

accordance with the amended Plan, the Rights allocated to their Accounts were sold, resulting in the sale of 9,956 Rights. Because of an administrative error in the communications between the Plan administrator and the Trustee, 27 Rights allocated to the Accounts were not sold prior to the expiration of the Rights. The Employer represents that it shall credit the Accounts of the participants affected by this administrative error with an amount equal to the value these Accounts would have received if the Rights had been sold as planned on the last day of the Offering plus interest thereon through the date of such crediting at a rate equal to the average rate of earnings on all Plan assets during that period.

(d) The Employer represents that all directions and instructions which were filed by the Invested Participants with respect to the Offering were observed and executed by the Trustee. In addition, all Invested Participants had been notified adequately in advance of the Offering of the procedure for directing and instructing the Trustee with respect to their Accounts' rights under the Offering. Thus, the Employer represents that all actions by the Trustee relating to the Offering, with respect to the Accounts, were pursuant to the express participant directions, except for the Accounts of participants who failed to file timely and valid instructions with the Trustee pursuant to the direction procedure. The Employer states that the Trustee's action on behalf of Accounts whose participants failed to file instructions with the Trustee, which was the sale of the Rights received by such Accounts, was disclosed in the explanatory materials for the Offering and in the direction forms sent to Invested Participants. The Employer states further that all actions taken by the Trustee in connection with the Offering were consistent with the participant-directed nature of investments under the Plan.

12. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons: (a) The Plan's acquisition of the Rights resulted from an independent act of the Employer; (b) With respect to all aspects of the Offering, all holders of the Stock, including the Accounts of Invested Participants in the Plan, were treated in a substantially similar manner; (c) All decisions with respect to the Plan's acquisition, holding and control of the Rights were made by the individual Invested Participants with Account balances invested in the Stock Fund, except for those who failed to file timely

and valid instruction forms, in which case the Rights were sold; (d) The disposition or exercise of the Rights received by the Invested Participants was executed by the Trustee in an orderly manner pursuant to the terms of the Offering relating to the submission of valid instruction forms by such Participants; and (e) The acquisition and holding of the Rights by the Plan affected all of the Invested Participants, and their Accounts held only about 0.65% of the Stock outstanding as of the Record Date of the Offering.

*For Further Information Contact:* Ronald Willett 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 31st 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

[Prohibited Transaction Exemption 98-38; Exemption Application No. D-10558, et al.]

**Grant of Individual Exemptions; Roark Young, Russell Rice, Mary J. Rice, Bruce Lamchick, Steven McKean, David McKean & Burton Young**

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

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

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

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No.

4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

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

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

### Individual Retirement Accounts (the IRAs) for Roark Young, Russell Rice, Mary J. Rice, Bruce Lamchick, Steven McKean and David McKean, and Burton Young (collectively, the Participants) Located in Miami, Florida

[Prohibited Transaction Exemption 98-38; Exemption Application Numbers D-10558-10561, 10565-10566, 10568]

#### 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 cash sales (the Sales) of certain stock (the Stock) by the IRAs<sup>1</sup> to the Participants, disqualified persons with respect to the IRAs, provided that the following conditions were met:

- (a) The terms and conditions of the Sales were at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party;
- (b) The Sale of Stock by each IRA was a one-time transaction for cash;
- (c) Each IRA received the fair market value of the Stock as established by a qualified, independent appraiser; and
- (d) Each IRA was not required to pay any commissions, costs or other expenses in connection with each Sale.

**EFFECTIVE DATE:** These exemptions will be effective as of March 30, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of the proposed exemption published on Friday, June 19, 1998 at 63 FR 33725.

<sup>1</sup> Because each IRA has only one Participant, 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.

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

### William M. Hitchcock SERP (DB) (the Plan) Located in Houston, Texas

[Prohibited Transaction Exemption 98-39; Exemption Application No. D-10605]

#### 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 proposed sale by the Plan of 67,466 shares of stock (the Stock) in Thoratec Laboratories, Inc. to William M. Hitchcock (Mr. Hitchcock), a disqualified person with respect to the Plan, provided the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) the Plan pays no sales commissions or other expenses in connection with the transaction; (c) the Plan receives the fair market value of the Stock, as determined by reference to its most current listed price on the National Association of Securities Dealers Automated Quotation National Market System (NASDAQ) at the time of the transaction; and (d) Mr. Hitchcock is the only Plan participant to be affected by the transaction, and he desires that the transaction be consummated.<sup>2</sup>

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 29, 1998 at 63 FR 35290.

#### Tax Consequences of the Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

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

<sup>2</sup> Since Mr. Hitchcock is the sole owner of the Plan sponsor and the only participant 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.

### 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 31st day of July, 1998.

**Ivan Strasfeld,**

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

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### 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 has submitted the following information collection forms for reinstatement with no changes to the Office of Management and Budget (OMB) for review and clearance under