

agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for Extended Benefits (20 CFR 615.12(c)(1)). In the case of a State ending an EB period, the State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits informing him/her of the EB period and its effect on the individual's right to Extended Benefits (20 CFR 615.13(c)(4)).

Persons who believe they may be entitled to Extended Benefits, or who wish to inquire about their rights under the programs, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on August 19th, 1996

Timothy M. Barnicle,

*Assistant Secretary of Labor for Employment and Training.*

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### **Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 96-64; Exemption Application No. D-10063, et al.]

**Grant of Individual Exemptions; Society National Bank; KeyTrust Company of Ohio; Society Asset Management, Inc; and KeyCorp, 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, 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.

Society National Bank; KeyTrust Company of Ohio; Society Asset Management, Inc; and KeyCorp Located in Cleveland, Ohio

[Prohibited Transaction Exemption 96-64; Application No. D-10063]

### **SECTION I—Exemption for In-Kind Transfer of CIF Assets**

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 section 4975(c)(1)(A) through (F) of the Code, shall not apply as of December 1, 1993, to the in-kind transfer of assets of plans for which Society National Bank, KeyTrust Company of Ohio, N.A., Society Asset Management, Inc., and KeyCorp or an affiliate (collectively, the Bank) serves as a fiduciary (the Client Plans), other than plans established and maintained by the Bank, that are held in certain collective investment funds maintained by the Bank (the CIFs), in exchange for shares of The Victory Portfolios (collectively, the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), for which the Bank acts as an investment adviser as well as a custodian, sub-administrator, and/or shareholder servicing agent, or provides some other

“secondary service” as defined in Section IV(h), in connection with the termination of such CIFs, provided that the following conditions and the general conditions of Section III below are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) All or a pro rata portion of the assets of a CIF are transferred to a Fund in exchange for shares of such Fund.

(c) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner at the close of the same business day, using independent sources in accordance with Rule 17a-7(b) of the Securities and Exchange Commission (SEC) under the 1940 Act 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 Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(d) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds, including:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section IV(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank considers investing in the Fund is an appropriate investment decision for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in a Fund, and, if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents are published in the Federal Register.

(e) After consideration of the foregoing information, the Second Fiduciary authorizes in writing the in-kind transfer of the Client Plan's CIF assets to a corresponding Fund in exchange for shares of the Fund.

(f) For all in-kind transfers of CIF assets to a Fund following March 5, 1996, the date of publication in the Federal Register for the proposal of this exemption, the Bank sends by regular mail to each affected Client Plan the following information:

(1) Within 30 days after completion of the transaction, a written confirmation containing:

(i) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4);

(ii) The price of each such security involved in the transaction;

(iii) The identity of each pricing service or market-maker consulted in determining the value of such securities; and

(2) Within 90 days after completion of each in-kind transfer, a written confirmation containing:

(i) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

(g) The conditions set forth in paragraphs (e), (f) and (n) of Section II below are satisfied.

#### *Section II—Exemption for Receipt of Fees*

The restrictions of sections 406(a) and 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 as of October 1, 1995 to: (1) the receipt of fees by the Bank from the Funds for acting as an investment adviser to the Funds in connection with the investment by the Client Plans in shares of the Funds; and (2) the receipt and retention of fees by the Bank from the Funds for acting as custodian, sub-

administrator and shareholder servicing agent to the Funds, as well as for providing any other services to the Funds which are not investment advisory services (i.e. "secondary services"), in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the general conditions of Section III are met:

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

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

(c) The Bank, including any officer or director of the Bank, does not purchase or sell shares of the Funds from or to any Client Plan.

(d) Each Client Plan receives a credit, either through cash or the purchase of additional shares of the Funds pursuant to an annual election made by the Client Plan, of such Plan's proportionate share of all fees charged to the Funds by the Bank for investment advisory services, including any investment advisory fees paid by the Bank to third party sub-advisors, within no more than one business day of the receipt of such fees by the Bank.

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

(f) The Bank does not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions.

