

date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, other than BT Alex. Brown Incorporated and its subsidiaries.

(b) For purposes of this exemption, "Deutsche Bank AG" includes Deutsche Bank AG and any entity that was affiliated with Deutsche Bank AG prior to the date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, and any future affiliates, other than Bankers Trust Company, as defined in subsection (a).

(c) The term "affiliate" of a person means—

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

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and,

(4) Any employee or officer of the person who—

(A) is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person) or,

(B) has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

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

Signed at Washington, DC, this 22nd day of July, 1999.

**Ivan L. 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 99-30; Exemption Application No. D-10669, et al.]

### Grant of Individual Exemptions; Premier Funding Group, Inc.; Employees Profit Sharing Plan, et al

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of

the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Premier Funding Group, Inc. Employees Profit Sharing Plan (the P/S Plan) and the Money Purchase Pension Plan for Employees of Premier Funding Group, Inc. (the M/P Plan, collectively; the Plans) Located in Arlington, Texas

[Prohibited Transaction Exemption 99-30; Exemption Application Nos. D-10669 and D-10670]

### 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 as of February 1, 1999, to a lease (the Lease) of certain second-floor space (the Leased Premises) in a building by the Plans to LM Holdings, Inc., a party in interest with respect to the Plans; provided that the following conditions are satisfied:

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

(b) The fair market rental amount for the Lease has been determined by an independent qualified appraiser;

(c) Each Plan's allocable portion of the fair market value of both the Leased Premises and the building where the Leased Premises are located represents no more than 20 percent (20%) of the total assets of each Plan throughout the duration of the Lease;

(d) The interests of the Plans under the Lease are represented by an independent, qualified fiduciary (the Independent Fiduciary);

(e) The fees received by the Independent Fiduciary, combined with any other fees derived from any related parties, will not exceed 1% of that person's annual income for each fiscal year that such person continues to serve in the independent fiduciary capacity with respect to the Lease;

(f) The Independent Fiduciary evaluated the Lease and deemed it to be administratively feasible, protective and in the best interest of the Plans;

(g) The Independent Fiduciary monitors the terms and the conditions of the exemption and the Lease throughout its duration, and takes whatever action is necessary to protect the Plans' rights;

(h) At the discretion of the Independent Fiduciary, the Lease can be extended for two additional five-year terms, provided that the Independent Fiduciary requires independent appraisals of the Leased Premises to be performed at the time of each extension of the Lease so as to ensure that LM Holdings continues to pay fair market

rent, and such rent is not less than the initial base rent or the amount paid during the most recent annual term; and

(i) Within 90 days of publication in the **Federal Register** of this exemption, LM Holdings files with the Internal Revenue Service (IRS) Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) and pays all excise taxes applicable under section 4975(a) of the Code that are due by reason of the existence of the Lease as a prohibited transaction prior to February 1, 1999.

**EFFECTIVE DATE:** This exemption is effective as of February 1, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 3, 1999 at 64 FR 29906.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

**The Unaka Company, Incorporated Employees' Profit Sharing Plan and Trust (the Plan) Located in Greenville, Tennessee**  
[Prohibited Transaction Exemption 99-31; Application No. D-10722]

#### *Exemption*

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to:<sup>1</sup>

(a) The assignment (the Assignment) by the Plan to the Unaka Company, Incorporated (Unaka), the sponsoring employer and a party in interest with respect to the Plan, of any and all claims, demands, and/or causes of action which the Plan may have against certain members of the Plan Administrative Committee (the PAC) and other involved parties (collectively, the Responsible Fiduciaries) for breach of fiduciary duty under the Act, during the period from July 1, 1996 to July 31, 1998;

(b) In exchange for the Assignment, described in paragraph (a), above, the interest-free, non-recourse loan (the Loan) by Unaka to the Plan in an amount equal to the difference between \$413 and the fair market value per share for the common stock of Unaka (the Stock) held by the Plan, in connection with the sale of such Stock by the Plan to Unaka, pursuant to the statutory

exemption, as set forth in section 408(e) of the Act;<sup>2</sup>

(c) The possible repayment of such Loan to Unaka from the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries;

(d) The interest-free, non-recourse extension of credit (the Extension of Credit) by Unaka to the Plan of certain expenses arising out of the litigation against the Responsible Fiduciaries, effective as of, May 1, 1999, the date when expenses incurred by the Plan in bringing such litigation were first paid by Unaka; and

(e) The possible receipt by Unaka of reimbursement of such litigation expenses from the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries; provided that the following conditions are satisfied:

(1) The Plan will pay no interest in connection with the Loan or the Extension of Credit;

(2) None of the assets of the Plan will be pledged to secure either the amount of the Loan or the amount of the Extension of Credit;

