

September 30, 1993. Finally, Aircon will pay the Plan \$68.50, which represents an assumed eight percent annual return for the period from October 1993 to October 31, 1995 on the \$410.31 loss the Plan incurred on the sale of the three Workstations.

7. Aircon's total obligation to the Plan will thus be \$70,617.59 and was calculated as follows:

Acquisition cost of 45 Workstations .....	\$38,564.65
Opp'ty costs on 45 Workstations in storage .....	13,205.69
Fair market rental value of 20 Workstations .....	17,580.00
Loss and opp'ty costs on 3 Workstations sold .....	1,267.25
<b>Total .....</b>	<b>70,617.59</b>

The applicant represents that the proposed transaction is in the interests of the Plan because if the Plan is forced to attempt a sale of the Workstations on the open market, the Plan will receive substantially less than the amount the applicant is willing to pay. In addition, the sale will convert non-income producing, illiquid assets into liquid assets that could then be redirected into more productive investments.

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

(1) The sale will be a one-time transaction for cash; (2) the Plan will pay no commissions nor any other expenses relating to the sale; (3) the sale will enhance the liquidity of the assets of the Plan; (4) the sale will enable Aircon to correct ongoing prohibited transactions; (5) the purchase price will be the greater of: (a) The fair market value of the Workstations as determined by a qualified, independent appraiser, or (b) the Plan's initial acquisition cost plus opportunity costs attributable to the Workstations while in storage; (6) Aircon will reimburse the Plan for the fair market rental value with respect to the prohibited use of 20 of the Workstations; (7) Aircon will reimburse the Plan for losses and opportunity costs associated with the sale of three of the Workstations; and (8) within 90 days of the publication in the Federal Register of the grant of this notice of proposed exemption, Aircon will file Form 5330 with the Service and pay all applicable additional excise taxes that are due by reason of the prohibited use transactions.

*Tax Consequences of Transaction*

The Department of the Treasury has determined that if a transaction between

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

*Notice to Interested Persons*

Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 15 days of the date of publication of the notice of pendency in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 45 days of the date of publication of this notice in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:**

Karin Weng of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

*General Information*

The attention of interested persons is directed to the following:

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

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

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is 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 25th day of January, 1996.

Ivan Strasfeld,  
*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
Department of Labor.*

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**[Prohibited Transaction Exemption 96-1; Exemption Application No. D-09877, et al.]**

**Grant of Individual Exemptions; First Hawaiian Bank, et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

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

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. 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.

First Hawaiian Bank Located Honolulu, HI

[Prohibited Transaction Exemption 96-1; Exemption Application No. D-09877]

#### Exemption

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

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the in-kind transfer to any opened investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the '40 Act) to which First Hawaiian Bank or any of its affiliates (collectively, the Bank) serves as investment adviser and may provide other services, of the assets of various employee investment funds (the CIF or CIFs) maintained by the Bank or otherwise held by the Bank as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plans, in exchange for shares of such Funds, providing the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, receives advance written notice of the in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Fund and the disclosure described in paragraph (g) of Section II below.

(b) On the basis of the information described in paragraph (g) of Section II below, the Second Fiduciary authorizes in writing the in-kind transfer of assets of the Plans in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees received by the Bank in connection with its services to the Fund. Such authorization by the Second Fiduciary to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commission are paid by the Plans in connection with the in-kind transfers of asset of the Plans or the CIFs in exchange for shares of the Funds.

(d) All or a *pro rata* portion of the assets of the Plans held in the CIFs or all or a *pro rata* portion of the assets of the Plans held by the Bank in any capacities as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds.

(e) The Plans or the CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the Plans or the CIFs exchanged for such shares on the date of transfer.

(f) The current market value of the assets of the Plans or the CIFs to be transferred in-kind in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a-7b (Rule 17a-7) under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the date of the Plan or CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers of pricing services independent of the Bank.

(g) Not later than 30 business days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is

independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, a written confirmation that contains the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4) under the '40 Act;

(2) The price of each of the assets involved in the transaction; and

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

(h) No later than 90 days after completion of each in-kind transfer of assets of the plans or the CIFs in exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, a written confirmation that contains the following information:

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

(2) The number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(i) The conditions set forth in paragraphs (d), (e), (f), (o), (p), (q), and (r) of Section II below are satisfied.

