

service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,
Secretary.

[FR Doc 84-31613 Filed 12-3-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Pursuant to Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Pine Valley Golf Club*, Civil Action No. 84-2105 (JFG) was lodged with the United States District Court for the District of New Jersey.

This is an action for civil penalties and injunctive relief concerning disposal of pesticides, fungicides, herbicides and other chemicals in violation of the Resource Conservation and Recovery Act ("RCRA") at the Pine Valley Golf Club, and for recovery of the government's costs of oversight of defendants' removal of the chemicals pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The decree enjoins future illegal acts and provides for the payment of a civil penalty of \$26,830.84 pursuant to section 3008 of RCRA and a payment of \$8,169.16 to reimburse plaintiff for its response and removal costs pursuant to section 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Pine Valley Golf Club*, D.J. No. 90-7-1-258.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the

Environmental Enforcement Section,
Land and Natural Resources Division of
the Department of Justice.

James M. Spears,
Acting Assistant Attorney General, Land and
Natural Resources Division.

[FR Doc. 84-31664 Filed 12-3-84; 8:45 am]

BILLING CODE 4410-01-M

Federal Bureau of Investigation

National Crime Information Center Policy Board; Renewal

In accordance with the provisions of the Federal Advisory Committee Act [U.S.C. App. I (Supp. II, 1972)], the Office of Management and Budget (OMB) Circular A-63, the Director, FBI, has determined that the renewal of the National Crime Information Center (NCIC) Advisory Policy Board is in the public interest in connection with the performance of duties imposed upon the FBI by law.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the NCIC, particularly the system's relationship with local and state criminal justice systems.

The Board consists of thirty members of which twenty are elected from state and local criminal justice representatives; six appointed by the Director, FBI, consist of two members each from the judicial, prosecutorial, and correctional segments of the criminal justice community; four are representatives of criminal justice professional associations, e.g., American Probation and Parole Association, National Sheriff's Association, National District Attorney's Association, and the International Association of Chiefs of Police.

The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen days from the date of the publication of this notice.

Interested persons are invited to submit comments regarding the renewal of the NCIC Advisory Policy Board to the the Committee Management Liaison Officer, Federal Bureau of Investigation, National Crime Information Center, Washington, D.C. 20533.

Dated: November 2, 1984.

William H. Webster,
Director.

[FR Doc. 84-31663 Filed 12-3-84; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Amendment of Privacy System of records and changes in routine uses and in location for system, Occupational Safety and Health Administration.

SUMMARY: Pursuant to 5 U.S.C. 552a(e) (4) and (11), sections of the Privacy Act, the Department of Labor hereby publishes for comment the amendment of the system of records DOL/OSHA-1, "Discrimination Complaint File." Under Section 405 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 2301 *et seq.*), the Secretary of Labor is responsible for handling employee discrimination complaints related to commercial motor vehicle safety and health matters. Pursuant to the Secretary's Order No. 9-83, 48 FR 35736, (August 5, 1983), the Secretary has delegated to OSHA responsibility for administration of the program because OSHA currently investigates similar discrimination complaints arising under Section 11(c) of the OSH Act. This notice amends DOL/OSHA-1 to include in the system records maintained pursuant to Section 405 of the Surface Transportation Assistance Act. This notice also amends DOL/OSHA-1 to reflect a change in the locations of the system and it also amends the system to reflect more accurately the routine uses of the records maintained in the system. Routine uses have been added and include the National Labor Relations Board and state occupational safety and health agencies which conduct investigations similar in scope and purpose to those conducted under OSHA and STAA.

DATE: Persons wishing to comment on this system of records may do so by January 3, 1985.

EFFECTIVE DATE: Unless otherwise noticed in the *Federal Register*, this notice shall become final on January 3, 1984.

ADDRESS: Seth P. Zinman, Associate Solicitor, Office of the Solicitor, Division of Legislative and Legal Counsel, U.S. Department of Labor, Room N-2426, 200 Constitution Avenue NW., Washington, D.C. 20210; Telephone (202) 523-8188.

FOR FURTHER INFORMATION CONTACT: Sofia P. Petters, Counsel for Administrative Legal Services, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N-

2428, Washington, DC. 20210; Telephone (202) 523-8188.

Amendment of DOL/OSHA-1

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Labor hereby publishes an amendment to the systems of records maintained by the Occupational Safety and Health Administration, previously published at 47 FR 30409-30410 (July 13, 1982).

DOL/OSHA-1

SYSTEM NAME:

Discrimination Complaint File.

SYSTEM LOCATION:

Regional Offices, See 29 CFR 70.36 (a)(3) for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints pursuant to section 11(c) of the Occupational Safety and Health Act or section 405 of the Surface Transportation Assistance Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files compiled in connection with investigations of discrimination complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11(c) of the Occupational Safety and Health Act (Pub. L. 91-596) and Section 405 of the Surface Transportation Assistance Act (Pub. L. 97-424).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is in the investigation of violations of section 11(c) of the OSH Act and/or section 405 of the Surface Transportation Assistance Act.

Disclosure may be made to the National Labor Relations Board, state occupational safety and health agencies and to other Federal and state agencies when they are conducting similar or related investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files.

RETRIEVABILITY:

By complainant's name or case identification number.

SAFEGUARDS:

Locked storage equipment, and personnel screening.

RETENTION AND DISPOSAL:

Destroy 5 years after case is closed.

SYSTEM MANAGER(S) NAME AND ADDRESS:

Regional Administrator at address where system is located.

NOTIFICATION PROCEDURES:

As above.

RECORD ACCESS PROCEDURES:

As above.

CONTESTING RECORD PROCEDURES:

As above.

RECORD SOURCE CATEGORIES:

Individual complaints filed alleging discrimination and information compiled in connection with investigations of alleged acts of discrimination.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with paragraph (k)(2) of the Privacy Act, investigatory material compiled for law enforcement purposes which is maintained in the Discrimination Complaint File is exempt from paragraphs (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of 5 U.S.C. 552a. Disclosure of information contained in this file could threaten investigators, witnesses, information and their families with adverse consequences and could hinder effective enforcement of the Occupational Safety and Health Act and the Surface Transportation Assistance Act. In order to conduct effective investigations it is necessary to guarantee the confidentiality of information being collected. Release of such information would constitute a breach of the guarantee of confidentiality, could lead to the intimidation, harassment or dismissal from employment of those involved, and could discourage those contacted in future investigations from cooperating with investigators.

