

**DEPARTMENT OF JUSTICE****Parole Commission****Public Announcement; Pursuant to the Government in the Sunshine Act**

(Pub. L. 94-409) [5 U.S.C. Section 552b]

**AGENCY HOLDING MEETING:** Department of Justice, United States Parole Commission.**TIME AND DATE:** 10 a.m., Thursday, January 22, 2009.**PLACE:** 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.**STATUS:** Open.**Matters To Be Considered**

The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of December 2008 Quarterly Business Meeting.
2. Reports from the Chairman, Commissioners, Chief of Staff, and Section Administrators. Agency Contact; Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492-5990.

Dated: January 12, 2009.

**Rockne J. Chickinell,***General Counsel, U.S. Parole Commission.*

[FR Doc. E9-1050 Filed 1-16-09; 8:45 am]

**BILLING CODE 4410-31-P****DEPARTMENT OF LABOR****Employee Benefits Security Administration****Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: Calpine Corporation, D-11458 (2009-01); Starrett Corporation Pension Plan (the Plan), D-11473 (2009-02); and General Motors Corporation and Its Wholly Owned Subsidiaries (together, GM) (2009-03)****AGENCY:** Employee Benefits Security 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 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for

exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), 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 exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Calpine Corporation, Located in Houston, TX  
[Prohibited Transaction Exemption 2009-01; Exemption Application No. D-11459]

**Exemption**

Effective January 31, 2008, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the past acquisition by the Calpine Corporation Retirement Savings Plan (the Plan) of warrants (the Warrants) issued by the Calpine Corporation (the Applicant) that would have permitted, under certain conditions, the purchase of shares of newly issued Calpine Common Stock (the New Stock) pursuant to certain bankruptcy proceedings; (2) the holding

of the Warrants by the Plan; and (3) the disposition of the Warrants. This exemption is subject to adherence to the following conditions:

(a) The acquisition and holding of the Warrants by the Plan occurred in connection with the Applicant's bankruptcy proceedings pursuant to which all holders of Calpine Common Stock prior to January 31, 2008 (the Old Stock) were treated in the same manner;

(b) The Plan had little, if any, ability to affect the negotiation of the Applicant's Plan of Reorganization pursuant to Chapter 11 of the United States Bankruptcy Code;

(c) The Plan acquired the Warrants automatically and without any action on the part of the Plan;

(d) The Plan did not pay any fees or commissions in connection with the acquisition and holding of the Warrants;

(e) All decisions regarding the holding and disposition of the Warrants by the Plan were made in accordance with Plan provisions for individually directed investment of participant accounts by the individual participants whose accounts in the Plan received the Warrants; and

(f) The Plan received the same proportionate number of Warrants as other owners of Old Stock.

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 September 3, 2008 at 73 FR 51524.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anh-Viet Ly, Department of Labor, telephone number (202) 693-8648. (This is not a toll-free number.)

Starrett Corporation Pension Plan (the Plan), Located in New York, NY  
[Prohibited Transaction Exemption 2009-02; Application Number: D-11473]

**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 cash sale (the Sale) by the Plan to the Starrett Corporation (the Applicant), a party in interest with respect to the Plan, of a \$25,000 face amount 7.797% secured senior note (the Security) issued by the Osprey Trust (the Trust), an Enron related entity, provided that the following conditions were satisfied:

(a) The Sale is a one-time transaction for cash;

(b) The Plan pays no commissions, fees or other expenses in connection with the Sale;

(c) The terms and conditions of the Sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party;

(d) The value of the Security is determined by Interactive Data Systems, a qualified, unrelated entity; and

(e) The Plan is a defined benefit plan which has been terminated and all benefits have been paid out to Plan participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 20, 2008 at 73 FR 70377.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Buyniski of the Department, telephone (202) 693-8545. (This is not a toll-free number.)

General Motors Corporation and Its Wholly-Owned Subsidiaries (together, GM), Located in Detroit, MI [Prohibited Transaction Exemption 2009-03; Exemption Application No. L-11407]

## Exemption

### Section I. Covered Transactions

The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), and 406(b)(1) and (b)(2) of the Act<sup>1</sup> shall not apply, effective December 16, 2005, to: (1) Monthly cash advances to GM by the DC VEBA to reimburse GM for the estimated mitigation of certain health care expenses (the Mitigation) and for the payment of dental expenses incurred by participants in the DC VEBA; and (2) an annual "true up" of the Mitigation payments and dental expenses against the actual expenses incurred, with the result that (a) if GM has been underpaid by the DC VEBA, GM receives the balance outstanding from the DC VEBA with interest, or (b) if the DC VEBA has overpaid GM, GM reimburses the DC VEBA for the amount overpaid, with interest.

### Section II. Conditions

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following conditions:

(a) A committee (the Committee), acting as a fiduciary independent of GM, has represented and will continue to represent the DC VEBA and its

participants and beneficiaries for all purposes with respect to the Mitigation process.

(b) The Committee for the DC VEBA has discharged and will continue to discharge its duties consistent with the terms of the DC VEBA and the DC VEBA Settlement Agreement.

(c) The Committee and actuaries retained by the Committee have reviewed and approved and will continue to review and approve the estimation process involved in the Mitigation, which results in the monthly Mitigation amount paid to GM.

(d) Outside auditors retained by the Committee, along with an administrative company that is partly owned by the DC VEBA, will audit the calculation of the true up to determine whether there are any differences between the estimated Mitigation and actual Mitigation amounts and make such information available to GM.

(e) GM has provided and will continue to provide various reports and records to the Committee concerning the Mitigation and dental care reimbursements, which are and will continue to be subject to review and audit by the Committee.