##### *Section II. Exemption for Receipt of Fees from Funds*

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (D) through (F) of the Code shall not apply to the receipt of fees by the Bank from the Funds for acting as the investment adviser, custodian, sub-administrator, and other service provider for the Funds in connection with the investment in the Funds by the Plans for which the Bank acts as a fiduciary provided that:

(a) No sales commissions are paid by the Plans in connection with purchases or sales of shares of the funds and no redemption fees are paid in connection with the sale of such shares by the Plans to the Funds.

(b) The price paid or received by the Plans for shares in the Funds is the net asset value per share, as defined in paragraph (e) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director purchases from or sells to any of the Plans shares of any of the Funds.

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

(e) The Bank does not receive any fees payable, pursuant to Rule 12b-1 under the '40 Act in connection with the transactions.

(f) The Plans are not sponsored by the Bank.

(g) A Second Fiduciary who is acting on behalf of each Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, receives in advance of the investment by the Plan in any of the Funds a full and detailed written disclosure of information concerning such Fund (including, but not limited to, a current prospectus for each portfolio of each of the Funds in which such Plan is considering investing and a statement describing the fee structure).

(h) On the basis of the information described in paragraph (g) of this Section II, the Second Fiduciary authorizes in writing the investment of assets of the Plans in shares of the Funds and the fees received by the Bank in connection with its services to the Funds. Such authorization by the Second Fiduciary is consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(i) The authorization, described in paragraph (h) of this Section II, is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected by the Bank selling the shares of the Fund held by the affected Plan within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (i) of Section III below, or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

(j) Plans do not pay any Plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the

assets of such Plans which are invested in shares of any of the Funds. This condition does not preclude the payment of investment advisory fees or similar fees by the Funds to the Bank under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act or other agreement between the Bank and the Funds.

(k) In the event of an increase in the rate of any fees paid by the Funds to the Bank regarding any investment management services, investment advisory services, or fees for similar services that the Bank provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (h) of this Section II, the Bank will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is increasing such fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(l) In the event of an addition of a Secondary Service, as defined in paragraph (h) of Section III below, provided by the Bank to the Fund for which a fee is charged or an increase in the rate of any fee paid by the Funds to the Bank for a Secondary Service, as defined in paragraph (h) of Section III below, that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Plan, in accordance with paragraph (h) of this Section II, the Bank will at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(m) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k), (l), and (n) of this Section II, which expressly provides an election to terminate the authorization, described above in paragraph (h) of this Section II, with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Plans, without penalty to such Plans. Such termination will be effected by the Bank redeeming shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the redemption of shares of such Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of a Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (k) and (l) of this Section II, and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of the Bank to engage in the transactions on behalf of such Plan.

(n) The Second fiduciary is supplied with a Termination Form, annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date this exemption is published in the Federal Register and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (n) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraphs (k) and (l) of this Section II, except to the extent required by said paragraphs (k) and (l) of this Section II to disclose an additional Secondary Service for which a fee is charged or an increase in fees.

(o)(1) With respect to each of the Funds in which a Plan invests, the Bank will provide the Second Fiduciary of such Plan:

(A) At least annually with a copy of an updated prospectus of such Fund;  
(B) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most

recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to the Bank; and

(2) With respect to each of the Funds in which a Plan invests, in the event such Fund places brokerage transactions with the Bank, the Bank will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(A) The total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to the Bank by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Bank;

(C) The average brokerage commissions per share, expressed as cents per share, paid to the Bank by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Bank.

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

(q) The Bank maintains for a period of 6 years the records necessary to enable the persons, as described in paragraph (r) of Section II below, to determine whether the conditions of this proposed exemption have been met, except that:

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

(2) No party in interest, other than the Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (r) of Section II below;

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

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

or the Securities and Exchange Commission (the SEC);

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

(iii) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (r)(1)(ii) and (r)(1)(iii) of Section II shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

### Section III. Definitions

For purposes of this exemption,

(a) The term "Bank" means First Hawaiian Bank and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of a person includes:

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

(2) Any officer, director, employee, relative, or partner in any such person; and

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

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

(d) The term "Fund or Funds" means any diversified open-end investment company or companies registered under the '40 Act for which the Bank serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

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

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to the

Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

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

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

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

If an officer, director, partner, or employee of the Bank (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/adviser, (ii) the approval of any purchase or redemption by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of Section III above, shall not apply.