Signed at Washington, D.C. 29th day of November 1984.

Ford B. Ford,
Under Secretary of Labor.

[FR Doc. 84-31654 Filed 12-3-84; 8:45 am]
BILLING CODE 4510-23-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance, Electra Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the

Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 19, 1984-November 23, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or any appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,380; *Electra Co., Division of Masco Corp. of Indiana, Cumberland, IN*

TA-W-15,307; *Kern Foods, Inc., Ohio Division, Leipsic, OH*

TA-W-15,386; *Pera Fashions, Inc., Miami, FL*

TA-W-15,444; *Noyo Pride, Inc., Fort Bragg, CA*

TA-W-15,408; *AT&T Technologies, Inc., Kearny, NJ*

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA-W-15,401; *Cheney Brothers, Inc., Manchester, CT*

The investigation revealed that criterion (3) has not been met. Separations from the subject firm resulted from a transfer of production to another domestic facility.

Affirmative Determinations

TA-W-15,322; *Pierrette, North Bergen, NJ*

A certification was issued covering all workers separated on or after December 15, 1983.

TA-W-15,452; *U.S. Steel Corp., International Traffic Dept., New York, NY*

A certification was issued covering all workers separated on or after August 21, 1983 and before November 1, 1984.

TA-W-15,472; *The Hanover Shoe, Inc., Hanover, PA*

A certification was issued covering all workers separated on or after March 1, 1984.

TA-W-15,403; *The Hanover Shoe, Inc., White Sulphur Springs, WV*

A certification was issued covering all workers separated on or after July 17, 1983 and before September 30, 1984.

TA-W-15,372; *Complex Division Stretchwear Manufacturing Co., Inc., Coamo, PR*

A certification was issued covering all workers separated on or after September 1, 1983 and before April 1, 1984.

TA-W-15,448; *Lesnow Manufacturing Co., Inc., Easthampton, MA*

A certification was issued covering all workers separated on or after February 1, 1984.

TA-W-15,490; *Kurt Preiss Leather Creations, Inc., Hallandale, FL*

A certification was issued covering all workers separated on or after August 1, 1984 and before September 30, 1984.

I hereby certify that the aforementioned determinations were issued during the period November 19, 1984–November 23, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 27, 1984.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-31647 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-30-M

Numerical Values for Performance Standards for Titles II-A and III of the Job Training Partnership Act (JTPA) in Program Year 1985

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Performance Standards.

SUMMARY: The Department of Labor (DOL) is announcing performance standards for Program Year (PY) 1985 for Titles II-A and III of the Job Training Partnership Act. The performance standards established in PY 1984 will be retained in PY 1985.

DATES: The performance standards announced in this document apply to Program Year (PY) 1985, which begins

on July 1, 1985, and ends on June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies. Telephone: 202-376-6700.

SUPPLEMENTARY INFORMATION: On July 6, 1984, the Department of Labor (DOL) solicited public comments on an Options Paper regarding whether numerical values of the performance standards under Title II-A of the Job Training Partnership Act (JTPA) should be adjusted each program year (PY) or every two years. 49 FR 27840. This notice announces DOL's decision to retain for PY 1985 the same numerical values for the performance standards established for PY 1984.

DOL received forty-two comments in response to the July 6 notice regarding adjusting the numerical values for the Secretary's performance standards for JTPA Title II-A programs in PY 1985 and subsequent years. Twenty-eight respondents favored Option 2 that would change the measures and numerical values no more than every two years; eleven respondents favored Option 1 that would revise the numerical values for PY 1985 standards and during alternate years; and three respondents did not favor either option.

Given this response and based on its own examination of the issue, DOL has decided to maintain the PY 1984 standards for a second year. It also will continue the same approach for setting JTPA Title III standards.

JTPA Titles II-A and III

Performance Standards for PY 1985

The performance standards for PY 1985 for JTPA Titles II-A and III shall be the same as those published in the Federal Register notice at 49 FR 4052 (February 1, 1984). Therefore, the Title II-A standards are: Adult entered employment rate, 55 percent; adult cost per entered employment rate, \$5,704; adult average wage at placement, \$4.91; adult welfare entered employment rate, 39 percent; youth entered employment rate, 41 percent; youth positive termination rate, 82 percent; youth cost per positive termination, \$4,900. Performance standards issuances which were in effect for PY 84 shall continue to be in effect for PY 85 (namely PSI-2-84, PSI-3-84, PSI-1-PY 84). For Title III, Governors again shall be required to set an entered employment rate standard for formula funded projects, and are encouraged to set goals for cost per entered employment.

Signed at Washington, D.C., this 28 day of November 1984.

Frank C. Casillas,
Assistant Secretary for Employment and Training.

[FR Doc. 84-31648 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-84-223-C]

Petition for Modification of Application of Mandatory Safety Standard; Colorado Westmoreland Inc.

Colorado Westmoreland Inc., P.O. Box E, Paonia, Colorado 81428, has filed a petition to modify the application of 30 CFR 75.1714-2(e)(3) (self-rescue devices; use and location requirements) to its Orchard Valley Mine located in Delta County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that self-contained self-rescuer (SCSR) devices not be placed more than 25 feet from miners on mantrips into and out of the mine.
2. As an alternative method, petitioner proposed to cache SCSRs at intervals not to exceed 2,000 feet along the mantrip routes. Cached SCSRs will be checked once every seven days. Any unit carried or worn will be checked every shift.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1985. Copies of the petition are available for inspection at that address.

Dated: November 23, 1984.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31655 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-21-M]

Petition for Modification of Application of Mandatory Safety Standard; Giant Portland & Masonry Cement Co.