(3) Repayment to Unaka of the amount of the Loan and reimbursement to Unaka of the amount of the Extension of Credit shall be restricted solely to the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries;

(4) To the extent the amount of the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries is equal to or less than the amount due to Unaka as repayment for the Loan and reimbursement of the Extension of Credit, the Plan shall not be liable to Unaka for any amount;

(5) To the extent the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries exceeds the total amount of the Loan, plus the amount of the Extension of Credit, such excess amount will be allocated to the accounts of the participants of the Plan; with the exception that no such allocation will be made to the account of Robert Austin, Jr. in the Plan;

(6) The transactions which are the subject of this exemption do not involve

any risk of loss either to the Plan or to any of the participants and beneficiaries of the Plan;

(7) The Plan will not incur any expenses as a result of the transactions which are the subject of this exemption;

(8) Notwithstanding the Assignment by the Plan of its rights against the Responsible Fiduciaries, the Plan does not release any claims, demands, and/or causes of action which it may have against Unaka and/or its affiliates;

(9) All of the terms of the transactions are at least as favorable to the Plan as those which the Plan could obtain in similar transactions negotiated at arm's-length with unrelated third parties;

(10) The Plan receives no less than the fair market value for the Assignment, as of the date of the closing on the transfer of the Assignment;

(11) Prior to the Plan's entering the transactions, an independent, qualified fiduciary (the I/F), who is acting on behalf of the Plan and who is independent of Unaka and its affiliates, reviews, negotiates, and approves the terms and conditions of the Loan, the Assignment, and the Extension of Credit and determines that such transactions are prudent, administratively feasible, in the interest of the Plan and its participants and beneficiaries, and protective of the participants and beneficiaries of the Plan;

(12) Throughout the duration of the transactions, the I/F monitors the prosecution of the lawsuit against the Responsible Fiduciaries, including but not limited to monitoring all costs and fees incurred in connection with any litigation related to the transactions, monitors the division of the recovery, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries to ensure that the Plan receives the portion to which it is entitled and that the Plan's interests are served, and monitors the terms and conditions of the transactions to ensure that such terms and conditions are at all times satisfied;

(13) The I/F, acting on behalf of the Plan, shall have final approval authority over any settlement of any legal proceedings against the Responsible Fiduciaries brought pursuant to the terms of the Assignment; and

(14) In the event the I/F resigns, is removed, or for any reason is unable to serve, including but not limited to the death or disability of such I/F, or if at any time such I/F does not remain independent of Unaka and its affiliates, such I/F will be replaced by a successor: (i) Who is appointed immediately upon the occurrence of such event; (ii) who is independent of Unaka and its affiliates; (iii) who is qualified to serve as the I/

<sup>1</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>2</sup> The Department, herein, expresses no opinion as to the applicability of the statutory exemption provided by section 408(e) of the Act to the sale by the Plan of its Unaka Stock to Unaka or as to whether the conditions set forth in such statutory exemption are satisfied in the execution of such transaction. Further, the Department, herein, is offering no relief for transactions other than the transactions described in this exemption.

F; and (iv) who assumes all the duties and responsibilities of the predecessor I/ F.

#### Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on June 3, 1999. All comments and requests for a hearing were due by July 19, 1999.

During the comment period, the Department received no requests for a hearing. However, on June 16, 1999, the Department did receive a favorable comment letter from one commentator. In this regard, the commentator noted that the exemption would move the Plan away from the internal family lawsuits and the transactions posed no risk of loss to the Plan or any of the participants.

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

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on June 3, 1999, at 64 FR 29908.

#### FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his

duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of July, 1999.

**Ivan Strasfeld,**

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

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation

and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 2, 1999.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 315.

*Program:* This meeting will review applications for Fellowships for University Teachers in Political Science, International Affairs, and Jurisprudence, submitted to the Division of Research Programs at the May 1, 1999 deadline.

2. *Date:* August 3, 1999.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 315.

*Program:* This meeting will review applications for Fellowships for University Teachers in American History and Studies II, submitted to the Division of Research Programs at the May 1, 1999 deadline.

3. *Date:* August 4, 1999.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 415.

*Program:* This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Music, Film, and Theater, submitted to the Division of Research Programs at the May 1, 1999 deadline.

4. *Date:* August 5, 1999.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 315.

*Program:* This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Languages and Literatures II, submitted to the Division of Research Programs at the May 1, 1999 deadline.

5. *Date:* August 5, 1999.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 415.

*Program:* This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Languages and Literatures I, submitted to the Division of Research Programs at the May 1, 1999 deadline.

6. *Date:* August 6, 1999.

*Time:* 8:30 a.m. to 5:00 p.m.

*Room:* 315.

*Program:* This meeting will review applications for Fellowships for College Teachers and Independent Scholars in