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

(i) The term "Termination Form" means the form supplied to the Second Fiduciary, at the times specified in paragraphs (k), (l), and (n) of Section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in paragraph (h) of Section II. Such Termination Form may be used at will by the Second fiduciary to terminate such authorization without penalty to the Plans and to notify the Bank in writing to effect such termination by redeeming the shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of the Bank, the redemption cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

### Written Comments

The Department received two written comments with respect to the proposed exemption and no requests for a public hearing. The comments were submitted by the Bank and concerned clarifications to the Summary of Facts and Representations of the proposed exemption and notification of interested persons. Following is a discussion of the applicant's comments.

#### 1. Clarifications to the Proposed Exemption

a. The Bank notes that the word "Pooled" should be inserted in Representation #1c. before the words "Equity Fund" in the last line of the middle column of page 47601.

b. The Bank explains that in Representation #3, the word "close," appearing in the fourth line of the last paragraph of the right column on page 47602, should be replaced with the word "opening." As described in Representation #3 of the proposed exemption (see page 47603, the last paragraph of the left column, carrying over to the top of the middle column, and the last paragraph of the middle column), the Bank asserts that the transferred assets are valued as of the "CIF Valuation Date," which is the close of business on the last business day prior to the date of transfer to the Funds. The transfer of the assets so valued is made to the Funds before the opening of business on the transfer date. Before the opening of business, the Bank further explains that the assets will have the same value as determined at the CIF Valuation Date, and the shares of the corresponding Funds will have the same value as the assets transferred. By the close of business on the transfer date, the Bank points out that the assets transferred in-kind to a Fund may change in value (i.e., increase or decrease) from the CIF Valuation Date, and thus the aggregate value of the corresponding fund may also change between opening and closing of business on the transaction date.

c. The Bank explains that the following language should be added after the words "Bishop Street Funds" in the eight line of Representation #4 on page 47603: "in exchange for an appropriate number of shares of certain portfolios of the Bishop Street Funds."

#### 2. Notification of Interested Persons

Due to unavoidable delays and an error in the dates specified in its first notice, the Bank explains that it renotified all interested persons on or before November 13, 1995. In the second notice, the Bank indicates that it

gave interested persons an extension of the comment period until December 15, 1995 which was more than 30 days from the mailing date of the second notice. As a result of the extended comment period, no further comments were received by the Department.

After giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption as clarified and modified above. The comment letters have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

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 September 13, 1995 at 60 FR 47598.

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

The Chase Manhattan Bank (National Association) Pooled Investment Trust for Employee Benefit Plans (the Trust) Located in New York, New York

[Prohibited Transaction Exemption 96-2; Exemption Application No. D-9983]

#### Exemption

The restrictions of sections 406(a) 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past cash sale of certain commercial paper notes (the Notes) for \$25,129,748 by two collective investment funds in the Trust known as VAN 1 and VAN 18 (the VANs) to The Chase Manhattan Bank, N.A. (the Bank), a party in interest with respect to the employee benefit plans invested in the VANs at the time of the transaction; provided the following conditions were met:

(a) The sale of each of the Notes was a one-time cash transaction;

(b) The terms and conditions of the sale were at least as favorable to the VANs as those obtainable in an arm's-length transaction with an unrelated party;

(c) The VANs received an amount for the Notes that was equal to the greater of: (i) In the case of a Note that had a

scheduled maturity after the date of the transaction, the original purchase price paid by the particular VAN for the Note plus interest at the imputed yield to maturity up to the date of sale, as calculated by the Bank; (ii) in the case of a Note that had a scheduled maturity on or before the date of the transaction, the value at maturity plus additional interest to the date of sale at the daily rates earned by the related VAN (exclusive of its holdings of the Notes) from the maturity date to the date of sale; or (iii) the fair market value of each Note as of the time of sale as determined by an independent, qualified appraiser;

(d) The VANs did not pay any commissions, costs or other expenses in connection with the sale of the Notes;

(e) If the exercise of any of the Bank's rights, claims or causes of action in connection with its ownership of the Notes results in the Bank recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the purchase price paid to the VANs by the Bank for the Notes (i.e. \$25,129,748), the Bank will pay such excess amounts to the respective VANs within thirty (30) days of the receipt of such recovery amounts; and

(f) Each employee benefit plan with interests in the VANs received its proportionate share of the proceeds of the sale of the Notes to the Bank and receives its proportionate share of any recovery amounts obtained on the Notes in excess of the purchase price received by the VANs, as described in condition (e) above.

