

**DEPARTMENT OF LABOR****Employee Benefits Security Administration**

[Application No. D-11408, et al.]

**Proposed Exemption; The DeRose Dental Offices, Inc., S.C. Profit Sharing Plan (the Plan)****AGENCY:** Employee Benefits Security Administration, Labor.**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of a proposed exemptions 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).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, 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 requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: [moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov), or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513,

200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemption 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 exemption were requested in an 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, 5 U.S.C. App. 1 (1996), 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 exemption 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.

**The DeRose Dental Offices, Inc., S.C. Profit Sharing Plan (the Plan), Located in Racine, Wisconsin**

[Application No. D-11408]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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 restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the December 29, 2006 sale by the Plan of 2,174 shares of stock (the Stock) in Wisconsin Bancshares, Inc. (the Company) each by Francesca DeRose (Francesca) and Nicolet DeRose (Nicolet), parties in interest with respect to the Plan, provided the following conditions are satisfied:

(a) The sales of the Stock were one-time transactions for cash;

(b) The Plan paid no commissions or other fees in connection with the sales;

(c) The terms of the transactions were at least as favorable to the Plan as those the Plan could obtain in similar transactions with an unrelated party; and

(d) the sales price of the Stock was determined by a qualified, independent appraiser.

**DATES: Effective Date:** The proposed exemption, if granted, will be effective as of December 29, 2006.

**Summary of Facts and Representations**

1. The Plan is an individual account plan established by DeRose Dental Offices, Inc., S.C. (the Employer), a professional dental corporation located in Racine, Wisconsin. As of December 31, 2005 (the Last Valuation Date), the Plan had 10 participants and beneficiaries, and had total assets of \$1,951,401. Francesca and Nicolet, the only dentists employed by the Employer, are participants in the Plan. Francesca, along with Ronald S. Rizzo, is also the co-trustee of the Plan. As of the Last Valuation Date, Francesca's account value was \$747,061.71, and Nicolet's account value was \$986,336.53. These account values constitute approximately 88.83% of the total assets of the Plan. The applicants represent that since the Last Valuation Date, the values of the participants' respective accounts have not significantly changed.

2. Among other assets, the Plan held shares (i.e., the Stock) of the Company, a closely-held bank holding company registered under the Bank Holding Company Act of 1956, as amended, and a financial holding company under the Gramm-Leach-Bliley Act of 1999. The Company is the 100% owner of Banks of Wisconsin (the Bank), a full service community bank with four locations in Wisconsin. As of December 8, 2006, 535,594 shares of Stock were issued and outstanding.

3. The applicants represent that the Plan initially acquired shares of common stock of the Bank in the secondary private stock offering by the Bank on July 29, 2003 at a price of \$23 per share, or an aggregate purchase price of \$100,004. On December 31, 2004, the Company was formed as a holding company for all of the shares of the common stock of the Bank. As of January 1, 2005, all of the shares of the Bank were converted into shares of the Stock. The price per share in the secondary offering was determined by the Board of Directors (the Board) of the Bank. The shares were offered to

existing shareholders of the Bank and to the Plan. The offer was not underwritten by any third party. The applicants represent that the Board determined the secondary offering price by calculating a hypothetical fair return for a start up bank after three years of operations and experience. All of the shares of the Bank were sold in the secondary offering, which raised approximately \$2.8 million for the Bank. The Bank's initial private stock offering occurred on June 26, 2000 at a price of \$20 per share. The Plan has not acquired any additional shares of Stock since the acquisition on July 29, 2003. The applicants represent that the Bank is, and at the time of the acquisition of the Stock by the Plan was, an entity unrelated to the Plan, and not a party in interest with respect to the Plan within the meaning of section 3(14) of the Act. The Company has at all times been an entity unrelated to the Plan.

