

will be protective of the rights of the participants and beneficiaries because the Fund will receive a purchase price which is an amount representing the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) the Sale is a one-time transaction for cash; (b) the terms and conditions are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party; (c) the Sales price is an amount which represents the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser; and (d) the Fund does not incur any expenses with respect to the Sale.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due on or before _____.

For Further Information Contact: Mr. James Scott Frazier, telephone (202) 219-8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

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

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

Signed at Washington, DC, this 16th day of June, 1998.

Ivan Strasfeld,

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

[FR Doc. 98-16335 Filed 6-18-98; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98-28; Exemption Application No. D-10396, et al.]

Grant of Individual Exemptions; Massachusetts Mutual Life Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

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

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a

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

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

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

(a) The exemptions are administratively feasible;

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

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

Massachusetts Mutual Life Insurance Company (MM) Located in Springfield, Massachusetts [Prohibited Transaction Exemption 98-28; Exemption Application No. D-10396]

Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by MM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*

(1) The restrictions of section 406(b)(2) of the Act shall not apply to

the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between ERISA-Covered Accounts and the General Account, provided that such transfer is made pursuant to stalemate procedures, described in the notice of proposed exemption, adopted by the independent fiduciary for the ERISA-Covered Account, and provided further that the ERISA-Covered Account pays no more or receives no less than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of

section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower, any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, or any exercise of a right under the loan agreement in the event of such default, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM thereof on behalf of two or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by MM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply

to the making of additional pro rata equity capital contributions by one or more Accounts participating in the joint venture.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to the participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(3) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of Disproportionate [as defined in section V(e)] additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by one or more Accounts which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all

additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and "selling" Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the

ERISA-Covered Accounts that approved the exercise of the right of first refusal decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

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 shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to MM and its affiliates. This condition shall not apply to plans covering employees of MM.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments that are structured as shared investments under this exemption is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the final exemption.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) a business organization which has at least five years of experience with respect to commercial real estate investments,

(2) a committee composed of three to five individuals (who may be investors or investor representatives approved by the plans participating in the ERISA-Covered Account, and) who each have at least five years of experience with respect to commercial real estate investments, or

(3) the plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of MM or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from MM, its affiliates and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his or her annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation shall not include compensation for services rendered to a single-customer ERISA-Covered Account by an independent fiduciary who is initially selected by the Plan sponsor for that ERISA-Covered Account.

The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the

Department. Notwithstanding the foregoing, such income limitation shall not include any income for services rendered to a single customer ERISA-Covered Account by an independent fiduciary selected by the Plan sponsor to the extent determined by the Department in any subsequent prohibited transaction exemption proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, MM, its affiliates, or any Account maintained by MM or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by MM or its affiliates for each of the transactions in this exemption. In the case of a possible transfer or exchange of any interest in a shared investment between the General Account and an ERISA-Covered Account, the independent fiduciary shall also have full authority to negotiate the terms of the transfer. MM and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) MM maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MM or its affiliates, the

records are lost or destroyed prior to the end of the six-year period.

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

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

(B) Any fiduciary of a plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of MM, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An "affiliate" of MM includes—

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

(2) Any officer, director or employee of MM or person described in section V(a)(1), and

(3) Any partnership in which MM is a partner.

(b) An "Account" means the General Account (including the general accounts of MM affiliates which are managed by MM), any separate account managed by MM, or any investment advisory account, trust, limited partnership or other investment account or fund managed by MM.

(c) The "General Account" means the general asset account of MM and any of its affiliates which are insurance companies licensed to do business in at

least one State as defined in section 3(10) of the Act.

(d) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

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 6, 1998 at 63 FR 6217.

Written Comments and Hearing Requests: The Department received no hearing requests with respect to the proposed exemption. The only written comments were submitted by MM in order to clarify certain of the information contained in the summary of facts and representations for the proposed exemption (the Summary).

