

(1) The Plan is represented for all purposes under the Lease by a qualified, independent fiduciary;

(2) The terms and conditions of the Lease are at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party;

(3) The rent paid to the Plan under the Lease is no less than the fair market rental value of the Property, as established by a qualified, independent appraiser;

(4) The rent is adjusted, at a minimum, every three years, based upon an updated independent appraisal of the Property, but in no event shall such adjustments result in the rent being less than the rental amount for the Property existing for the preceding period;

(5) The Lease is triple net (with all expenses for maintenance, taxes, and insurance to be borne by the Employer as the tenant);

(6) The independent fiduciary for the Plan (the I/F) reviews the terms and conditions of the Lease on behalf of the Plan and determines that the Lease is in the best interests of, and appropriate for, the Plan;

(7) The I/F monitors and enforces compliance with all of the terms and conditions of the Lease, and of this exemption, throughout the duration of the Lease;

(8) The I/F expressly approves any improvements by the Employer to the Property, any renewal of the Lease beyond the initial term, and any sale of the Property to the Employer, pursuant to the Employer's option to purchase the Property under the Lease;

(9) In the event that the Employer exercises its option to purchase the Property under the Lease, the Employer pays the Plan an amount which is the greater of either (a) the original acquisition cost of the Property, plus holding expenses, or (b) the fair market value of the Property, as of the date of the sale, as established by a qualified, independent appraiser; and

(10) At all times throughout the duration of the Lease, the fair market value of the Property represents no more than 25 percent of the total assets of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 29, 1998 at 63 FR 29456.

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

**McClain's R.V., Inc. 401(k) Profit Sharing Plan (the Plan), Located in Lake Dallas, Texas**

[Prohibited Transaction Exemption 98-37; Exemption Application No. D-10583]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain unimproved real property (the Land) by the Plan to Larry McClain, the sole shareholder of McClain's R.V. Inc., the sponsor of the Plan, and a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale will be a one-time cash transaction;

(b) The Plan will receive the greater of: (1) The original acquisition cost of the Land plus the aggregate holding costs incurred by the Plan; or (2) the current fair market value of the Land (plus an appropriate premium related to the adjacency of the Land to other real property owned by McClain's R.V. Inc.), as established by an independent qualified appraiser at the time of the sale; and

(c) The Plan will pay no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 18, 1998 at 63 FR 27330.

**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 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 15th day of July, 1998.

**Ivan Strasfeld,**

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

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**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

[Application No. D-10324, et al.]

**Proposed Exemptions; Pacific Income Advisers, Inc.**

**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 restrictions 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 requests 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.

**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 Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

#### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). 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. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

#### Pacific Income Advisers, Inc. (PIA), Located in Santa Monica, CA

[Application No. D-10324]

#### Proposed Exemption

The Department is considering granting an 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 set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990).

#### Section I—Proposed Exemption Involving Plans Where PIA Is Both a Fiduciary or Other Party in Interest With Respect to the Plan and Investment Adviser of Certain Trusts in Which the Plans Invest

If the exemption is granted, 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 to: (1) The acquisition, sale or redemption of trust units (the Units) in the Pacific Income Advisers Fixed-Income Group Investment Trust (Fixed Income Trust), the Pacific Income Advisers Short-Term Group Investment Trust (Short-Term Trust), the Pacific Income Advisers Equity Group Investment Trust (Equity Trust), and the Pacific Income Advisers International Group Investment Trust (International Trust; each a Trust and collectively, the Trusts), by employee plans, and Individual Retirement Accounts (IRA's; collectively, the Plan(s)); and (2) the payment of fees by a Trust to Pacific Income Advisers (PIA) where PIA is a fiduciary or other party in interest with respect to a Plan investing in a Trust and the investment adviser to each of the Trusts, provided the conditions of Section II are satisfied.