(f) The terms of the transactions are no less favorable and will continue to be no less favorable to the DC VEBA than the terms negotiated at arm's length under similar circumstances between unrelated third parties.

(g) The interest rate applied to any true up payments is a reasonable rate, as set forth in the DC VEBA Settlement Agreement, and will continue to be a reasonable rate that runs from the beginning of the year being true'd up and does and will continue to not present a windfall or detriment to either party.

(h) The DC VEBA has not incurred and will continue not to incur any fees, costs or other charges (other than those described in the DC VEBA and the DC VEBA Settlement Agreement) as a result of the covered transactions described herein.

(i) GM and the Committee have maintained and will continue to maintain for a period of six years from the date of any of the covered transactions, any and all records necessary to enable the persons described in paragraph (j) below to determine whether conditions of this exemption have been and will continue to be met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of GM or the Committee, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than GM or the Committee shall

be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by paragraph (j) below.

(j)(1) Except as provided in section (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 (i) above have been or will be unconditionally available at their customary location during normal business hours to:

(A) Any duly authorized employee representative of the Department;

(B) The UAW or any duly authorized representative of the UAW;

(C) GM or any duly authorized representative of GM; and

(D) Any participant or beneficiary of the DC VEBA, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (1)(B) or (D) of this paragraph (j) is authorized to examine the trade secrets of GM, or commercial or financial information that is privileged or confidential.

### Section III. Definitions

For purposes of this exemption, the term—

(a) "GM" means General Motors Corporation and its wholly owned subsidiaries.

(b) "Affiliate" means:

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

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; or

(3) Any corporation, partnership or other entity of which such other person is an officer, director or partner. (For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(c) "Class Members" mean all persons other than active employees who, as of the ratification date of the GM-UAW Memorandum of Understanding, November 11, 2005 (the Ratification Date) were (1) GM/UAW hourly employees who had retired from GM with eligibility for the General Motors Health Care Program for Hourly Employees (the Original Plan) as in effect prior to the Ratification Date or (2) the spouses, surviving spouses and dependents of GM/UAW hourly employees, who, as of the Ratification Date, were eligible for post-retirement or

<sup>1</sup> Because the Independent Health Care Trust for UAW Retirees of General Motors Corporation (the DC VEBA) is not qualified under section 401 of the Code, there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under Title I of the Act.

surviving spouse health care coverage under the Original Plan as a consequence of a GM/UAW hourly employee's retirement from GM or death prior to retirement.

(d) "Committee" means the seven individuals, consisting of two classes: (1) the United Auto Workers Class (UAW) with three members, and (2) the Public Class with four members, who act as the named fiduciary and administrator of the DC VEBA.

(e) "Court" or "Michigan District Court" means the United States District Court for the Eastern District of Michigan.

(f) "DC VEBA" means the Independent Health Care Trust for UAW Retirees of General Motors Corporation.

(g) "DC VEBA Settlement Agreement" means the agreement, dated December 16, 2005, which was entered into between GM, the UAW, and Class Representatives, on behalf of a Class of plaintiffs in the *Henry* case (2006 WL 891151 (E.D. Mi. March 31, 2006)), *aff'd* 2007 WL 2239208 (6th Cir. August 7, 2007).

(h) "Mitigation" means the reduction of retirees' monthly contributions, annual deductibles, and other retirees' out-of-pocket costs to the extent payments from the DC VEBA are made, as directed by the Committee, to GM and/or to providers, insurance carriers and other agreed-upon entities.

(i) "OPEB" means Other Post-Employment Benefits. The OPEB Valuation is an actuarially developed annual valuation of a company's post employment benefit obligations, other than for pension and other retirement income plans. The OPEB Valuation is based on a set of uniform financial reporting standards promulgated by the Financial Accounting Standards Board and embodied in Financial Accounting Standard 106, as revised from time to time. The types of benefits addressed in an OPEB Valuation typically are retiree healthcare (medical, dental, vision, hearing) life insurance, tuition assistance, day care, legal services, and the like.

(j) "Shares" or "Stock" refers to shares of common stock of reorganized GM, par value \$.01 per share.

(k) "UAW" means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America or the United Auto Workers, if shortened.

(l) "VEBA" means a voluntary employees' beneficiary association.

**DATES:** *Effective Date:* This exemption is effective as of December 16, 2005.

#### Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption within 30 days of the publication of such notice in the **Federal Register** on July 23, 2008. All comments were due by September 22, 2008.

During the comment period, the Department received 159 telephone calls, 20 letters, and 24 E-mail messages from participants or beneficiaries of various GM-sponsored welfare plans. The Department also received four requests for a public hearing, all of which were withdrawn. GM submitted no comments or hearing requests with respect to the proposed exemption.

A majority of the comments concerned the commenter's inability to understand the notice of proposed exemption or the effect of the exemption on the commenter's health care benefits. Of the written comments received, seven commenters said they were in favor of the Department's granting the exemption while five commenters objected to the exemption for reasons that were not germane to the subject matter of the proposal. In this regard, the commenters' objections ranged from general confusion over the subject exemption involving the DC VEBA and another exemption GM will be seeking in the future for a "new VEBA," to unhappiness over GM's decision not to renew the contract of a service provider for one of its health care plans.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has determined to grant the exemption. For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. L-11407) 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 Employee Benefits Security Administration, Room N-1513, 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 July 23, 2008 at 73 FR 42828.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady at telephone number (202)

693-8556. (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 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) This exemption is 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 this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of January, 2009.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. E9-963 Filed 1-16-09; 8:45 am]

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