First, MM states that with regard to the reference to health insurance in Representation 1 of the Summary, Footnote 1 is intended to indicate only the extent to which MM currently offers such health insurance. The footnote states that MM sold its group life and health subsidiary on March 31, 1996 and will no longer offer group life and health insurance after the completion of a transition period under the purchase and sale agreement relating thereto.

Second, with respect to the second paragraph of Representation 1 of the Summary, MM wishes to clarify that the exemption will cover Accounts (including ERISA-Covered Accounts) other than those currently in existence, and which may invest in equity real estate and mortgage investments.

Third, the last sentence of Representation 7 of the Summary concerns those persons to whom MM must make certain disclosures regarding its shared real estate investments. With respect to the proposed exemption and other information to be contained in such disclosures, MM seeks to clarify that it was only required to provide a copy of the proposed exemption within 30 days of the publication of the proposed exemption (i.e., March 8, 1998) to each current contract holder in an ERISA-Covered Account that proposes to engage in transactions which are structured as shared investments under the exemption. In addition, MM states that it will provide a copy of this exemption (as published in the **Federal Register**) before the Account begins to participate in such investments.

Fourth, concerning the first sentence of Representation 8 of the Summary, MM states that in order to more clearly define the persons to whom certain disclosures must be made, the sentence should be rewritten to read as follows:

With respect to new contractholders in an ERISA-Covered Account that participates in the sharing of investments which are structured as shared investments under this exemption, each such contractholder must be provided with the description outlined above, a copy of the notice of pendency and a copy of the exemption as granted, before the Account begins to participate in the sharing of such investments.

Fifth, with respect to Footnote 4 in Representation 12 of the Summary, relating to the sophistication of investors participating in MM's single customer and pooled closed-end real estate Accounts, MM states that this footnote only refers to contractholders in its ERISA-Covered Accounts which engage in transactions structured as shared investments under this exemption.

Finally, the third sentence in Representation 18 of the Summary and the fourth paragraph of Representation 21 of the Summary both refer to the partition and sale of undivided and divided real estate investment interests, respectively. In this regard, MM seeks to clarify that the partition and sale of such interests is meant to establish a possible resolution to the stalemates which are described in Representations 18 and 21 of the Summary. Such events would involve the partition of property in which Accounts own a fractional undivided interest in the whole, and the sale of one or more resulting divided interests, including those interests which are co-owned by some of the Accounts. The Department confirms that these scenarios are presented only as examples of possible resolutions to the stalemates which are described in Representations 18 and 21 of the Summary, and are not meant to describe resolutions to other matters.

In addition, the Department acknowledges all of the above-described clarifications by MM to the record which formed the basis for the proposed exemption as published in the **Federal Register**.

Accordingly, after considering the entire record, including the comments made by MM, the Department has determined to grant the exemption as proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Knoxville Surgical Group Qualified Retirement Plan (the Plan) Located in Knoxville, Tennessee

[Prohibited Transaction Exemption 98-29; Exemption Application No: D-10506]

Exemption

The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the sale (the Sale) of a medical office condominium (the Property) by the Plan to Hugh C. Hyatt, M.D., Richard A. Brinner, M.D., Randal O. Graham, Michael D. Kropilak, M.D., and P. Kevin Zirkle, M.D., parties in interest with respect to the Plan provided the following conditions are satisfied: (1) The Sale will be a one time transaction for cash; (2) the Property will be sold at a price equal to the greater of \$780,000 or the fair market value of the Property on the date of the Sale; and (3) the Plan will pay no commissions or expenses associated with the Sale.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on February 6, 1998 at 63 FR 6216.

Written Comments: The Department received one comment from the applicant. The applicant noted that during the Department's consideration of the exemption application, the Knoxville Surgical Group had originally planned to merge the Plan into the Premier Surgical Plan. However, this merger did not occur. Rather, the Plan will remain a dormant plan with all participants fully vested.

The Department has considered the entire record, including the comment submitted by the applicant, and has determined to grant the exemption as proposed.