#### Section II—Conditions

(1)(a) The investment of a Plan's assets in each of the Trusts and the fees to be paid by a Trust to PIA are authorized in writing by a Plan fiduciary who is independent of PIA (Independent Fiduciary).<sup>1</sup> Such authorization shall be consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act. In addition, such authorization shall be either: (1) Set forth in the investment management agreement between the Plan and PIA; (2) indicated in writing prior to each purchase or sale; or (3) indicated in writing prior to the commencement of a

<sup>1</sup> A fiduciary will not be deemed independent of PIA if: (1) Such fiduciary is directly or indirectly controlled by PIA or an affiliate thereof; (2) such fiduciary or any officer, director, partner, highly compensated employee, or the relative of such fiduciary is an officer, director, partner, or highly compensated employee, of PIA or an affiliate of PIA; and (3) such fiduciary directly or indirectly receives any compensation or other consideration for that fiduciary's own personal account in connection with any transaction described in this proposed exemption.

specified purchase or sale program in the Units of the Trusts.

(b) PIA does not provide investment advice to a Plan's Independent Fiduciary within the meaning of 29 CFR 2510.3-21(c)(1)(ii) with respect to a Plan's acquisition of Units of a Trust.

(2) Prior to making an initial investment in the Units, each Plan's Independent Fiduciary shall receive the following written disclosures from PIA:

(a) The proposed exemption and grant notice describing the exemptive relief provided herein;

(b) The applicable Trust's Offering Memorandum, outlining the investment objective(s) of the Trust and the policies employed to achieve these objectives and a description of all fees associated with investment in the Trust; and

(c) The applicable Trust's Agreement and Declaration of Trust, disclosing the structure and manner of operation of the Trust.

(d) A statement describing the relationship between PIA and the Trusts.

(3) The Independent Fiduciary shall acknowledge in writing that the Plan is an "accredited investor" as defined in Rule 501 of Regulation D of the Securities Act of 1933 (1933 Act). In addition, the Independent Fiduciary shall acknowledge in writing that it has not relied upon the advice of PIA with respect to the acquisition, sale or redemption of the Units.

(4) No Plan shall pay a sales commission or redemption fee, in connection with the acquisition, sale or redemption of the Units of the Trusts.

(5)(a) No participating Plan may invest more than 25% of its total assets in the International Trust.

(b) No Plan, other than a multiple employer welfare arrangement (MEWA), a multiple employer trust (MET), or voluntary employee benefit association (VEBA), may acquire or hold Units representing more than 20% of the assets of a Trust.<sup>2</sup> A MEWA, MET, or VEBA may acquire and hold Units representing up to 35% of the assets of either the Short-Term Trust or Fixed Income Trust only. As to investment in any other Trust, a MEWA, MET, or

<sup>2</sup> A MEWA is defined in section 3(40)(A) of the Act and provides benefits described in section 3(1) of the Act for employees of two or more employers. Although the term "MET" is not used or defined in title I of the Act, a MET may be covered by title I of the Act, to the extent that it provides benefits described in section 3(1) of the Act and it is established or maintained by an employer, an employee organization, or both. A VEBA is defined in section 501(c)(9) of the Code and is subject to title I to the extent that it provides benefits described in section 3(1) of the Act and it is established or maintained by an employer, an employee organization, or both.

VEBA may not acquire or hold Units representing more than 20% of the assets of such Trust.

(c) For purposes of determining the percentage of the assets of a Trust being held by a single Plan, PIA shall first make the calculation 90 days after the first Unit of a Trust is sold to such Plan.

(6)(a) At the time the transactions are entered into, the terms of the transactions shall be at least as favorable to the Plans as those obtainable in arm's length transactions between unrelated parties.

(b) PIA, including any officer or director of PIA, does not purchase or sell shares of the Trusts from or to any Plan Client.

(c) The price paid or received by a Plan Client for Units of a Trust is the net asset value per Unit at the time of the transaction and it is the same price which would have been paid or received for the Units of a Trust by any other investor at that time. For purposes of this paragraph, 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 an objective method as set forth in each Trust's relevant Trust documents and Trust Offering Memorandum, and other assets belonging to the Trust, less the liabilities charged to such Trust, by the total number of Units of the Trust.

(7) The combined total of all fees paid by a participating Plan shall constitute no more than reasonable compensation within the meaning of section 408(b)(2) of the Act.

(8) The Plan does not pay any Plan-level investment management fees, investment advisory fees or similar fees to PIA with respect to any of the assets of such Plan which are invested in Units of a Trust. This condition does not preclude the payment of investment advisory or similar fees by the Trusts to PIA under the terms of investment management agreements between PIA and each of the Trusts.