Giant Portland & Masonry Cement Company, P.O. Box 218, Harleyville, SC 29448 has filed a petition to modify the application of 30 CFR 56.16-14(b) (overhead cranes; requirements) to its Harleyville Quarry and Mill (I.D. No. 38-00007) located in Dorchester County, South Carolina. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that operator-carrying overhead cranes be provided with automatic switches to halt uptravel of the blocks before they strike the hoist.
2. Petitioner seeks a modification of the standard to permit operation of the Marl Crane without an automatic switch to halt uptravel of the blocks before they strike the hoist. Petitioner states that there is no travel of equipment or personnel under or in the vicinity of the suspended load of the crane and that the switch would serve no purpose of safety.
3. For this reason, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1985. Copies of the petition are available for inspection at that address.

Dated: November 23, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31656 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-22-M]

Petition for Modification of Application of Mandatory Safety Standard; Kaiser Sand & Gravel Co.

Kaiser Sand & Gravel Company, P.O. Box 580, Pleasanton, California 94566 has filed a petition to modify the application of 30 CFR 56.16-2(c) (materials storage and handling) to its Radum Plant (I.D. No. 04-01827) located in Alameda County, California. The

petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that ladders, platforms, or staging be provided where persons are required to enter any facility for maintenance or inspection purposes, that no person enter the facility until the supply and discharge of materials have ceased and the supply and discharge equipment is locked out, that persons entering the facility wear a safety belt or harness equipped with a lifeline suitably fastened, and that a second person, similarly equipped, be stationed near where the lifeline is fastened to constantly adjust it or keep it tight as needed, with minimum slack.
2. As an alternate method, petitioner proposes to conduct repairs inside bunkers or silos as follows:
 - a. All material (rock, sand or gravel) is drained or drawn down to empty the bunker/silo;
 - b. By a positive means, a chain locks out the lower draw-down gate by each worker to prevent opening;
 - c. The switch gear that activates the gate is tagged-out by the worker;
 - d. A permanent ladder is provided and internal repair commences at the bottom of the bunker/silo, providing a safe working surface. No void can form below nor can the gate be opened, also eliminating the use of safety belts and life lines;
 - e. There is always a person with radio communication to the control room that calls for and controls the flow of specific materials into a series of bunkers, including the bunker/silo where work may be conducted below.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1985. Copies of the petition are available for inspection at that address.

Dated: November 23, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31657 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Application No. D-4683 et al.]

Proposed Exemptions; the Royal Bank of Canada et al.

AGENCY: Pension and Welfare Benefit Programs, 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 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this *Federal Register* Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Program, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

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 pendency of the 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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). 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 pendency 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.

The Royal Bank of Canada (Royal Bank)
Located in Montreal, Quebec, Canada

[Application No. D-4663]

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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) 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 (D) of the Code shall not apply, retroactive to June 15, 1981, to the execution by Royal Bank of a letter of credit agreement (the Agreement) providing for and the actual issuance, maintenance in effect and performance or honoring of a letter of credit (the Letter of Credit) in conjunction with a private financing arrangement where Royal Bank may have had or may in the future have a party in interest relationship with one or more of the several investor employee benefit plans (the Plans).

Effective Date: If this proposed exemption is granted, the effective date will be June 15, 1981.

Summary of Facts and Representations

1. The Letter of Credit is an integral part of the subject leveraged lease financing transaction involving the purchase of a McDonnell Douglas DC-10-15 aircraft (the Aircraft) for lease and

operation by Compania Mexicana de Aviacion, S.A. de C.V. (Mexicana), a major Mexican airline. The mechanism by which the Aircraft was acquired and leased to Mexicana was a complex but fairly typical leveraged lease financing arrangement containing the following elements: (1) Mexicana had previously contracted with McDonnell Douglas Corporation (the Manufacturer) to purchase the Aircraft. As part of the financing arrangement, Mexicana assigned its rights and obligations under the purchase agreement to the Bank of New York (Owner Trustee) as trustee, with the Manufacturer consenting and agreeing to the assignment; (2) The Owner Trustee, acting on behalf of McDonnell Douglas Financing Corporation (the Owner Participant), purchased the Aircraft from the Manufacturer for \$50,000,000; (3) The Owner Trustee obtained \$17,000,000 (1/3 of the purchase price) from the Owner Participant and the balance from the collective investment of eleven life insurance companies and one commercial bank (the Loan Participants).¹ Some of the Loan Participants have invested funds on behalf of the Plans through insurance company separate accounts and, in the case of the commercial bank, through a commingled pension trust; (4) The amounts loaned by the Loan Participants were evidenced by a series of non-recourse notes (the Loan Certificates) issued by the Owner Trustee pursuant to a trust indenture and mortgage (the Indenture) between itself and Bankers Trust Company (the Loan Trustee), as trustee for the holders of the Loan Certificates. The Loan Certificates mature twelve years after their issue and bear interest at the rate of 15 1/2 percent per annum with principal amortization payments commencing at the end of the second year. Among other things, the Indenture created a security interest in the Aircraft in favor of the holders of the Loan Certificates and the Royal Bank; (5) To provide further security for the holders of the Loan Certificates, the Owner Trustee entered into the Agreement with the Royal Bank. The Agreement provides for the issuance by the Royal

¹ The names of the original Loan Participants are Aetna Life Insurance Company, INA Life Insurance Company, Horace Mann Life Insurance Company, INA Life Insurance Company of New York, Standard Life Insurance Company of Indiana, John Hancock Mutual Life Insurance Company, Morgan Guaranty Trust Company of New York (as Trustee of a Commingled Pension Trust), Union Mutual Life Insurance Company, Union Mutual Stock Life Insurance Co. of America, Union Mutual Stock Life Insurance Company of New York, Canada Life Assurance Company and Crown Life Insurance Company.

Bank of the Letter of Credit in favor of the Loan Trustee, for the benefit of the holders of the Loan Certificates, in an amount sufficient to cover the full amount of the principal and interest owing on the Loan Certificates;² and (6) the Aircraft was then leased by the Owner Trustee to Mexicana for a basic term of fifteen years under a lease agreement (the Lease Agreement) providing for rentals sufficient to pay all of the obligations arising under the agreements referred to above. The various elements to the financing agreement were tied together by a participation agreement executed by all the parties to the above described transactions except the Manufacturer of June 15, 1981.

