

The Company stated that it would be in the position to purchase the Property at this price due to the fact that the Company had recently sold another piece of property for \$150,000 with respect to which the Company was trying to complete a Code section 1031 like-kind exchange. The Company further states that based upon the section 1031 requirements, the like-kind exchange had to be completed by April 15, 1998, and the Company determined that due to the notice requirements of the exemption process, the exemption would not be granted before this date. Accordingly, the Company purchased the Property from the Plan on April 15, 1998. The applicant represents that the Sale was in the interest of the Plan because it permitted the Plan to fully recover the money it invested in the Property, and it appeared highly unlikely that the Plan could sell the Property to a third party in its current condition at such a price. In addition, the Plan incurred no expenses as a result of the Sale.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of the section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) the Sale was a one-time transaction for cash; (2) the Plan paid no expenses associated with the Sale; and (3) the Plan received the greater of the fair market value as determined by an independent, qualified appraiser of the Property or \$134,600 which represents the Plan's total investment in the Property.

For Further Information Contact:

Allison Padams Lavigne of the Department, telephone (202)219-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

employees of the employer maintaining the plan and their beneficiaries;

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

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

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

Signed at Washington, DC, this 1st day of July, 1998.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Prohibited Transaction Exemption 98-32; Exemption Application No. D-10459, et al.; Grant of Individual Exemptions; Union Bank of Switzerland

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.

Union Bank of Switzerland (UBS/Swiss) and UBS Securities, LLC (UBS Securities) Located in Zurich, Switzerland and New York, New York, Respectively

[Prohibited Transaction Exemption 98-32; Exemption Application Nos. D-10459 and D-10460]

Exemption

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the (1) lending of securities to UBS/Swiss, UBS Securities, UBS Ltd. (UBS/UK), UBS Securities Limited (UBS/Japan) and their successors in interest, which are or will

be affiliated domestic or foreign broker-dealers of UBS Securities,¹ by employee benefit plans (the Client Plans or Plans), including commingled investment funds holding plan assets, for which UBS/Swiss, acting through its New York branch in connection with securities lending activities (UBS NY), an affiliate of the proposed UBS Borrowers, may serve as a securities lending agent, sub-agent, or as a custodian or a directed trustee to Client Plans under either of two securities lending arrangements, referred to herein as "Plan A" or "Plan B"; and (2) the receipt of compensation by UBS NY in connection with these transactions.

This exemption is subject to the following conditions:

(a) For each Client Plan, neither UBS NY, any of the UBS Borrowers nor any affiliate of those entities has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice [within the meaning of 29 CFR 2510.3-21(c)] with respect to those assets.

(b) With regard to—

(1) Plan A, under which UBS NY lends securities of a Client Plan to any UBS Borrowers in either an agency or sub-agency capacity, such arrangement is approved in advance by a Plan fiduciary who is independent of UBS NY and the UBS Borrower and is negotiated by UBS NY which acts as a liaison between the lender and the borrower to facilitate the securities lending transaction.²

(2) Plan B, under which the UBS Borrower directly negotiates the agreement with the fiduciary of a Client Plan, including a Plan for which UBS NY provides services with respect to the portfolio of securities to be loaned pursuant to an exclusive borrowing arrangement (the Exclusive Borrowing Arrangement), such Client Plan fiduciary is independent of both the UBS Borrower and UBS NY, and UBS NY does not participate in any such negotiations.

(c) The independent fiduciary of a Client Plan approves the general terms

of the securities loan agreement (the Loan Agreement) between the Client Plan and the UBS Borrower.

(d) The terms of each loan of securities by a Client Plan to a UBS Borrower are at least as favorable to such Plan as those of a comparable arm's length transaction between unrelated parties.

(e) A Client Plan may terminate the agency or sub-agency arrangement under Plan A or an Exclusive Borrowing Agreement under Plan B at any time, without penalty, on five business days notice, whereupon the UBS Borrowers will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and the UBS Borrowers, whichever is less.

(f) The Client Plan or its designee receives from each UBS Borrower by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the UBS Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a U.S. bank, other than UBS NY or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81-6 as it may be amended or superseded.