4. Francesca also holds 3,950 shares of the Stock individually. In addition, David Barnes, her husband and the Chairman of the Board of the Bank, holds 37,777 shares of Stock individually and 2,050 shares as trustee of one or more custodial accounts established under the Uniform Transfer to Minors Act. Together, Mr. Barnes and Francesca hold approximately 9.02% of the issued and outstanding shares of Stock. Nicolet in her individual capacity holds 375 shares of Stock. Mr. Rizzo, the co-trustee of the Plan, holds 15,616 shares of the Stock individually, which represents approximately 2.92% of the issued and outstanding Stock. The Stock held by the Plan represented 0.81% of the issued and outstanding Stock. During the period of its ownership of the Stock, the Plan earned no dividends or other income and incurred no expenses with respect to the Stock. Except for Mr. Barnes, neither Mr. Rizzo, nor any family member (including the Plan participants) is an officer, director or controlling shareholder of the Bank or the Company.

5. The applicants have requested a retroactive prohibited transaction exemption for the purchase of 2,174 shares of the Stock by Francesca, and the purchase of 2,174 shares of the Stock by Nicolet. Both transactions occurred on December 29, 2006. The applicants represent that due to business and income tax considerations, the Company and Bank are both seeking to make a Subchapter S election, to be effective as of January 1, 2007. Although a tax-exempt qualified trust forming part of a stock bonus, pension or profit-sharing plan, such as the Plan and its related trust, can be an S corporation eligible shareholder, such exempt trust

is required to pay the unrelated business income tax (UBIT) on all income attributable to ownership of stock of an S corporation, using the income tax rates. UBIT is due whether or not the S corporation actually distributes the income to the trust. In addition, any gain on the sale of the S corporation stock by a trust is generally subject to UBIT. Because the Plan would incur unfavorable tax consequences as a result of an S corporation election and the continued holding of the Stock, Nicolet and Francesca desired to purchase the Stock from the Plan. The decision on behalf of the Plan to sell the Stock was made solely by Mr. Rizzo in his capacity as co-trustee.

6. The Stock was independently appraised by an independent appraiser, Mercer Capital (Mercer). Mercer is an independent financial advisor experienced in the financial analysis and valuation of financial institutions. The Company retained Mercer, in connection with the S corporation election and related merger transaction, to assist the Board in determining a fair price for the Stock. Mercer delivered an appraisal to the Board at the Board's meeting on October 17, 2006, using the Company's September 30, 2006 financial data, whereby it determined the fair market value of the Stock to be \$44 per share. On November 1, 2006, Mercer issued an opinion to the Board that the cash consideration to be received by the Bank's shareholders was fair to the shareholders. In arriving at its opinion and appraisal, Mercer reviewed and analyzed the Company's audited financial statements, quarterly reports, the Company's financial forecasts, the historical trading prices and activity for the Stock, the nature and financial terms of certain other merger and acquisition transactions involving banks, financial studies, analyses and investigations and relevant financial, economic and market criteria. In addition, Mercer met with the management of the Company to discuss past and current operations, financial condition and prospects, as well as the result of regulatory examinations.

7. On the date of the sale of the Stock to Francesca and Nicolet by the Plan, Mr. Rizzo, in his capacity as co-trustee for the Plan, contacted Mr. Andy Gibbs at Mercer in order to obtain an updated appraisal of the Stock or a confirmation that the value of Stock since the date of the appraisal had not changed. Mr. Gibbs advised Mr. Rizzo that Mercer was aware of no circumstances that would change its appraisal of the Stock as of September 30, 2006, and that the appraisal report and appraised value of

\$44 per share of Stock remained current as of the date of sale.

8. The applicants represent that there is no active trading market for the Stock, and no market is expected to develop for the Stock upon the consummation of the merger and the S corporation election. The sale of the Stock to Francesca and Nicolet presented an opportunity to provide better liquidity and diversification of investments in the Plan at a fair price. The applicants represent that the Plan benefited from significant appreciation in the value of the Stock since purchasing the Stock in the secondary offering. As demonstrated by the appraisal by Mercer, the value of the Stock as of September 30, 2006 (\$44) significantly exceeds the purchase price paid by the Plan for the Stock (\$23 per share on July 23, 2003) and the value of the Stock on the Last Valuation Date, which was determined to be \$25 per share based on recent private sale transactions.