2. The Royal Bank is a Canadian chartered bank headquartered in Montreal, Province of Quebec. It is Canada's largest bank and the fourth largest in North America. On October 31, 1982, it had total assets of Can. \$88.5 billion (U.S. \$72.2 billion, based on the exchange rate on October 29, 1982 of Can. \$1.00=U.S. \$8157). Included among its holdings are two wholly-owned banking subsidiaries in the United States and its possessions: the Royal Bank and Trust Company (New York, New York) and Banco de San Juan (Hato Rey, Puerto Rico). Since both of these financial institutions possess authorization to engage in trust activities, it is possible that one of the Plans having a beneficial interest in the Loan Certificates may have a party in interest relationship with an affiliate of the Royal Bank.

3. The Letter of Credit is an unconditional and irrevocable promise to pay to the Loan Trustee (for the benefit of the holders of the Loan Certificates) the amount stated therein by a single payment upon presentation by the Loan Trustee of certain specified documents, one of which is a certificate of the Loan Trustee that either an event of default has occurred under the Indenture or a payment to the Loan Certificate holders is or may be an avoidable preference under the U.S. Bankruptcy Code (as a result of the bankruptcy of Mexicana). The Loan Certificates become immediately due and payable upon the giving of the notice of acceleration to the Owner Trustee, such notice may be given by

² The fact that the repayment of the Loan Certificates is fully covered by the Royal Bank's Letter of Credit means that the interest rate on the Loan Certificates is lower than the interest rate which would have been required if such repayment were dependent solely upon the lease rentals payable by Mexicana and the mortgage on the Aircraft.

either Royal Bank or the holders of twenty five (25) percent or more in outstanding principal amount of the Loan Certificates. Upon receipt of the notice of acceleration, the Loan Trustee is obligated to demand payment from the Royal Bank under the Letter of Credit in an amount equal to the outstanding principal and interest due on the Loan Certificates. When the Loan Trustee receives payment from the Royal Bank, it will in turn pay all of the holders of the Loan Certificates against delivery of the outstanding Loan Certificates duly endorsed and assigned to the Royal Bank. While Royal Bank may give the notice of acceleration which sets in motion the demand for payment under the Letter of Credit, section 4.15 of the Indenture provides that "no such action shall adversely affect the interests of the holders of the Loan Certificates."

The Letter of Credit Agreement provides for a fee payable to Royal Bank in an amount equal to one percent on the average daily maximum amount available under the Letter of Credit, subject to certain limitations. The fee is payable by the Owner Trustee; however the Lease Agreement between the Owner Trustee and Mexicana provides that the amount of the fee is included in the rent payable by Mexicana. Non-payment of this fee will not affect the validity of the Letter of Credit or the obligations of Royal Bank thereunder.

4. Royal Bank acknowledges that it has de minimus banking relationships with the Loan Trustee and certain of the Loan Participants and believes it is the principal Canadian banker for Crown Life Insurance Company. However, Royal Bank represents that it neither owns five percent or more of the outstanding voting shares nor has the power to influence the management decisions of any of the Loan Participants or the Loan Trustee.

5. The applicant understands that the Department has taken the position that where a loan transaction in which employee benefit plans are investors is guaranteed by a person having a party in interest relationship to such investing plans a prohibited extension of credit exists between the guarantor and the investing plans. The Loan Participants disclosed the identities of all Plans with more than a 5% interest in any separate account or in the commingled pension trust, and reasonable steps were taken to determine that no party in interest relationship existed between the Royal Bank and those Plans. However, the Loan Participants refused to disclose the identities of Plans owning less than 5% interests in the separate accounts and

commingled pension fund. Since the identity of certain of the Loan Certificate holders could not be established in advance, the Royal Bank is concerned that it may be a party in interest (e.g., by providing custodial or other services) to a Plan which either has or may hereafter acquire Loan Certificates. Therefore, should a full disclosure of the identity of Plans investing in the Loan Certificates establish such a relationship, it could be argued that the issuance and maintenance in effect of the Letter of Credit involves a loan or extension of credit in violation of section 406(a)(1)(B) of the Act.

The applicant acknowledges the possible application of two previously granted class exemptions involving investment by bank collective investment funds and insurance company pooled separate accounts.³ However, the Loan Participants have not been willing to provide assurances that the pooled accounts which they operate meet the requirements of those exemptions. The Royal Bank also acknowledges the existence of the recently granted class exemption for qualified professional asset managers (QPAM);⁴ however, Royal Bank has no assurances that transactions involving current holders of the Loan Certificates would qualify for the relief available under that exemption. Additionally, the Indenture acknowledges the potential for transferability of the Loan Certificates to, among others, employee benefit plans which are not invested through such pooled vehicles or managed by entities which satisfy the definition of a QPAM. To date no sales have occurred and the Loan Trustee stated that as of July 1, 1984, the original Loan Participants continue to be the beneficial owners of the Loan Certificates. The applicant also notes that the Department has taken the position that a loan or extension of credit which is permissible when entered into nevertheless becomes prohibited if a party in interest relationship develops thereafter. The honoring of the Letter of Credit by the Royal Bank also raises prohibited transaction problems should the Department determine the transfer of the Loan Certificates under the terms of the Indenture to be prohibited. Because of the above stated concerns Royal Bank has determined that it could be

exposed to the risk of a possible prohibited extension of credit for the life of the Letter of Credit. Accordingly, the applicant has determined it appropriate to seek exemptive relief for the transactions described herein.

6. In summary, the applicant has represented that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The proposed exemption applies to the issuance, maintenance in effect, performance and honoring of a single letter of credit, the terms of which are fixed based on arms length negotiations between unrelated parties; (b) the Letter of Credit is a secondary form of security adding an additional protection at no cost to the holders of the Loan Certificate and which is held by the independent Loan Trustee acting pursuant to the Indenture; and (c) repayment of the Loan Certificates is assured by Royal Bank's unconditional obligation and its substantial resources.