For Further Information Contact: Allison Padams Lavigne, U. S. Department of Labor, telephone (202) 219-8971. (This is not a toll-free number.)

Jack Mayesh Wholesale Florist, Inc. Profit Sharing Plan (the Plan) Located in Los Angeles, California

[Prohibited Transaction Exemption 98-30; Exemption Application No. D-10524]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by

the Plan of certain unimproved real property (the Property) to Roy Dahlson, a party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other expenses relating to the sale; and (3) the Plan receives an amount which is the greater of either (a) the fair market value of the Property as of the date of the sale, as determined by a qualified, independent appraiser, or (b) the original acquisition cost of the Property to the Plan, plus lost opportunity costs attributable to the Property.

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 April 22, 1998 at 63 FR 19950.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Pipefitters Local Union No. 537 Pension Fund (the Plan) Located in Boston, Massachusetts

[Prohibited Transaction Exemption No. 98-31; Application No. D-10577]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of certain real property (the Property) to the Plan by Local Union 537 (the Union) of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Plan incurs no expenses from the Sale;

(D) The Plan pays as consideration for the Property no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale; and

(E) The independent fiduciary for the Plan will undertake to monitor and enforce the terms of the exemption.

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 April 22, 1998, at 63 FR 19953.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202)219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions 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) These exemptions are 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 these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 16th day of June 1998.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Nos. D-10470 and D-10576]

Navistar International Transportation Corporation (Navistar); Located in Chicago, IL and the Supplemental Program Committee of the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (Supplemental Program Committee) Located in Euclid, OH

AGENCY: Department of Labor.

ACTION: Notice of proposed amendments to Prohibited Transaction Exemption (PTE) 93-69

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of proposed amendments to PTE 93-69 [58 FR 51105, September 30, 1993]. PTE 93-69 provides an exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 for: (1) the acquisition and holding by the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (New Plan) of shares of Class B Common Stock and Series A Preference Stock of Navistar International Corporation (NIC); (2) the holding by the New Plan of shares of NIC Common Stock resulting from the conversion of NIC Class B Common Stock into such shares; (3) the extension of credit between Navistar and the New Plan, which may occur in conjunction with Navistar's annual obligation to advance funds to the Supplementary Benefit Program Trust; and (4) the sale of shares of NIC Class B Common Stock by the New Plan to Navistar. The proposed amendments, if granted, would affect participants and beneficiaries of, and fiduciaries with respect to the New Plan.

EFFECTIVE DATE: If granted, the proposed amendments will be effective July 1, 1998.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before the expiration of August 3, 1998.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, Attention: Application Nos. D-10470 and D-10576. The applications for amendments and the comments

received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5638, 200 Constitution Avenue, NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT:

Lyssa E. Hall of the Department of Labor, telephone (202) 219-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed amendments to PTE 93-69. The proposed amendments were requested in applications filed by the Supplemental Program Committee and Navistar pursuant to section 408(a) of the Act and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). One of the proposed amendments would permit William Craig, a member of the Supplemental Program Committee, to continue to serve on the NIC board of directors beyond the termination of the Lock-up Period. The other amendment would permit the sale of shares of NIC Common Stock by the New Plan to NIC or Navistar for not less than adequate consideration as defined in section 3(18) of the Act.

Summary of Facts and Representations

The applications contain representations with regard to the proposed amendments which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

1. Background

(a) Navistar, a Delaware corporation headquartered in Chicago, Illinois, is a manufacturer of large and medium size trucks and mid-range diesel engines.

(b) NIC is a publicly-traded corporation which wholly owns Navistar.

(c) The Supplemental Program Committee is a five-member committee which is responsible for managing the assets of the Supplemental Benefit Program Trust.

(d) In 1992, Navistar proposed to terminate its retiree health and life insurance benefit program and to replace it with a plan providing a reduced schedule of benefits. The New Plan was created as part of the 1993 settlement of a class action which was filed by the Navistar retirees against Navistar in response to the proposed