(g) The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan is initially at least 102 percent of the market value of the loaned securities. The applicable Loan Agreement gives the Client Plan a continuing security interest in and a lien on the collateral. The level of collateral is monitored daily (either by UBS NY under Plan A, or by UBS NY or another designee of the Client Plan under Plan B). If the market value of the collateral, on the close of trading on a business day is less than 100 percent of the market value of the loaned securities at the close of business on that day, the UBS Borrower is required to deliver, by the close of business on the next day, sufficient additional collateral to bring the level to at least 102 percent.

(h) Prior to entering into a Loan Agreement, the applicable UBS

Borrower furnishes each Client Plan its most recently available audited and unaudited statements to UBS NY, and in turn, such statements are provided to the Client Plan before the Client Plan approves the terms of the Loan Agreement. The Loan Agreement contains a requirement that the applicable UBS Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, UBS NY does not make any further loans to the UBS Borrower unless an independent fiduciary of the Client Plan is provided notice of any material change and approves the loan in view of the changed financial condition.

(i) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to UBS Borrowers, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(j) All procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of PTEs 81-6 and 82-63 as well as to applicable securities laws of the United States, Switzerland, the United Kingdom or Japan.

(k) UBS NY agrees to indemnify and hold harmless the Client Plan in the United States (including the sponsor and fiduciaries of such Client Plan) for any transactions covered by this exemption with a UBS Borrower so that the Client Plan does not have to litigate, in the case of a UBS Foreign Borrower, in a foreign jurisdiction nor sue the UBS Foreign Borrower to realize on the indemnification. Such indemnification, by UBS NY, is against any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer, arising from any impermissible use by the UBS Borrower of the loaned securities or from an event of default arising from the UBS Borrower's failing to deliver loaned securities in accordance with the applicable Loan Agreement or to otherwise comply with the terms of that agreement, except to the extent that such losses or damages are caused by the Client Plan's own negligence.

¹ For purposes of this exemption, UBS/Swiss, UBS/UK, UBS/Japan and their successors in interest are collectively referred to as the UBS Foreign Borrowers. In addition, UBS Securities, including its successor in interest, and the UBS Foreign Borrowers are together referred to herein as the UBS Borrowers or individually as a UBS Borrower.

² The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than UBS NY, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82-63 (47 FR 14804, April 6, 1982).

(1) If any event of default occurs, UBS NY, promptly and at its own expense (subject to rights of subrogation in, to the collateral and against such borrower), purchases or causes to be purchased, for the account of the Client Plan, securities identical to the borrowed securities (or their equivalent as discussed above). If the collateral is insufficient to accomplish such purchase, UBS NY indemnifies the Client Plan for any shortfall in the collateral plus interest, if contractually applicable, on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on loans or failure to properly indemnify under this provision). Alternatively, if such replacement securities cannot be obtained on the open market, UBS NY pays the Client Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral on the date of the borrower's breach of its obligation to return the loaned securities.

(2) If, however, the event of default is caused by the UBS Borrower's failure to return the securities within the designated time, the Client Plan has the right to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

(l) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities, including all interest and dividends on the loaned securities during the loan period.

(m) Prior to any Client Plan's approval of the lending of its securities to any UBS Borrower, copies of the notice of proposed exemption (the Notice) and the final exemption are provided to the Client Plan.

(n) Each Client Plan receives monthly reports with respect to securities lending transactions, including, but not limited to, the information described in Representation 26 of the Summary of Facts and Representations (the Summary) of the Notice, so that an independent fiduciary of a Client Plan may monitor such transactions with the UBS Borrower.

(o) Only Client Plans with total assets having an aggregate market value of at least \$50 million are permitted to lend securities to UBS Borrowers; provided, however, that —

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization

(i.e., the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing \$50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of \$100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing \$50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to Client Plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of \$100 million.

(In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.)