For Further Information Contact: Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

Krohn Clinic, Ltd., Money Purchase Pension Plan (the Plan) Located in La Crosse, Wisconsin

[Application No. D-5370]

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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2), and 407(a) 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 (1) a lease, effective July 1, 1984, of certain improved real property (the Property) by the Plan to Krohn Clinic, Ltd., (the Employer), the sponsor of the Plan; and (2) the potential cash purchase of the Property from the Plan by the Employer pursuant to a provision in such lease; provided that the terms and conditions of such transactions are at least as favorable to the Plan as the Plan could expect in arm's-length transactions with unrelated parties.

Effective date: If granted, this exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined contribution money purchase pension plan with 47

³ Prohibited Transaction Exemption 78-19, 43 FR 59915, December 22, 1978 and Prohibited Transaction Exemption 80-51, 45 FR 49709, July 25, 1980.

⁴ Prohibited Transaction Exemption 84-14, 49 FR 9494, March 13, 1984.

participants and total assets of \$2,430,600 as of September 14, 1984. The Employer is a Wisconsin professional corporation with a net worth of \$686,928 as of April 6, 1984, operating as the Krohn Medical Clinic for the general practice of medicine. The trustee of the Plan is the La Crosse Trust Company (the Trustee), which represents that it is independent of and unrelated to the Employer except as Trustee of the Plan. Among the assets of the Plan is the Property, a 160,000 square foot parcel of land improved with a one-story frame and masonry building and adjacent parking lot located at 610 West Adams Street in Black River Falls, Wisconsin and used by the Employer as its principal place of business. As of February 15, 1984 the property had a fair market value of \$610,000, according to Donald F. Johnson (Johnson), an independent professional real estate appraiser whose office is located in La Crosse, Wisconsin. Based upon Johnson's valuation, the Property constitutes 25 percent of the total assets of the Plan as of September 14, 1984. The Property has been leased by the Employer from the Plan continuously since 1970 under a lease (the Original Lease) which was renewed according to its terms on May 31, 1982. The Employer represents that the Original Lease constitutes a lease as defined under section 414(c)(2) of the Act and is therefore exempt until June 30, 1984 from the prohibitions of section 406 and 407 of the Act.⁵ An exemption is requested to permit the Employer's continued lease of the Property from the Plan past June 30, 1984 under a modification of the Original Lease (the New Lease), effective July 1, 1984, under the terms and conditions proposed herein.

2. The interests of the Plan for all purposes under the New Lease are and will remain represented by the Trustee. The New Lease is a triple net lease for an initial term of ten years, with provisions for unlimited five-year renewal terms at the Trustee's sole discretion. Under the New Lease the employer assumes responsibility for all taxes, all costs of maintenance and repair, and full fire and extended coverage insurance on the Property. The New Lease requires the Employer to indemnify the Plan and hold the Plan harmless against all claims, demands, and liabilities arising from the Employer's use of the Property. Annual rental under the New Lease, payable monthly, will be the greater of (1) the fair market rental value of the Property

as determined annually by an independent appraiser selected by the Trustee, or (2) ten percent of the fair market value of the Property as determined annually by independent appraiser selected by the Trustee. Rental during any renewal term shall be determined in the same manner. Johnson has determined that the amount of rental being charged under the Original Lease at the time of his appraisal, which was \$60,000, was equal to the Property's fair market rental value. After an investigation by the Trustee of existing market conditions relating to the Property's fair market rental value as of July 1, 1984, in which the Trustee found no significant changes since Johnson's appraisal of February 15, 1984, the annual rental under the New Lease for its first year has been set at \$61,000, representing the higher figure of ten percent of the Property's fair market value. Other than the amount of rental, all terms and conditions of the New Lease during any renewal terms shall remain the same as those of the New Lease during its initial term. Any renewal of the New Lease beyond its initial ten-year term shall be at the sole discretion of the Trustee.

3. The New Lease includes a provision (the Put Option) under which the Trustee may require the Employer to purchase the Property from the Plan for cash upon ninety days' written notice for a purchase price equal to the greater of: (1) The fair market value of the Property as determined by a qualified, independent real estate appraiser chosen by the Trustee, or (2) the original cost of the Property to the Plan. Such a purchase of the Property under the Put Option shall occur without any attendant sales costs to the Plan. The Put Option provides that the Trustee shall predicate any decision to exercise the Put Option on a good-faith evaluation of the following factors: (1) The yield of the Property in relation to alternative investment returns; (2) the Plan's liquidity needs; and (3) the ratio of real estate asset value to total Plan asset values. Further, the Trustee represents that any exercise of the Put Option shall be evaluated under the prudent man rule and diversification requirements of section 404 of the Act. An exemption is requested to permit the potential purchase of the Property by the Employer pursuant to the Trustee's potential exercise of the Put Option.

4. The Trustee will represent the Plan in the enforcement of all terms and conditions of the New Lease and will monitor the Employer's performance thereunder for the duration of the New Lease, including any renewal thereof.

The Plan's continued leasing of the Property to the Employer past June 30, 1984 under the New Lease has been reviewed and evaluated by William P. Grow (Grow), Assistant Vice President of the Trustee. Grow represents that the Plan's continued holding of the Property and its continued lease to the Employer under the New Lease are in the best interests and protective of the participants and beneficiaries of the Plan for the following reasons: (1) Historically, the Property has proven to be a good investment for the Plan, having appreciated substantially since its acquisition and having yielded the Plan a return of 12.8% over the past ten years; (2) the Plan's return on the Property under the New Lease, to be no less than ten percent, will compare quite favorably to returns available from alternative investments, especially marketable bonds; (3) in the event of unforeseen adverse developments with respect to the Property, the Plan's investment in the Property is protected by the Put Option; (4) the Property provides the Plan with non-interest-sensitive performance, lending stability of principal value to this Plan asset in a context of fluctuating financial markets; (5) Plan assets are appropriately diversified by industry, number of issues, and maturity; and (6) the Property represents the Plan's sole investment in real property, and its continued holding by the Plan does not adversely affect the Plan's liquidity needs. The Trustee represents that based upon the current and projected cash flow on Plan assets, the percentage of Plan assets represented by the Property is steadily diminishing.