(9) All authorizations and approvals made by the Independent Fiduciary regarding investment in a Trust and the fees paid to PIA are subject to an annual reauthorization wherein any such prior authorization shall be terminable at will by the Plan, without penalty to the Plan, upon written notice of termination. A form expressly providing an election to terminate the authorization (the Termination Form) with instructions on the use of the form must be supplied to the Independent Fiduciary no less than annually; provided that the Termination Form need not be supplied sooner pursuant to paragraph (10) below. The

Termination Form must include the following information:

(a) The authorization is terminable at will by the Plan, without penalty to the Plan, upon receipt by PIA of written notice from the Independent Fiduciary; and

(b) Failure of the Independent Fiduciary to return the Termination Form will result in continued authorization of PIA to continue to engage in the transactions described in Sections I.

(10) PIA will provide, at least 30 days in advance of the implementation of an additional service to a Trust by PIA or a fee increase for investment management, investment advisory or similar services, a written notice to the Independent Fiduciary of the Plan Client explaining the nature and amount of the additional service for which a fee is charged or the increase in fees.

(11) Each Plan shall receive the following:

(a) A monthly report disclosing the performance and the value of the Plan's investment in each of the Trusts. Such monthly report shall disclose the extent to which assets of a Plan have been shifted between the Trusts by PIA and any fee differential resulting from such shifting between the Trusts;

(b) An audited financial statement of each of the Trusts in which a Plan is invested, prepared annually by an independent, certified public accountant, including a list of investments of each Trust and their valuations, provided to the Plan not later than 45 days after the end of the period to which the report relates; and

(c) An annual statement of a Plan's percentage interest in each Trust and the value of the Plan's Units, provided to the Plan not later than 45 days after the end of the period to which the report relates. Such report shall also include the total fees paid to PIA by each Trust. Further, such report shall also include the brokerage fees paid by each Trust to unrelated broker-dealers, as well as the total of all fees and expenses paid by PIA to third parties.

(12) Brokerage transactions for the Trusts are performed by entities unrelated to PIA for no more than reasonable compensation within the meaning of section 408(b)(2) of the Act.

(13) PIA shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (14) of this section to determine whether the conditions of this exemption have been satisfied, except that (a) prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PIA, the records are lost or

destroyed prior to the end of the six year period, and (b) no party in interest other than PIA 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 (13) below.

(14)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (13) of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any Independent Fiduciary of a Plan investing in a Trust, or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any Plan investing in a Trust, or any duly authorized employee representative of such employer;

(4) Any participant or beneficiary of any participating Plan investing in a Trust, or any duly authorized representative of such participant or beneficiary; and

(5) Any other person or entity investing in a Trust.

(b) None of the persons described above in subparagraphs (2)–(5) of this paragraph (14) shall be authorized to examine the trade secrets of PIA or commercial or financial information which is privileged.

*Effective Date:* If granted, this proposed exemption will be effective August 29, 1997.

#### *Summary of Facts and Representations*

1. PIA, which maintains its headquarters in Santa Monica, California, is an investment adviser registered under the Investment Advisers Act of 1940, as amended. As of January 1, 1997, PIA rendered investment advisory services with respect to \$3.1 billion in client's assets.

2. It is represented that in order to offer both lower fees relative to the fees charged by PIA for separate account management, and to provide an investment vehicle that will facilitate effective diversification and management of investor assets, PIA organized each Trust as a business trust under the laws of the Commonwealth of Massachusetts. The Trusts were organized on August 29, 1997. PIA is the investment adviser for each Trust and Imperial Trust Company (Imperial)

serves as trustee and custodian of each Trust. Imperial is a wholly owned subsidiary of Imperial Bank, N.A., and is not affiliated with PIA.