(p) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(q) In addition to the above, all loans involving UBS Foreign Borrowers, have the following requirements:

(1) Such Foreign Borrower is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom in the case of UBS/UK, the Swiss Federal Banking Commission in the case of UBS/Swiss, and the Ministry of Finance, in the case of UBS/Japan;

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a-6 (17 CFR 240.15a-6) under the Securities Exchange Act of 1934 which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or U.S. dollar-denominated securities or letters of credit;

(4) All collateral is held in the United States and the situs of the securities lending agreements (either the Loan Agreement under Plan A or the Exclusive Borrowing Agreement under Plan B) is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1; and

(5) Prior to a transaction involving a UBS Foreign Borrower, the applicable UBS Foreign Borrower—

(A) Agrees to submit to the jurisdiction of the United States;

(B) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(C) Consents to service of process on the Process Agent; and

(D) Agrees that enforcement by a Client Plan of the indemnity provided by UBS New York will occur in the United States courts.

(r) UBS NY and each UBS Foreign Borrower maintain, or cause to maintain within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (s)(1) to determine whether the conditions of the 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 UBS NY and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than UBS NY or its affiliates 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 below by paragraph (s)(1).

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

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(s)(2) None of the persons described above in paragraphs (s)(1)(B)—(s)(1)(D) of this paragraph (s)(1) are authorized to examine the trade secrets of UBS NY or its affiliates or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on March 31, 1998 at 63 FR 15452.

Written Comments

During the comment period, the Department received one written comment with respect to the Notice and no requests for a public hearing. The comment letter was submitted by UBS/Swiss and UBS Securities (together, the Applicants) and is intended to clarify the operative language of the Notice and the Summary. Presented below are a discussion of the Applicants' comments and the Department's responses.

General Comments

The Applicants wish to make the following general comments to reflect changed circumstances since the original filing of the exemption application.

1. *Successors in Interest.* The Applicants represent that there is currently a pending merger between UBS Swiss and Swiss Bank. The transaction, which has not been structured as an asset sale but rather as a transfer of stock, would result in the formation of a new entity that would be

named "UBS AG." In effect, the Applicants state that the shareholders of UBS Swiss and Swiss Bank would surrender shares of stock in their respective entities in exchange for shares of UBS AG. Following the merger, UBS Securities would be renamed "Warburg Dillon Read LLC." The names of UBS/UK and UBS/Japan would remain unchanged. The Applicants state that they have obtained final regulatory approval and anticipate that the merger will be consummated by the end of June 1998.

To ensure that the requested exemption will still be effective following the merger, the Applicants have requested that it be revised, as necessary, to extend to successors in interest to the Applicants and their affiliates. Therefore, the Department has revised the operative language of the exemption by making it applicable to successors in interest to UBS Swiss, UBS Securities and their affiliates, including UBS NY and the UBS/UK and UBS/Japan.

2. *Representation 1(b) of the Summary.* The last sentence in the second paragraph of Representation 1(b) of the Summary states that "All borrowings by UBS Securities must conform to applicable provisions of the Federal Reserve Board's Regulation T." The Applicants note that Regulation T has been amended as of April 1, 1998 and therefore, believe that a representation as to compliance with Regulation T should be made only to the extent it is applicable to the UBS Borrower and the transaction. Accordingly, the Applicants suggest that the last sentence of Representation 1(b) be revised to read as follows:

All borrowings by UBS Securities must conform to applicable provisions of the Federal Reserve Board's Regulation T, to the extent that such regulation is applicable to UBS Securities and to the transaction.

In concurrence, the Department has made the requested change in Representation 1(b) of the Notice.

Specific Comments

1. *Operative Language of the Notice and Representation 8 of the Summary.* In the operative language of the Notice, the introductory paragraph and Representation 8 of the Summary briefly state that UBS NY may serve as a securities lending agent, a sub-agent or as a custodian or a directed trustee to Client Plans under either of two securities lending arrangements, which are referred to therein as "Plan A" and "Plan B." To clarify the statements made in these paragraphs, the Applicants point out that when UBS NY

effects securities lending activities on behalf of a Client Plan, it may be acting as a lending agent or a sub-agent pursuant to discrete agency documentation or pursuant to authority granted under a trust or custodial agreement with the Client Plan which expressly includes the securities lending activity.

The Department has noted the clarification offered by the Applicants.