\* In addition, the Department notes that Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Thus, the Department believes that the Bank should ensure, prior to any investments made by a Client Plan for which it acts as a trustee or investment manager, that all fees paid by the Funds, including fees paid to parties unrelated to the Bank and its affiliates, are reasonable. In this regard, the Department is providing no opinion as to whether the total fees to be paid by a Client Plan to the Bank, its affiliates, and third parties under the arrangements described herein would be either reasonable or in the best interests of the participants and beneficiaries of the Client Plans.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) The Second Fiduciary receives, in advance of any initial investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section IV(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank may consider such investment to be appropriate for the Client Plan;

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

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents are published in the Federal Register.

(i) After consideration of the information described above in paragraph (h), the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund, the fees to be paid by such Funds to the Bank, and the purchase of additional shares of a Fund by the Client Plan with the fees credited to the Client Plan by the Bank.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Bank are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually; provided that the Termination Form need not be supplied to the Second Fiduciary pursuant to this paragraph sooner than six months after such Termination Form is supplied pursuant to paragraph (i) below, except to the extent required by such paragraph in order to disclose an additional service or fee increase. The instructions

for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of the Bank to engage in the transactions described in paragraph (i) on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services (as defined in Section IV(h) below) at least 30 days prior to the effective date of such increase, accompanied by a copy of the Termination Form, and receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited as required by paragraph (d) above.

(l) In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form, as defined in Section IV(i) below.

(m) On an annual basis, the Bank provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to the Bank;

(2) A copy of the annual financial disclosure report of the Funds in which such Client Plan is invested which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

#### *Section III—General Conditions*

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this 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 six-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 (b) below.

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

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

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

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

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

#### *Section IV—Definitions*

For purposes of this exemption:

(a) The term "Bank" includes Society National Bank, KeyTrust Company of Ohio, Society Asset Management, Inc., KeyCorp and any affiliate thereof as defined below in paragraph (b)(1) of this section.

(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" shall include the Victory Portfolios, or any other diversified open-end investment company or companies registered under the 1940 Act for which the Bank serves as an investment adviser and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other "secondary service" (as defined below in paragraph (h) of this Section) which has been 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 the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, 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 Client 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 fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

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

(3) Such 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 exemption.

If an officer, director, partner, employee of the Bank (or relative of such persons), or affiliate thereof, is a director of such Second Fiduciary, and

if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of this section 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. For purposes of this exemption, the term "secondary service" will include securities lending services provided by the Bank to the Funds, but will not include any brokerage services provided to the Funds by the Bank for the execution of securities transactions engaged in by the Funds.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form; 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 sale.

**EFFECTIVE DATE:** This exemption is effective as of December 1, 1993, for the transactions described in Section I above, and October 1, 1995, for the transactions described in Section II above.

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 March 5, 1996, at 61 FR 8674.

**NOTICE TO INTERESTED PERSONS:** The applicant represents that it was unable to notify interested persons within the time period specified in the Federal Register notice published on March 5, 1996. The applicant states that interested persons were notified, in the manner agreed upon between the applicant and the Department, by June 30, 1996. Interested persons were advised that they had until July 31, 1996

to comment or request a hearing on the proposed exemption. No written comments or requests for a hearing were received by the Department.

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

Bill Ussery Motors, Inc. Fourth Amended and Restated Profit Sharing Plan and Trust (the Plan) Located in Coral Gables, Florida

[Prohibited Transaction Exemption 96-65; Exemption Application No. D-10146]

#### *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 cash sale (the Sale) of certain real property (the Property) by the Plan to Mr. John C. Brockway, the sole shareholder of the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not experience any loss nor incur any expenses from the transaction; and (3) the Plan receives as consideration from the Sale the greater of either (a) the fair market value of the property as determined by a qualified, independent appraiser on the date of the Sale, or (b) an amount equal to the appraised fair market value as determined on December 31, 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 June 21, 1996, at 61 FR 31954.