3. With regard to some Plan clients (Plan Clients) who invest in the Trusts, PIA has no pre-existing fiduciary relationship. Investments in a Trust will only occur with the express written consent of an Independent Fiduciary. PIA notes that in the situation where Units of a Trust are sold to a Plan Client with which PIA does not have a pre-existing relationship prior to the Plan Client's initial purchase, a prohibited transaction could arise under section 406(a) of the Act upon a subsequent purchase or redemption of Units of a Trust. This is because a party in interest relationship would have been established by virtue of PIA serving as investment adviser and fiduciary with respect to the Plan assets invested in the Trusts.<sup>3</sup>

4. Also, in some instances, PIA explains that a prohibited transaction may arise under section 406(a) of the Act if the Plan acquires Units of a Trust where the Plan Client has previously entered into a separate account investment management agreement with PIA and the Plan Client subsequently wishes to change the nature of its relationship with PIA from a separate account investment to an investment in a Trust. In such a situation, the Plan will terminate its separate account relationship with PIA and invest in the Trusts. The initial investment in a Trust may give rise to a prohibited transaction because of the pre-existing relationship between PIA and the Plan Client.

5. Further, some Plan Clients may decide to continue the individual investment management relationship with PIA or permit PIA, at its discretion, to move Plan assets between one or more Trusts, subsequent to a Plan's investment in a Trust. In these instances, possible violations of sections 406(a) and 406(b) of the Act may occur with respect to PIA's sale of Units of a Trust to such Plans. Also, PIA represents that the purchase of Units of a Trust by a Plan Client may give rise to a prohibited transaction because of the receipt of fees by PIA from the Trusts as a result of the investment of Plan assets in a Trust. In situations where the Plan Clients decide to continue the individual investment

<sup>3</sup> PIA represents that the equity participation by all Plans investing in Units of a Trust is expected to exceed 25% of the value of all Units of each of the Trusts and it has not been established that the Trusts are operating companies. Accordingly, it is anticipated that the underlying assets of the Trusts will constitute "plan assets" within the meaning of 29 CFR 2510.3-101.

management relationships with PIA following the investment in the Trusts, PIA represents that it will not receive duplicate fees (i.e., a Plan-level investment management fee and a Trust-level investment management fee) with respect to the assets of a Plan that are invested in a Trust. Specifically, PIA represents that it will forego that portion of the plan-level investment management fee to which it would be entitled to receive under the investment management agreement with the Plans where assets subject to that agreement are also invested in a Trust.

6. PIA represents that it will not act as an investment adviser, within the meaning of section 3(21)(A)(ii) of the Act, to such Plan Clients which propose to invest in one or more Trusts. PIA represents that the decision to invest in a Trust will be made by an Independent fiduciary on the basis of his or her own investigation into the advisability of investing in one or more Trusts.<sup>4</sup> PIA represents that under no circumstances will it have discretionary authority or control with respect to an Independent Fiduciary's initial authorization or approval to acquire Units.

7. With respect to subsequent shifting of assets between the various trusts, PIA may have the discretionary authority to effect such transactions. However, PIA will obtain authorization or approval from the Plan Client prior to shifting assets between the various Trusts. Such authorization or approval by an Independent Fiduciary shall be either: (1) Set forth in the investment management agreement between the Plan Client and the PIA; (2) indicated in writing prior to each purchase or sale; or (3) indicated in writing prior to the commencement of a specified purchase or sale program in the Trusts.

8. Each Trust will maintain and pursue a separate investment objective by investing in equity and debt securities. For example, the objective of the Equity Trust is to provide long-term growth of capital by investing primarily in equity securities. PIA represents that the Equity Trust is expected to invest a majority of its assets in U.S. securities. In addition to investing in equity

<sup>4</sup> To the extent that in the ordinary course of business, PIA provides investment advice to a Plan within the meaning of regulation 29 CFR 2510.3-21(c)(1)(ii)(B) and recommends an investment of the Plan's assets in a Trust, the presence of an independent fiduciary acting on the investment adviser's recommendations on behalf of the Plan is not sufficient to insulate the adviser from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84-03A and 84-04A, issued by the Department on January 4, 1984.) No relief is being provided herein for the provisions of investment advice in connection with the Plan's investment in the Trusts.

securities, the Equity Trust may as well invest in high-grade debt securities. PIA further represents that the Equity Trust will not: (1) Invest more than 10% of its assets in the securities of any one issuer, excluding obligations of the U.S. Government and its instrumentalities; and (2) invest more than 25% of its assets in any one industry.

