

DEPARTMENT OF LABOR**Pension and Welfare Benefits
Administration**

[Prohibited Transaction Exemption 98-20;
Exemption Application No. D-10355, et al.]

**Grant of Individual Exemptions;
Equitable Life Assurance Society**

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.

**Equitable Life Assurance Society of the
United States (Equitable) Located in
New York, New York; Exemption**

[Prohibited Transaction Exemption 98-20;
Exemption Application No. D-10355]

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 and continuing lease (the Lease) of commercial space in One Boston Place by Equitable Separate Account No. 8, also known as the Prime Property Fund (PPF), to an Equitable affiliate, Equitable Real Estate Investment Management, Inc. (ERE), provided the following conditions are satisfied:

(1) All terms and conditions of the Lease are at least as favorable to PPF as could be obtained in an arm's length transaction with an unrelated party;

(2) The interests of PPF for all purposes under the Lease is represented by an independent fiduciary, Lawrence A. Bianchi, a principal of the Codman Company in Boston, Massachusetts;

(3) The rent paid by ERE at all times under the Lease is no less than the fair market rental value of the property; and

(4) The independent fiduciary will continue to monitor the Lease on behalf of PPF.

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 6214.

EFFECTIVE DATE: This exemption has an effective date of July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

**Tyson Foods, Incorporated Employee
Profit Sharing Plan and Trust (the Plan)
Located in Springdale, Arkansas
Exemption**

[Prohibited Transaction Exemption 98-21;
Exemption Application No. D-10421]

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 sale by the Plan of certain

hatcheries, a freezer facility and an office complex (collectively, the Properties), all located in Arkansas, to Tyson Foods, Incorporated (the Company), a party in interest with respect to the Plan, provided that the following conditions were satisfied:

(A) All terms of the transactions were 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 sale was a one-time transaction for cash;

(C) The Plan paid no commissions nor other expenses relating to the sale;

(D) The purchase price was the greater of: (1) the fair market value of each of the Properties as determined by a qualified, independent appraiser; or (2) the Plan's original acquisition cost; and

(E) Prior to the sale, an independent fiduciary reviewed the transactions and determined that the transactions described herein, were appropriate and in the best interests of the Plan and its 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 March 20, 1998 at 63 FR 13693.

EFFECTIVE DATE: This Exemption has an effective date of May 23, 1997.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219-8883 (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, DC, this 13th day of May 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

[Prohibited Transaction Exemption 98-22; Exemption Application Nos. D-10461, D-10462 and D-10463]

Grant of Amendment to Prohibited Transaction Exemption (PTE) 93-8 Involving the Fortunoff Pension Plans (the Plans) Located in Westbury, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of Amendment to PTE 93-8.

SUMMARY: This document contains a final exemption which amends PTE 93-8 (58 FR 7258, February 5, 1993), a purchase, leaseback and license exemption involving Plans sponsored by Fortunoff Fine Jewelry and Silverware, Inc. (FFJ) and M. Fortunoff of Westbury Corporation (M. Fortunoff) and parties in interest. These transactions are described in a notice of pendency that was published in the **Federal Register** on May 8, 1992 at 57 FR 19951.

EFFECTIVE DATE: This exemption is effective as of May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, D.C. 20210, telephone (202) 219-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 19, 1997, the Department of Labor (the Department) published a

notice of proposed exemption (the Notice) in the **Federal Register** (62 FR 66685) that would amend PTE 93-8. PTE 93-8 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. The Notice was requested in an application filed on behalf of M. Fortunoff and FFJ (collectively, the Applicants) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990) (the Procedures). 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 requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The Notice gave interested persons the opportunity to comment and to request a public hearing on the matters described therein. Although the Notice and supplemental statement were to be posted and distributed to interested persons during the month of December 1997, the Applicants stated that this action was not taken but inadvertently overlooked. Therefore, the Applicants represented that they posted copies of the Notice and supplemental statement on employee bulletin boards in company stores and executive offices and also mailed this documentation to all other participants in the Plans who were not current employees, on or about March 9, 1998. The Department received no comments or hearing requests from interested persons following the dissemination of the Notice and supplemental statement and, therefore, has determined to grant the amendment to PTE 93-8.

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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and 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 require, among other things, a

fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

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

(4) This exemption will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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

(5) This exemption is subject to the express condition that the Summary of Facts and Representations set forth in the proposed exemption relating to PTE 93-8, as amended by this grant notice, accurately describe, where relevant, the material terms of the transactions consummated pursuant to that exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the Procedures cited above, the Department hereby amends PTE 93-8. Accordingly, 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 leasing by the Fortunoff Pension Plan—Employer Group A Plan, the Fortunoff Pension Plan—Employer Group B Plan and the Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (collectively, the Plans) to Fortunoff Fine Jewelry and Silverware, Inc. (FFJ), under the provisions of an amended lease (the Amended Lease) described in Prohibited Transaction Exemption (PTE) 93-8 (58 FR 7258, February 5, 1993), of certain real property (the Substitute Property), acquired by the Plans through