000). The final exemption did not discuss this limitation. Moreover, in later exemptions to amend the Underwriter Exemptions or to provide similar individual relief, the original PTE 2000-58 preamble language referring to residential and commercial mortgage investment trusts is repeated without change, except for the omission of the provision concerning RLMs.

The Department wishes to allay any public uncertainty regarding whether the RLM requirement continues to apply to the Underwriter Exemptions and to subsequent individual exemptions. Thus, the Harris Nesbitt exemption presents the first opportunity for the Department to affirm its position that with respect to RLMs, the terms of ground leases pledged to secure leasehold mortgages should be at least five years longer than the terms of such mortgages. The Department also wishes to clarify that the leasehold limitation mentioned in Footnote 11 applies to RLMs that are subject to Fannie Mae and Freddie Mac guidelines.

After giving full consideration to the entire record, the Department has decided to grant the exemption subject to the clarifications described above. For further information, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11281) 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 Employee Benefits Security Administration, Room N-1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ms. Silvia M. Quezada of the Department,

telephone (202) 693-8553. (This is not a toll-free number.)

**Fortunoff Fine Jewelry and Silverware, Inc. Cash Balance Pension Plan (the FFJS Cash Balance Plan), M. Fortunoff of Westbury Corp. Cash Balance Pension Plan (the MFW Cash Balance Plan), and Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (the FFJS Profit Sharing Plan; Collectively, the Plans) Located in Westbury, NY**

[Prohibited Transaction Exemption 2006-08; Exemption Application Nos. D-11307, D-11308 and D-11309, respectively]

*Exemption*

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code,<sup>8</sup> by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply (1) effective November 26, 2003 until February 28, 2005, to the leasing of certain improved real property (the Property) by the Plans, directly and then through One MH Plaza Realty LLC (the Plans' LLC), a special purpose entity designed to hold the Plans' interests in the Property, to Fortunoff Fine Jewelry and Silverware, Inc. (FFJS), under the provisions of a written lease (the Interim Lease); and (2) effective March 1, 2005 through August 31, 2006, to the 18 month extension of the Interim Lease (the Interim Lease Extension) between the Plans,<sup>9</sup> through the Plans' LLC, and FFJS and its successors in interest, Fortunoff Fine Jewelry and Silverware, LLC (FFJS LLC) and M. Fortunoff of Westbury, LLC (MFW LLC).

This exemption is subject to the following conditions:

(a) Since November 26, 2003, the Plans have been and continue to be represented for all purposes under the Interim Lease, by Independent Fiduciary Services (IFS), a qualified, independent fiduciary, which also represents the interests of the Plans under the Interim Lease Extension.

(b) IFS has (1) reviewed and approved the continued adherence by the Plans and the Plans' LLC with the terms and conditions of the Interim Lease under the facts and circumstances in existence on and after November 26, 2003; (2) negotiated, reviewed, and expressly

<sup>8</sup>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.

<sup>9</sup>As of January 1, 2006, all references to the Plans shall mean the Fortunoff, the Source, Cash Balance Plan (the Merged Cash Balance Plan), which resulted from the merger of the FFJS Cash Balance Plan and the MFW Cash Balance Plan, and the FFJS Profit Sharing Plan.



approved the terms and conditions of the Interim Lease Extension on behalf of the Plans; and (3) determined that the leasing of the Property since November 26, 2003 pursuant to the Interim Lease and, since March 1, 2005, pursuant to the Interim Lease Extension, (i) complies with the relevant provisions of Prohibited Transaction Exemption (PTE) 93-8 (58 FR 7258, February 5, 1993), as amended by PTE 98-22 (63 FR 27329, May 18, 1998), (except as modified by this exemption); (ii) continues to be an appropriate investment for the Plans on and after November 26, 2003, consistent with each Plan's investment policies and liquidity needs; and (iii) is in the best interests of each Plan and its respective participants and beneficiaries on and after November 26, 2003.

(c) The rent paid to the Plans under the Interim Lease and the Interim Lease Extension is no less than the fair market rental value of the Property, as established by a qualified, independent appraiser. Effective March 1, 2006, the rent is adjusted to the greater of the current annualized rental of \$656,400 or the then-current, fair market rental value, as determined by IFS on the basis of an appraisal conducted by the independent appraiser selected by IFS.

(d) The base rent has been adjusted or is adjusted annually by IFS based upon an independent appraisal of the Property.

(e) Under both the Interim Lease and the Interim Lease Extension, FFJS pays for property and liability insurance on the Property, property taxes, utility costs, other costs for maintaining the Property including environmental assessments, engineering inspection reports, as well as all other expenses that are incident to such agreements.

(f) IFS has monitored, and continues to monitor, compliance with the terms of the Interim Lease since November 26, 2003 and the terms of the Interim Lease Extension throughout the duration of these agreements.

(g) IFS is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of FFJS and its successors in interest, FFJS LLC and MFW LLC, under the terms of such agreements.

(h) IFS makes determinations, on behalf of the Plans, with respect to any sale or future leasing of the Property.

(i) IFS has determined that (1) the leasing of the Property pursuant to the Interim Lease on and after November 26, 2003 was no less favorable to the Plans than similar leasing arrangements between unrelated parties; (2) the then-prevailing rent received by the Plans under the interim lease was no less favorable to the Plans than the rent the

Plans would have received under similar circumstances if the rent had been negotiated at arm's length with unrelated third parties; and (3) the terms and conditions of the Interim Lease Extension have been or are no less favorable to the Plans than those obtainable by the Plans under similar circumstances when negotiated at arm's length with unrelated third parties.

(j) With respect to the Interim Lease Extension, FFJS (1) has made a two-month security deposit pursuant to the agreement; and (2) is required to pay an additional four-month security deposit (Additional Deposit) after the expiration of the first 12 months of the Interim Lease Extension, calculated at the rental amount to be effective March 1, 2006.

(k) Over the last six months of the Interim Lease Extension, one-sixth of the Additional Deposit is applied to the rent each month, so long as there is no uncured default.

*Effective Date:* This exemption is effective from November 26, 2003 until February 28, 2005 with respect to the Interim Lease and from March 1, 2005 until August 31, 2006 with respect to the Interim Lease Extension.

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 February 13, 2006 at 71 FR 7647.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (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.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. E6-8529 Filed 6-1-06; 8:45 am]

**BILLING CODE 4510-29-P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Notice of Meeting; Sunshine Act

May 26, 2006.

**TIME AND DATE:** 10 a.m., Thursday, June 8, 2006.

**PLACE:** The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Secretary of Labor v. Jim Walter Resources, Inc.*, Docket No. SE 2003-160. (Issues include whether the judge correctly determined that the operator violated 30 CFR 75.360(b)(3), and that the violation was significant and substantial and attributable to the operator's unwarrantable failure; whether the judge correctly determined that the operator did not violate 30 CFR 75.1101-23(a); whether the judge correctly determined that the operator violated 30 CFR 75.1101-23(c), and that the violation was not significant and substantial; and whether the judge properly followed section 110(i) of the Mine Act in setting the penalty amounts for the violations found.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs, subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**FOR FURTHER INFORMATION CONTACT:** Jean Ellen, (202) 434-9950 / (202) 708-9300