The Short-Term Trust's investment profile is similar to that of a money market fund. PIA represents that the Short-Term Trust will invest its assets only in investment grade debt securities the average maturity of which will not exceed three years, including U.S. Treasury obligations, U.S. government agency obligations, collateralized mortgage obligations (excluding swaps), corporate bonds, commercial paper and repurchase agreements. The primary investment objectives of the Short-Term Trust are, in order of preference: (1) To preserve principal; (2) maintain liquidity; and (3) to maximize the rate of return available from investments consistent with these objectives. The rate of return objective of the Short-Term Trust is to attain a total rate of return that exceeds that available for a Certificate of Deposit and other similar short-term investment strategies.

The investment objective of the Fixed Trust is to maximize its total rate of return on its investment portfolio, including realized and unrealized appreciation, and to minimize risk. In accordance with these investment objectives, the Fixed Trust will invest primarily in high quality debt securities which are rated as investment grade by at least one of the major credit rating agencies, or judged to be of comparable quality, by PIA. It is represented that the Fixed Trust's portfolio of securities will be diversified. Specifically, the Fixed Trust will not: (1) Invest more than 10% of its total assets in the securities of one issuer, excluding obligations of the U.S. government, its agencies, and instrumentalities; and (2) invest more than 25% of its assets in issuers whose principal business activities are in the same industry, excluding obligations of the U.S. Government, its agencies, and instrumentalities.

The applicant believes that the investment in Units of the Short-Term Trust and Fixed Trust by a MEWA, MET, or VEBA would be an effective way for such Plans to manage its assets to meet its regular needs for cash to pay benefit claims. In this regard, the applicant believes that it would be in the interest of a MEWA, MET, or VEBA to own as much as 35% of the Units of each of the Short-Term Trust and Fixed Trust.

The objective of the International Trust is to achieve growth of capital and to earn income. The International Trust will seek to achieve these objectives by investing, under normal circumstances, in debt securities issued in emerging and developed markets located throughout the world including: (1) Debt securities issued or guaranteed by U.S. or foreign governments, their agencies, instrumentalities or political subdivisions, or by government owned, controlled or sponsored entities, including central banks (collectively, "Sovereign Debt"), including Brady Bonds;<sup>5</sup> (2) interests in issuers organized and operated for the purpose of restructuring Sovereign Debt; (3) debt securities issued by foreign banks and other foreign business entities; and (4) debt securities denominated in or indexed to the currencies of emerging and developed markets. PIA represents that under normal circumstances, 75% or more of the International Trust's portfolio will be comprised of debt instruments of issuers located in global developed markets, including the United States. Further, no more than 25% of the International Trust's assets will be invested in debt securities of issuers in emerging markets. While the International Trust is not restricted in the portion of its assets that may be invested in securities of issuers located in a single region, under normal conditions the International Trust's assets will be invested in the securities of issuers located in at least three countries, and the International Trust's investments in the securities issued in any one country, other than the United States, will not exceed 25% of the International Trust's assets.

9. The Trusts will be treated as partnerships within the meaning of Part I of Subchapter K of the Code, and PIA will serve as the sole general partner of each Trust with full discretion over management and control of the business of each Trust. It is represented that PIA will not beneficially own more than 1% of the assets of any Trust. PIA will serve as investment adviser for each Trust. Under the investment advisory agreements with each Trust, PIA will provide certain investment advisory and management services that will primarily involve the exercise of investment

<sup>5</sup>Brady Bonds are the most liquid asset class in fixed income emerging market securities. These bonds have been issued in exchange for outstanding sovereign bank loans in a number of developing countries as part of debt reduction/restructuring plans named after former Treasury Secretary Nicholas Brady. Brady Bonds have been implemented as a method of restructuring debt in emerging markets since 1989. All Brady Bonds carry principal and interest collateral guarantees in the form of U.S. Treasury securities.