**COMMENTS:** The Department received one written comment requesting that the purchaser of the Property be changed from Bill Ussery Motors, Inc. (the Employer), the sponsoring employer and a party in interest to Mr. John C. Brockway, the sole shareholder of the Employer and its Chief Executive Officer, and a party in interest. Accordingly, after giving full consideration to the request and the entire record, the Department has determined to change the designation of the purchaser of the Property as requested and to grant the exemption.

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

Hach Company 401(k) Profit Sharing Plan (the Plan) Located in Loveland, CO

[Prohibited Transaction Exemption 96-66; Exemption Application No. D-10203]

#### *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 proposed cash sale by the Plan of Group Annuity Contract No. 5000008 (the GAC) issued by Anchor National Life Insurance Company, located in Los Angeles, California, to Hach Company, a party in interest with respect to the Plan.

This exemption is subject to the following conditions:

(a) The sale is a one-time transaction for cash.

(b) The Plan does not experience any losses or incur any expenses in connection with the transaction.

(c) The Plan receives as consideration an amount that is equal to the fair market value of the GAC as of the date of the sale.

(d) The trustees of the Plan have determined that the proposed transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 21, 1996 at 61 FR 31955.

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

Cablevision Industries Corporation Profit Sharing Plan (the Plan) Located in New York, New York

[Prohibited Transaction Exemption 96-67; Exemption Application No. D-10233]

#### *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 purchase from the Plan by Cablevision Industries Corporation (the Employer), the sponsor of the Plan, of the Plan's entire remaining interest (the Surviving Claim) in guaranteed investment contract number GCNG8690011A issued by the Executive Life Insurance Company; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price which is no less than the greater of (1) the fair market value of the Surviving Claim as of the sale date, or (2) the Plan's principal investment attributable to the Surviving Claim plus interest through the purchase date at the Contract Rate (as defined in the Notice of Proposed Exemption); and

(C) In the event the Employer subsequently receives payments with respect to the Surviving Claim from any source in excess of the purchase price paid to Plan, such excess will be paid to the Plan.

**EFFECTIVE DATE:** This exemption is effective as of June 17, 1996.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on June 4, 1996 at 61 FR 28242.

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

Hoechst Marion Roussel, Inc. Matching Contribution Plan (the Plan) Located in Kansas City, Missouri

[Prohibited Transaction Exemption 96-68; Exemption Application No. D-10242]

#### *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 continuing guarantee by Hoechst Marion Roussel, Inc. (the Corporation) of a loan made to the Marion Merrell Dow Inc. Associate Stock Ownership Plan (the Plan), provided the following conditions are satisfied: a) the transaction is a continuation of a guarantee that was statutorily exempt at the time it was entered into; and b) the transaction requires an exemption because of an independent transaction involving the Plan's sponsor as a corporate entity.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 21, 1996 at 61 FR 31956.

**EFFECTIVE DATE:** This exemption is effective from July 18, 1995 to August 2, 2005.

#### **WRITTEN COMMENTS AND HEARING**

**REQUESTS:** The only written comment

received by the Department was submitted by the applicant to correct an erroneous representation in the notice of proposed exemption. The applicant had represented that German companies do not maintain stock plans since, under German law, companies are not legally permitted to purchase their own stock. The applicant states in its comment letter that it has recently come to the applicant's attention that in certain cases some German corporations have introduced stock plans to compensate their German employees. The applicant also represents that this does not change the fact that Hoechst AG, the German corporation of which the Corporation is an indirect wholly owned subsidiary, does not wish to have any of its equity securities owned by an employee stock ownership plan for the benefit of United States employees.

The Department received no hearing requests with respect to the proposed exemption. The Department has considered the entire record, including the applicant's comment, and 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.)

#### **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 22nd day of August, 1996.

Ivan Strasfeld,

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

[FR Doc. 96-21840 Filed 8-26-96; 8:45 am]

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[Application No. D-10224, et al.]

**Proposed Exemptions; Zerhusen and Ghazi, M.D. Inc. Profit Sharing Plan, et al.**

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

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction 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

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of