2. *Condition (k) of the Notice and Representations 23 and 38 of the Summary.* The Applicants suggest that the Department revise Condition (k) of the Notice and Representation 23 and 38 of the Summary to reflect more accurately the scope of the indemnification given by UBS NY to a Client Plan. In this regard, the Applicants recommend that the second sentence of Condition (k) and the second sentence of Representation 38 be modified by striking the phrase "the failure of the UBS Borrower" and inserting the phrase "from an event of default arising from the UBS Borrower's failing * * *" after the word "or."

In response, the Department concurs with the requested modifications and has revised the Notice, accordingly. Although Representation 23 of the Summary contains language similar to that of Condition (k) and Representation 38, the Department has not made a corresponding change since the language contained therein already appears to embody the Applicants' requested modification.

3. *Condition (k)(1) of the Notice and Representation 23 of the Summary.* The Applicants note that UBS NY will perform its indemnity within one business day of the insolvency event (either by (1) paying the Client Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral on the date of the borrower's breach of its obligation to return the loaned securities or (2) by purchasing securities identical to the borrowed securities and applying the collateral to payment of the purchase price and any other expenses of the Client Plan that may be associated with the sale and/or purchase. Because UBS NY generally performs its indemnity by the next business day, the Applicants represent that UBS NY does not pay interest on any shortfall in collateral arising from other than reinvestment risk but it does bear the transaction costs of performing the indemnity. However, in the event UBS NY is ever required to pay interest to a Client Plan, the Applicants request that the phrase "if contractually applicable" be inserted following the reference to "interest" in Condition

(k)(1) and in the second sentence of the second paragraph in Representation 23.

In response, the Department has made the change requested by the Applicants.

4. Condition (o)(2)(A) of the Notice and Representation 28(a) of the Summary.

Condition (o)(2) of the Notice provides that—

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing \$50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate;

(B) Has full investment responsibility with respect to Client Plan assets invested therein; and

(C) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to Client Plan investment in the commingled entity, which are in excess of \$100 million.

Representation 28 of the Summary contains a similar provision. The Department believes that subparagraph (A) above and clause (a) of Representation 28 unnecessarily limit the ability of a Client Plan to effect securities loans under the proposed lending program, particularly in a situation where the independent investment manager's own in-house plan wishes to invest in the commingled investment vehicle. Therefore, the Department has modified the Condition and Representation to read as follows:

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with UBS Borrowers, the foregoing \$50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Plan with respect to which the fiduciary

responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

In effect, the independent investment manager's own plan may participate in the commingled investment vehicle but for purposes of determining whether the \$50 million aggregation requirement is met, the assets of the Unrelated Plans must be utilized.

5. Condition (q)(5)(D) of the Notice and Representations 25(d) and 32(d) of the Summary. Condition (q) of the Notice sets forth certain supplemental requirements for securities loans involving UBS Foreign Borrowers. Specifically, subparagraph 5 of Condition (q) describes the limited form of indemnity that is to be provided by the UBS Foreign Borrower to a Client Plan. For example, prior to a securities lending transaction, the UBS Foreign Borrower must (a) agree to submit to the jurisdiction of the United States; (b) agree to appoint an agent for service of legal process; and (c) consent to service of process on the Process Agent.

The Applicants note, however, that the language of Condition (q)(5)(D) of the Notice and Representations 25(d) and 32(d) of the Summary appears to have been added in error. These paragraphs state that the applicable UBS Foreign Borrower "agrees to be indemnified in the United States for any transaction covered by this exemption." Because no UBS Borrower will be indemnified under this exemption, the Applicants suggest that the language be clarified to state that the "UBS Foreign Borrower agrees that enforcement by a Client Plan of the indemnity provided by UBS New York will occur in the United States courts."

In response, the Department concurs with the clarification made by the Applicants and has made the requested change.

6. Representation 11 of the Summary. The Applicants request that the second sentence in the second paragraph of Representation 11 of the Summary be modified by inserting the phrase "will

be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement." Therefore, the Department has revised the sentence to read as follows:

Thus, for example, the form of Loan Agreement will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement.