discretion with respect to each Trust's assets. Beneficial owners of the Units (Unitholders) are anticipated to include individuals, corporations, Plans and other tax-exempt organizations. For its investment advisory services to the Equity Trust, Fixed-Income Trusts, Short-Term Trust, and International Trust, PIA will be paid an annual fee of .65%, .45%, .35% and .40% respectively, of the assets held by each Trust, payable in quarterly installments. The fee is a percentage of the value of each Trust. Such fee is accrued monthly and is paid to PIA quarterly in arrears. Each Plan bears a proportionate share of the fee based upon the value of its Units in each Trust. Brokerage and custodial services will be performed by unrelated third parties and the fees for such services will be charged in addition to PIA's fees. It is represented that the fees paid by the Plans will constitute no more than reasonable compensation.<sup>6</sup>

10. Units in the Trusts will be offered to Plans pursuant to a Trust Offering Memorandum (the Memorandum). This document describes the Trust, the parties involved and their rights, the investment objectives, and the fees charged for investment in each of the Trusts.<sup>7</sup> PIA represents that to the extent that a Plan acquires Units of one or more Trusts, that portion of a Plan's assets will be diversified because each Trust constitutes a diversified pool of securities.

11. A Plan fiduciary will determine how much to invest in a Trust and such Plan will receive a pro rata interest in the Trust based upon its capital account balance as compared to the capital account balances of other investors. All investments in the Trust will be paid in cash.

12. It is represented that prior to accepting a subscription for Units from a prospective Plan investor, PIA will

<sup>6</sup>The Department expresses no opinion herein on whether the fees charged by PIA satisfies the terms of section 408(b)(2) of the Act.

<sup>7</sup>The Department wishes to note that the Act's general standards of fiduciary conduct would apply to the investments described in this proposed exemption, and that satisfaction of the conditions of this proposal should not be viewed as an endorsement of the investments by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment transaction. The Department further emphasizes that it expects the plan fiduciary to fully understand the benefits and risks associated with engaging in a specific type of investment, including any changes in the value of the investment. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight over the particular investment.

furnish to an Independent Fiduciary with (a) a copy of the applicable Trust's offering Memorandum, which discusses the investment objective(s) of the Trust, the policies employed to achieve these objectives, and the compensation paid by each Trust to PIA, and fees paid by PIA and the Trust to third parties; (b) the fees charged to a Plan by each Trust; (c) a Subscription Agreement, which is designed to elicit information about the Independent Fiduciary and the Plan to determine whether the Plan qualifies as an "accredited" investor as set forth in Rule 501 of Regulation D of the 1933 Act; (d) a copy of the applicable Trust's Declaration of Trust; and (e) copies of the notice of proposed exemption and notice granting this exemption.

If a Plan is accepted as an investor in a Trust, the Independent Fiduciary will be required to acknowledge in connection with the execution of the Subscription Agreement that such fiduciary has received copies of the above-noted documents. In addition, the Independent Fiduciary will also be required to represent to PIA that such fiduciary is (a) independent of PIA, (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and (c) capable of making, and in fact has made, an independent decision regarding the investment of Plan assets in the Trust.

PIA represents that no officer, director or employee of PIA who owns or controls, directly, or indirectly, five percent or more of the beneficial ownership or voting power of PIA will be accepted as an investor in a Trust. In addition, PIA will not be a sponsor of a Plan that invests in Units of a Trust.

13. It is represented that after a Plan is accepted as a Unitholder, PIA will provide each Unitholder with a monthly statement, reflecting the performance of the Plan's investment in the Trust, and a copy of the Trust's annual audited report.

14. Each Trust's Declaration of Trust provides that Units may not be sold or transferred to a third party without PIA's consent. Because Units will not be registered under the 1933 Act, they will be subject to the restrictions on transfers imposed thereby under applicable state securities laws. In Each Trust's Declaration of Trust, PIA has retained the right to dissolve a Trust at anytime.

15. Although each Trust's Declaration of Trust restricts each Unitholder's ability to assign its Units, Unitholders are allowed to redeem their Units. To effect a redemption of Units, a Plan must instruct PIA in writing at least seven (7) calendar days prior to the last business day of the month, which is the day on which each Trust's assets are

valued (Valuation Date).<sup>8</sup> Redemption requests received by PIA in proper form at least seven (7) calendar days prior to the month's Valuation Date will result in the Units being redeemed at the net asset value per Unit determined on that month's Valuation Date, with the cash redemption proceeds transferred to or for the benefit of the redeeming Unitholder within seven (7) days thereafter. Redemption requests received by PIA fewer than seven (7) days prior to the Valuation Date will be effected at the per Unit price at the close of business on the next month's Valuation Date, with cash proceeds transferred to or for the benefit of the redeeming Plan within seven (7) days after that Valuation Date.