9. In summary, the applicants represent that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The terms of the transactions were at least as favorable to the Plan as those the Plan could have obtained in similar transactions with an unrelated party; (b) the sales of the Stock were one-time transactions for cash, and the Plan paid no commissions or other fees in connection with the sales; (c) the sales price of the Stock was determined by a qualified, independent appraiser who confirmed the fair market value as of the date of the sales; (d) the Plan benefited from significant appreciation in the Stock since the time of its acquisition in July, 2003; and (e) the sales of the Stock provide better liquidity and diversification of investments in the Plan.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (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 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 16th day of March, 2007.

**Ivan Strasfeld,**

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

[FR Doc. E7-5209 Filed 3-21-07; 8:45 am]

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application No. D-11345]

#### Notice of Proposed Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 2000-34, Involving the Fidelity Mutual Life Insurance Company (FML), Located in Pittsburgh, PA

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Notice of proposed individual exemption to amend and replace PTE 2000-34.

This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend and replace PTE 2000-34 (65 FR 41732, July 6, 2000), an exemption granted to FML. PTE 2000-34, relates to (1) the receipt of certain stock (Plan Stock) issued by Fidelity Insurance Group, Inc. (Group), a wholly owned subsidiary of FML, or (2) the receipt of plan credits (Plan Credits), by or on behalf of a FML mutual member (the Mutual Member), which is an employee benefit plan (the Plan), other than the Employee Pension Plan of Fidelity Mutual Life Insurance Company, in exchange for such Mutual Member's membership interest (the Membership Interest) in FML, in accordance with the terms of a plan of rehabilitation (the Third Amended Plan), approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and a rehabilitator (the Rehabilitator) appointed by the Pennsylvania Insurance Commissioner (the Commissioner). These transactions are described in a notice of proposed exemption (65 FR 18359, April 7, 2000), which underlies PTE 2000-34.

If granted, this proposed exemption would incorporate by reference many of the conditions contained in PTE 2000-34. The proposed exemption would also revise and update certain facts and representations set forth in PTE 2000-34 to include the terms of the Fourth Amended Plan of Rehabilitation (the Fourth Amended Plan) which supersedes the Third Amended Plan upon which PTE 2000-34 is based.

**DATES: Effective Date:** If granted, this proposed exemption would be effective as of the date the grant notice is published in the **Federal Register**.

**DATES:** Written comments should be received by the Department by April 24, 2007.

**ADDRESSES:** All written comments should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D-11345. Interested persons are also invited to submit comments to the Department by e-mail to [uzlyan.katie@dol.gov](mailto:uzlyan.katie@dol.gov) or by facsimile at (202) 219-0204.

The application pertaining to the proposed exemption and the comments will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of

Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

#### FOR FURTHER INFORMATION CONTACT:

Ekaterina A. Uzlyan, Office of Exemptions Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8552. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed exemption that would amend and replace PTE 2000-34. PTE 2000-34 provides an exemption from the prohibited transaction restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1)(A) through (D) of the Code.

The proposed exemption has been requested in an application filed on behalf of FML pursuant to 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 32836, 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. Accordingly, this proposed exemption is being issued solely by the Department.

#### I. FML and Its Affiliates

As noted in the proposed exemption underlying PTE 2000-34, FML is a mutual life insurance company maintaining its principal place of business at 250 King of Prussia Road, Radnor, Pennsylvania. Prior to certain rehabilitation proceedings, FML was licensed to issue life insurance policies in 47 states and the District of Columbia. Because FML has been organized as a mutual form of life insurance company, it has no stockholders. Instead, the owners of its contracts (i.e., the Mutual Members) are vested with the right to vote and to receive an allocable portion of the divisible surplus. In addition, the Mutual Members have contractual rights under their contracts with FML.

FML owns all of the stock of Group, a Pennsylvania-domiciled stock corporation. Group, in turn, owns all of the stock of Fidelity Life Insurance Company (FLIC), a Pennsylvania stock life insurance company.