7. Representation 27 of the Summary. Representation 27 of the Summary describes the contents of the monthly report that will be given to the independent fiduciary of a Client Plan by UBS NY. Among other things, the monthly report will enable the Client Plan fiduciary to monitor securities lending activity, rates on loans to UBS Borrowers compared with loans to other brokers and the level of collateral. The Applicants wish to emphasize that while they cannot be required to divulge, in the monthly report, confidential information regarding securities loans made by outside lenders, they will disclose all of a Client Plan's outstanding securities loans that are made to UBS Borrowers. Therefore, the Applicants request that Representation 27 be revised, in part, as follows:

In order to provide the means for monitoring lending activity, rates on loans to UBS Borrowers compared with loans to other brokers and the level of collateral on the loans, it is represented that the monthly report will show, on a daily basis, the market value of all of the Client Plan's outstanding securities loans to the UBS Borrower and to other borrowers as compared to the total collateral held for both categories of loans.

In response, the Department concurs with the Applicants' clarification of the monthly report and has made the requested change.

For further information regarding the Applicants' comments or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application Nos. D-10459 and D-10460) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment provided by the Applicants, the Department has made the aforementioned changes to the Notice and has decided to grant the exemption

subject to the modifications or clarifications described above.

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

Breland Investments, Inc. Profit Sharing Plan and Trust (the Plan) Located in Phoenix, Arizona

[Prohibited Transaction Exemption 98-33; Exemption Application No: D-10529]

Exemption

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 proposed loan (the Loan) by the individually directed account (the Account) in the Plan³ of Dr. Albert E. Breland (Dr. Breland), to Mesa Scholastic Enterprises, a disqualified person with respect to the Plan, and (2) the personal guarantee of the Loan by Dr. Breland, a disqualified person with respect to the Plan, provided the following conditions are satisfied:

(a) the terms of the Loan are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party;

(b) the amount of the Loan does not exceed 25% of the assets in the Account;

(c) the Loan is secured by a first deed of trust on the commercial real property, which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the outstanding balance of the Loan throughout its duration;

The Department received no comments or requests for a hearing in response to the Notice of Proposed Exemption (the Notice) published on Friday, May 29, 1998 at 63 FR 29458. However, in the paragraph entitled "Notice to Interested Persons" contained in the Notice, the word "Overland" should be deleted and the word "Breland" should be inserted in lieu thereof.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption, refer to the Notice.

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

³ Because Dr. Breland is the only participant in the Plan, there is no jurisdiction under 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Karen J. Hartley Profit Sharing Plan (P/S Plan) and Karen J. Hartley Money Purchase Pension Plan and Trust Agreement (M/P Plan, collectively; the Plans) Located in Eugene, Oregon

[Prohibited Transaction Exemption 98-34; Exemption Application Nos. D-10588 and D-10589]

Exemption

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 loan (the Loan) by the Plans to Karen J. Hartley, the trustee and sole participant of the Plans and, a disqualified person with respect to the Plans;⁴ provided that the following conditions will be met:

1. The Loan will be structured such that each Plan will lend up to 25% of its assets. However, the aggregate amount of the Loan will not exceed \$40,000 at any time;

2. The outstanding balance of the Loan will at no time exceed 25% of the Plans' aggregate assets;

3. The Plans will bear no expenses with respect to the proposed transaction;

4. The terms and conditions of the Loan will be at least as favorable to the Plans as those obtainable in arm's-length transaction with an unrelated party; and

5. The Loan will be adequately secured by collateral, which at all times will be equal to 100% of the outstanding principal amount of the Loan plus 6 months interest at the Loan's interest rate of 8.2%. In the event the collateral amount falls below this required amount, this exemption will no longer be available.

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 May 18, 1998 at 63 FR 27332.

For Further Information Contact: Ekaterina A. Uzlyan of the Department at (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

⁴ Pursuant to CFR 2510.3-3(b) and (c), the Department has no jurisdiction with respect to the Plans under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

disqualified person from certain other provisions to which the exemptions do 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 1st day of July 1998.

Ivan Strasfeld,

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

[FR Doc. 98-18010 Filed 7-7-98; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[98-092]

Notice of Agency Reports Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3506(c)(2)(A)).