5. In summary, the applicant represents that the subject transactions satisfy the criteria of section 408(a) of the Act because: (1) The New Lease is a triple net lease under which the Employer pays all expenses related to the Property and will protect the Plan's investment in the Property with full fire and extended coverage insurance; (2) the Plan's interests under the New Lease are represented by the Trustee, an independent fiduciary which is unrelated to the Employer; (3) the New Lease ensures the Plan a return from the Property of no less than the Property's fair market rental value, determined annually; (4) the Put Option protects the Plan from unforeseen adverse developments with respect to the Property by requiring the Employer to purchase the Property from the Plan for its full fair market value, without attendant sales costs to the Plan; and (5) after a review and analysis of the subject transactions, the Trustee has

⁵ The Department expresses no opinion as to whether the Original Lease constitutes a lease as defined under section 414(c)(2) of the Act.

determined that the New Lease, including the Put Option, is in the best interests and protective of the Plan's participants and beneficiaries.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

ESI Profit Sharing Retirement Plan and Trust (the Plan) Located in Portland, Oregon

[Application No. D-5395]

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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 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 proposed sale, pursuant to the escrow arrangement described below, of certain employer real property (the Property) by the Plan to Electro Scientific Industries, Inc. (the Employer), a party in interest with respect to the Plan, provided the terms of such transaction are at least as favorable to the Plan as those of similar transactions between unrelated parties.

Summary of Facts and Representations

1. The Plan covered 609 participants as of December 31, 1982, and, as of May 31, 1983, had assets totalling \$8,404,347. The trustee of the Plan is the United States National Bank of Oregon (the Trustee). The Employer has a variety of commercial accounts with the Trustee, which is one of the two largest banking institutions in the State of Oregon and maintains a large commercial banking practice. It is represented that each individual account of the Employer with the Trustee represents less than 1% of the aggregate of similar accounts currently maintained by the Trustee. Section 10.05-2 of the Plan authorizes the Profit Sharing Committee (the Committee) for the Plan to elect to direct the investment of Plan assets. Each member of the Committee is an employee of the Employer and owns less than 1% of the Employer's stock.

2. To avoid any question arising out of the relationships between the Employer and the Committee members, the Committee has waived its authority under Plan section 10.05-2 as it relates to the Property and has left to the Trustee the exclusive authority and

control over, and responsibility for, the management and investment of the Property.

3. The Property consists of 5.27 acres of land improved by a one-story engineering building of 21,424 square feet. The Property is located at 13900 N.W. Science Park Drive, Beaverton, Oregon, in a highly desirable, campus-like development near Portland, known as Sunset Science Park. The Trustee currently manages the Property. The building contained on the Property is a multi-purpose industrial building currently used by the Employer for research and development, some light manufacture, and general drafting and engineering. The land was acquired by the Plan in 1963 for about \$31,000, and the building was constructed in 1963 by the Plan for about \$340,000 as an income investment.

4. The Property has been leased to the Employer since September 1, 1963, under a lease which, among other provisions, gave the Employer both a purchase option and also a right of first refusal in the event a sale of the Property was considered. Prohibited Transaction Exemption (PTE) 84-55 (49 FR 23955, June 8, 1984) exempts such leasing effective July 1, 1984, but does not exempt either the purchase option or the right of first refusal. The Trustee has been involved with the Property since the Plan acquired it. At the request of the Trustee, the Property is appraised annually by an independent appraiser. The history of the Property since the Plan acquired it is described in detail in the Notice of Proposed Exemption for PTE 84-55, published April 3, 1984 (Application No. D-4401, 49 FR 13214). The Plan has continued to lease the Property to the Employer under the terms described in detail in said Notice.

5. The Plan now proposes to sell the Property to the Employer pursuant to the following terms:

(a) An independent appraiser, chosen by the Trustee and at the Employer's expense, will determine the fair market value of the Property as of a date certain in the near future (the Escrow Date) without regard to any right of first refusal or purchase option of the Employer under the existing lease. Such value shall be the amount of the offer to purchase the Property. The independent appraiser chosen by the Trustee is the firm of Curtis Mackenzie and Slocum, which has not provided any prior services and has no relationship to the Employer, according to the applicant. The individuals who will participate in the new appraisal are Messrs. John E. Slocum, Patrick C. Jordan, and Gerald L. Curtis—all of whom are certified Members of the Appraisal Institute of

the American Institute of Real Estate Appraisers and have extensive real-estate appraisal experience.

(b) On the Escrow Date (see (a), above), a sale agreement between the Plan and the Employer (the Sale Agreement) will be executed by the Trustee, serving as an independent fiduciary to the Plan, only if it has determined that: (i) The sale of the Property is in the best interests of the Plan, its participants and beneficiaries, and (ii) the price of the offer is not less than the fair market value of the Property on the Escrow Date.

(c) The Sale Agreement (see (b), above) will provide that the sale price and any additional payment (see (f), below) will be payable in cash in full to the Escrow Agent (see (e), below) no later than the Delivery Date (defined in (e), below).

(d) The deed shall be in the form of a bargain and sale deed which will convey the interest in the Property, will estop the Plan and its successors from ever asserting that it had less than the full estate in the Property at the date of the deed, and will pass after acquired title. However, the deed will not operate to provide covenants of title in the Employer as grantee or its successors. Therefore, according to the applicant, the Plan is not required to defend the title to the Property against claims that the Plan did not legally possess the Property or did not have authority to transfer the Property or that the Property was encumbered. The applicant explains that under a bargain and sale deed, if the transferor does not have legal title to the property described in the deed on the date of transfer and the transferor later acquires such property, the property passes to the transferee; however, the transferor is not required to obtain such property or to cure any defects in its title to the property. It is represented that deeds in this form are the types normally used by the Trustee when acting in a fiduciary capacity.