16. PIA anticipates that each Trust will incur the following expenses: organizational expenses, investment management and administration fees, fees for necessary professionals, the costs of regulatory compliance, and the costs associated with maintaining the Trust's legal existence. Such expenses will be paid by PIA. Each Trust will be responsible for paying brokerage commissions of unrelated brokers. No Trust will impose sales charges, redemption fees or commissions on the acquisition, sale or redemption of Units.

17. The books of the Trust will be audited annually by independent certified public accountants selected by PIA. Each Independent Fiduciary will receive a copy of the audited financial report of a Trust in which it has invested Plan assets after the close of the fiscal year of that Trust. The books

<sup>8</sup> Each Trust's Declaration of Trust provides that Imperial, the unrelated Trustee, shall determine the value of the assets of the Trust on the basis of the following valuation rules:

(1) Marketable U.S. Government obligations (including guaranteed obligations) shall be valued at the dealer bid prices appearing on the Valuation Date. Such prices will be taken from recognized pricing services.

(2) Securities listed on a securities exchange for which market quotations are available will be valued at the last quoted sales price on the Valuation Date or, if there has been no such reported sale, at the mean between the current bid and ask prices. Price information on listed securities will generally be taken from a composite trading tape offered by one of the pricing services. Unlisted U.S. securities for which market quotations are readily available will be valued at the official market price as quoted by the Trustee's pricing vendors.

(3) In those instances where there is no readily ascertainable market value obtainable from any of the sources specified above, investments shall be valued on the basis of data obtained from the best qualified and available independent sources, including bankers, brokers or dealers who may be employees of the unrelated Trustee, brokers or dealers who deal in or are familiar with the type of investment involved or other qualified appraisers, or by reference to the market value of similar investments for which a market value is readily ascertainable.

and financial records of a Trust will be open for inspection by an Independent Fiduciary of, any contributing employer to, any participant or beneficiary of, or any duly authorized representative of such participant or beneficiary of, a Plan investing in Units of that Trust as well as the Department and the Internal Revenue Service, during regular business hours.

18. In summary, it is represented that the proposed transactions will meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) each Independent Fiduciary will be required to represent that he or she is both independent of PIA and sufficiently knowledgeable to make an informed decision regarding the transactions described herein; (b) the Independent Fiduciary will be solely responsible for making the decision with respect to that Plan's initial acquisition of Units; (c) no Plan will pay a fee or commission by reason of the acquisition, sale or redemption of Units; (d) Unitholders will receive monthly statements and copies of the annual report for each Trust in which assets are invested; (e) at the time the transactions are entered into, the terms of the transactions shall be at least as favorable to the Plans as those obtainable in arm's length transactions between unrelated parties; (f) the fees paid by the Plans shall constitute no more than reasonable compensation; and (g) with respect to assets invested in a Trust, no Plan will pay an investment management fee at the Plan level to PIA.

*For Further Information Contact:* Ms. Janet L. Schmidt of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

**R & J Hoffman, Inc. Profit Sharing Plan (the Plan), Located in Fremont, California**

[Application No. D-10572]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of 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, 32847, August 10, 1990). If the exemption is granted, 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) of \$53,240 by the Plan to R & J Hoffmann, Inc. (the Employer), a disqualified person with respect to the Plan; and (2) the personal guarantee of the Loan by Richard and Angela Hoffmann (the Hoffmanns), provided the following

conditions are satisfied: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan does not exceed 25% of the assets of the Plan; (c) the Loan is secured by a second mortgage on certain real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of the Loan plus the balance of the first mortgage which it secures; (d) the Hoffmanns have also personally guaranteed the Loan; (e) in the event that the fair market value of the Property is no longer adequate to secure all outstanding loans, additional property will be pledged to the Plan to secure the Loan at an amount equal to at least 150% of the outstanding principal balance of all loans secured by the Property; and (f) the Hoffmanns are the only Plan participants to be affected by the Loan.<sup>9</sup>

*Summary of Facts and Representations*

1. The Hoffmanns are the 100% owners of the Employer, a California corporation, which is the sponsor of the Plan. The Employer is involved in the purchasing of lighting fixtures from various countries in the Pacific Rim and then selling the fixtures to United States retailers. The Hoffmanns are the only participants in the Plan.