**EFFECTIVE DATE:** This exemption is effective as of December 19, 1994.

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 October 17, 1995, at 60 FR 53806.

**FOR FURTHER INFORMATION CONTACT:** Mr. E. F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

Retirement Plan for Employees of Concord Hospital Capital Region Healthcare Corp. (the Plan) Located in Concord, New Hampshire

[Prohibited Transaction Exemption 96-3; Exemption Application No. D-10027]

#### Exemption

The restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from application of section 4975 of the Code, by reason of section 4975(a)(1) (A) through (E) of the Code, shall not apply to: (1) The July 7, July 13, July 18, August 19, and August 22, 1994, transfers to the Plan of \$7,376,039

of publicly-traded securities from non-ERISA accounts (the Accounts) of Concord Hospital, Inc. and its parent corporation, Capital Region Health Care Corporation; (2) the transfer of \$3,761,319 of publicly-traded securities from the Plan to the Accounts in August of 1994; and (3) the proposed transfer of approximately \$3.6 million from the Plan to the Accounts, provided the following conditions are satisfied: (a) The decision for the Plan to enter the subject transactions was made at the recommendation of the Plan's independent investment advisor; (b) the Plan has not paid and will not pay commissions or other fees in connection with the subject transactions; (c) the transactions involve publicly-traded securities, the fair market values of which were based upon published prices on established markets; and (d) the Plan's independent fiduciary has reviewed the transactions and has determined that the transactions were in the best interest of the Plan and protective of the rights of the participants and beneficiaries of the Plan.

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 November 3, 1995 at 60 FR 55857.

**EFFECTIVE DATE:** This exemption is effective July 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Larson Distributing Co. Profit Sharing Plan (the Plan) Located in Denver, Colorado

[Prohibited Transaction Exemption 96-4; Exemption Application No. D-10083]

#### *Exemption*

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extension of credit to the Plan (the Loan) by Larson Distributing Co., Inc. (the Employer), the sponsor of the Plan, with respect to the Plan's investments in annuity accounts maintained with USG Annuity and Life Co. and All American Life Insurance Company (the Annuities), and (2) the Plan's potential repayment of the Loan (the Repayments); provided the following conditions are satisfied:

(A) The Plan does not pay any interest or incur any expenses with respect to the Loan;

(B) The Repayments are restricted solely to the amounts recovered by the Employer on behalf of the Plan (the Recovery Amounts) in litigation concerning the Annuities; and

(C) To the extent that Loan exceeds the total Recovery Amounts, the Repayments shall be waived.

For a more complete statement of the facts and representations supporting the exemption, refer to the notice of proposed exemption published on November 3, 1995 at 60 FR 55881.

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

Retirement Savings Plan and Trust for Employees of the J.H. Heafner Company, Inc. (the Plan) Located in Lincolnton, North Carolina

[Prohibited Transaction Exemption 96-5; Exemption Application No. D-10125]

#### *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 of the Plan of certain limited partnerships units (the Units) in two limited partnerships to the J.H. Heafner Company, Inc. (Heafner), provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Plans pays no commissions or other expenses in connection with the transaction; and (c) the Plan receives no less than the greater of: (1) Its cost for the Units; or (2) the fair market value of the Units on the date of the sale.

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 November 3, 1995 at 60 FR 55862.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz 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 25th day of January 1996.

Ivan Strasfeld,

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration.*  
[FR Doc. 96-1777 Filed 1-30-96; 8:45 am]

**BILLING CODE 4510-29-M**

[Application No. D-09627, et al.]

#### **Proposed Exemptions; Hassan Zekavat, M.D., P.A. Money Purchase Pension Plan (the Plan)**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name,