(e) On the Escrow Date, the executed Sale Agreement, documents of conveyance of title, and such other documents as are necessary to consummate the transaction, each dated as of the Escrow Date, will be deposited with an independent third party (the Escrow Agent). An escrow agreement (the Escrow Agreement) between the Trustee, the Employer, and the Escrow Agent will be entered into which will provide that the documents conveying title, the sale price, and the additional payment described in (f), below, will not be delivered until and unless the proposed exemption is granted and the

terms and conditions of the Escrow Agreement are satisfied. In such event:

- (i) Said date (the Delivery Date) shall occur no later than 15 days following the date the proposed exemption is granted; and
- (ii) on the Delivery Date, the documents conveying title will be delivered to the Employer, and the sale price and the additional payment described in (f), below, will be delivered to the Trustee for the Plan. The Escrow Agent is the real estate department of the Trustee. The Escrow Agreement does not affect the obligation of the Employer to make payments to the Plan when due under the lease on the Property during the period beginning on the Escrow Date and ending on the Delivery Date (the Escrow Period).

(f) If the exemption is granted, the parties desire to preserve the benefit of their respective bargains during the Escrow Period. Therefore, the Escrow Agreement is designed to place the Plan and the Employer in the same economic position which they would have been in had the sale closed on the Escrow Date, subject to satisfaction of the terms of the Escrow Agreement. Pursuant to the Escrow Agreement, if the proposed exemption is granted, the Plan will be entitled to an additional payment (the Additional Payment) on the Delivery Date equal to the excess, if any, of (A) over (B), below. For this purpose:

(A) Equals the sum of—

- (i) The product obtained by multiplying the sale price of the Property by a rate for the entire Escrow Period equal to the interest rate on the Escrow Date borne by a security (the Alternative Security) selected by the Trustee, in which the Plan would have invested had it had the purchase price available for investment, plus

- (ii) Interest on the product obtained under A(i), above, computed from the date interest on the Alternative Security would have been received if the Plan had actually invested in the Alternative Security on the Escrow Date, and computed until the Delivery Date at a daily rate equal to that earned by QualiVest Fund, the money market fund of the Trustee; and

(B) Equals the sum of—

- (i) Any net payments under the lease of the Property during the Escrow Period, plus

- (ii) Interest on the amount under B(i), above, computed from the date such amounts are received by the Plan to the Delivery Date at the daily rate described in A(ii), above.

(g) If the proposed exemption is not granted, the escrow documents shall be returned to the appropriate parties, and the sale shall not be consummated. In such event, except as specified in (h),

below, neither the Trustee nor the Employer shall have any further obligations with respect to the sale.

(h) Whether or not the transaction is finally consummated, all expenses of the sale, including escrow expenses and attorneys' fees, will be paid by the Employer.

(i) If the Department's notice granting or denying the proposed exemption is not received by April 1, 1985, the sale shall not be consummated, and the escrow documents shall be returned to the appropriate parties.

6. The applicant explains that the purpose of the Escrow Agreement (see 5, above) is to fix the Employer's obligation to purchase the Property for its fair market value on the Escrow Date, thereby protecting the Plan from any decrease in the Property's fair market value during the period required for the Department to take final action on the proposed exemption (see 7(c), below), while providing interest income to the Plan on the sale price during such period to the extent of the Additional Payment (described in 5(f), above).

7. The Trustee represents that the proposed sale of the Property would be in the best interest of the Plan and its participants for the following reasons:

- (a) The sale of the Property to the Employer would reduce costs to the Plan, including bank fees, appraisal fees, and maintenance fees.

- (b) The Trustee feels that the sale of the Property and subsequent investment of the proceeds in various areas of the market will provide more diversification and flexibility to the Plan. Some investments under consideration include guaranteed insurance contracts, collective stock and bond funds, and a dedicated bond portfolio, depending upon the timing of the availability of the sale proceeds and the market climate at that time.

- (c) While the value of the Property has increased over 300% compared to the Plan's investment therein, the real estate market projections for this area indicate a "soft" market and as potential decline in property values.

- (d) The Trustee feels that the escrow arrangement described in 5, above, is the most prudent means of handling the proposed transaction because the escrow arrangement will not only fix the sale price but will protect the value of the sale price in the interim.

8. The Trustee also represents that the proposed transaction (including the escrow arrangement) will be subject to the following conditions:

- (a) The sale price of the Property, as determined by an independent appraisal, must be equal to the fair

market value of the Property on the date the sale document is executed and placed into escrow without regard to any right of first refusal or purchase option of the Employer.

- (b) The sale price of the Property will be payable in cash in a lump sum at closing, which shall occur after (and if) the proposed exemption is granted.

- (c) All costs incurred as a result of the proposed sale will be borne by the Employer.

9. The Trustee explains that it is not aware of a third party who might be interested in purchasing the Property and would not expect a third party purchaser either to agree to a lump-sum cash transaction or to pay all of the sales related expenses. Given the Employer's willingness to meet the conditions set forth above, the Trustee believes the Employer is the most appropriate purchaser.

10. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the entire sale price and any Additional Payment will be paid in cash to the Plan on the Delivery Date, which will occur no later than 15 days following the date the proposed exemption is granted; (b) the proposed sale price will equal the fair market value of the Property as of the Escrow Date determined without regard to the Employer's right of first refusal and purchase option under the lease on the Property; (c) the Escrow Agreement is designed to place the Plan and the Employer in the same economic position which they would have been in had the sale closed on the Escrow Date, subject to satisfaction of the terms of the Escrow Agreement; (d) whether or not the transaction is finally consummated, all expenses of the sale, including escrow expenses and attorneys' fees, will be paid by the Employer; (e) the sale will result in greater flexibility and greater potential diversification for the Plan; (f) the Trustee, an independent fiduciary to the Plan, represents that the proposed transaction is in the best interest of the Plan and its participants and beneficiaries; (g) the Trustee will agree to the proposed transaction only if the conditions described in 8, above, are met; and (h) if the proposed exemption is not granted by April 1, 1985, the sale will not be consummated.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Star-Mark, Inc., Profit Sharing Plan and Trust (the Profit Sharing Plan); and Star-Mark, Inc., Defined Benefit Plan and Trust (the Defined Benefit Plan; Collectively, the Plans) Located in Sioux Falls, South Dakota

[Application Nos. D-5398 and D-5399]

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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 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: (1) The purchase of certain leases of equipment (the Leases) by the Plans from Star-Mark, Inc. (the Employer), the sponsor of the Plans; (2) the repurchase by the Employer or its shareholders (the Shareholders) of any Leases in default; (3) the indemnification of the Plans by the Employer and its Shareholders against any loss relating to the Leases; and (4) the possible repurchase by the Employer of its Shareholders of the leased equipment at the end of the term of a Lease, provided that the following conditions are met:

A. Any sale of Leases to the Plans will be on terms at least as favorable to the Plans as an arm's length transaction with an unrelated third party.