2. The Hoffmanns have requested an exemption that would permit the Employer to borrow \$53,240 from the Plan. The Plan had total assets of \$212,963.21 as of June 30, 1997. Therefore, the principal amount of the Loan would represent less than 25% of the value of the Plan. The term of the Loan will be for a period of five years at an interest rate equal to the Prime Rate of Interest of U.S. banks (the Prime Rate) plus 1.5%, based on the published Prime Rate in the Western Edition of the Wall Street Journal, which currently would be 8.5% per annum. The interest rate will be adjusted during the term of the Loan whenever there is a change in the Prime Rate. The new interest rate will be effective immediately after such adjustment and will remain in effect until the next time the Prime Rate changes. The Loan will be repaid in equal monthly installments of principal and interest using a level amortization schedule until there is a change in the Prime Rate, at which time a new amortization schedule will be put into

<sup>9</sup> Since the Hoffmanns are the sole owner of the Employer and the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

place. Mr. Jeffrey Good of Wells Fargo Bank, N.A. (the Bank), has represented in a letter dated February 27, 1998, that the Bank would require a rate of Prime plus .75% in order to make a similar loan to the Employer.

3. The Loan will be secured by the Property, which consists of the Hoffmanns' residence, which is located at 1324 Grosventres Court, Fremont, California. The Property has been appraised by Karen J. Mann, SRA of Mann & Associates, an independent real estate appraiser in Fremont, California, to have a fair market value of \$540,000 as of March 12, 1998. The Property has a first mortgage in the amount of \$133,382. The Loan would be secured by a second mortgage on the Property. Thus, if the Loan is made, the appraised fair market value of the Property would represent approximately 289% of the total outstanding principal amount of debt secured by the Property, including the Loan. The applicant represents that the mortgage to the Plan will be duly recorded in the Office of the County Clerk, Alameda County, California. The applicant states that in the event the fair market value of the Property is no longer adequate to secure all outstanding loans, additional property will be pledged to the Plan to secure the Loan at an amount equal to at least 150% of the outstanding principal balance of all outstanding loans secured by the Property. As additional security to the Plan, the Hoffmanns have agreed to personally guarantee the Loan. The applicant has submitted a personal balance sheet for the Hoffmanns which demonstrates that they have a total net worth of \$691,804.16 as of March 19, 1998.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because: (a) The Loan represents not more than 25% of the assets of the Plan; (b) the terms of the Loan will be not less favorable to the Plan than those required by a third party lender, the Bank, if it were to make a similar loan; (c) the Loan will be secured by the Hoffmanns' personal guarantee and by a second mortgage on the Property, which has been determined by a qualified, independent appraiser to have a fair market value of approximately 289% of the total principal amount of the loans that it will secure; (d) in the event the fair market value of the Property is no longer adequate to secure all outstanding loans, additional property will be pledged to the Plan to secure the Loan at an amount equal to at least 150% of the outstanding principal balance of all outstanding loans secured

by the Property; and (e) the Hoffmanns are the only Plan participants to be affected by the Loan, and they desire that the transaction be consummated.

**Notice to Interested Persons:** Since the Hoffmanns are the only Plan participants to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**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 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 15th day of July, 1998.

**Ivan Strasfeld,**

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

[FR Doc. 98-19234 Filed 7-17-98; 8:45 am]

BILLING CODE 4510-29-P

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Review; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA plans to submit the following extension of a currently approved information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

**DATES:** Comments will be accepted until September 18, 1998.

**ADDRESSES:** Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

*Clearance Officer:* Mr. James L. Baylen (703) 518-6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax No. 703-518-6433, E-mail: jbaylen@ncua.gov.

*OMB Reviewer:* Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518-6411.

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*OMB Number:* 3133-0011.

*Form Number:* NCUA 9600.

*Type of Review:* Extension of a currently approved collection.

*Title:* Application for Insurance of Accounts State-Chartered Credit Unions.