B. The acquisition of a Lease from the Employer shall not cause either Plan to hold: (1) More than 25% of that Plan's assets in the Leases; (2) more than 3% of that Plan's assets in a single Lease; and (3) more than 10% of that Plan's assets in Leases of any one lessee.

C. Upon default by a lessee on any payment due under a Lease, the Employer and its Shareholders agree to indemnify the Plan holding that Lease against any loss resulting from such default and also agree to repurchase such Lease at full face value, without discount, and to repurchase the equipment underlying the Lease at the present value of that equipment based on its value at the end of the Lease. A Lease shall be deemed to be in default for purposes of this section if: (1) A payment due under the terms and conditions of the Lease is past due for a period of 45 days; (2) a lessee defaults in the performance of any other term of condition of the Lease for a period of 45 days; or (3) a lessee Leases doing business or becomes insolvent.

D. The Plans receive adequate security for the equipment underlying the Lease. For purposes of this exemption, the term adequate security means that the equipment is secured by a perfected security interest in the leased equipment, so that if there is a default on a Lease and the security is foreclosed upon or otherwise disposed of, the value and liquidity of the security is such that it may reasonably be anticipated that the Plan holding the Lease will experience no loss.

E. Insurance against loss or damage to the leased equipment from fire or other hazards will be procured and maintained by the lessee, and that the proceeds from such insurance will be assigned to the Plans.

Temporary Nature of Exemption: This exemption is temporary in nature and will expire five years after the date of grant with respect to the purchase by the Plans of Leases.

Summary of Facts and Representations

1. The Profit Sharing Plan has approximately 58 participants and assets of \$104,541.87 as of March 31, 1984. The Defined Benefit Plan has four participants and assets of \$97,926.57 as of June 30, 1983. The trustees of the Profit Sharing Plan are Paul W. Lawrence, Robert J. Swanson and Samuel Hertogs, officers and shareholders of the Employer. The trustees of the Defined Benefit Plan are Paul W. Lawrence, Robert J. Swanson, Samuel Hertogs, Donald W. Gustafson and David A. Lawrence, officers and shareholders of the Employer.

2. The Employer is in the business of manufacturing and distributing all types of cabinetry. Cabinets are distributed through third party dealers who display them on their premises. As an incentive to dealers to take on the Employer's lines, the Employer leases cabinet displays to the dealers. The Leases that the Plans propose to purchase from the Employer will involve Employer cabinets which are leased to these third party dealers. The Leases vary in length from 12 to 36 months, with the lessee determining the length of an individual Lease. The Leases will be sold to the Plans for cash. The Plans propose to invest, for a five year period, up to 25% of each Plan's assets in such Leases, with the conditions that no more than 10% of a Plan's assets be invested in the Leases of any one customer and no more than 3% of a Plan's assets be invested in a single Lease. The Leases are completely net to the Plan and similar Employer leases have been yielding a return of 15½% per annum.

3. The purchase price of a Lease will be based on the invoiced price of the

cabinets being leased less an appropriate discount as determined by the independent fiduciary of the Plans (see below). No commissions will be paid to the Employer as a result of sales of Leases to the Plans. The rental for the Leases purchased by the Plans will be calculated by the same method used to calculate the rental for the leases which are held by the Employer for its own account. Rentals will be comparable to what the Plans could obtain in a direct transaction with an unrelated third party.

4. Notwithstanding the fact that upon purchase of a Lease the Plans also acquire and hold title to the equipment underlying the Lease, as a further protection to the Plans such equipment will be secured by a perfected security interest which will name the purchasing Plan as the secured party. If the security would be foreclosed upon in the event of default, the value and the liquidity of the security will be such that it may reasonably be anticipated that loss of principal or interest will not result. In addition, the lessee is required to maintain insurance on the cabinets against fire and other hazards, the proceeds of which shall be assigned to that Plan.

5. The Plans will assume the position of the lessor under the terms of the Leases. However, if a default occurs, the Plans will have full recourse against the Employer and the shareholders of the Employer (the Shareholders). In addition, the Employer and the Shareholders have agreed to repurchase any Lease in default at its full face value, without any discount and to repurchase the cabinets underlying the Lease for the present value of the cabinet's residual value at the expiration of the Lease as determined by the independent fiduciary of the Plans (see below). The Employer and the Shareholders have also agreed to indemnify the Plans for any losses suffered as a result of a default. Leases shall be deemed to be in default if the lessee fails to make a rental payment within 45 days after it is due or if a lessee defaults in the performance of any other term or condition of the Lease for a period of 45 days or if a lessee ceases doing business or becomes insolvent. The Employer's net worth as of April 28, 1984 was \$443,692. The Shareholders represent that their net worth is in excess of \$16,000,000.

6. First Bank of South Dakota (the Bank) has agreed to act as an independent fiduciary for the Plans with respect to the proposed purchases of the Leases. The Bank represents that as of June 30, 1984, its sole relationship with

the Employer and its officers, directors and Shareholders is that the Employer and one Shareholder have deposits of \$105,000 in the aggregate, representing less than 1% of the Bank's total deposits and that the Employer and a partnership controlled by the directors of the Employer have, in the aggregate, \$875,000 in loans from the Bank, representing less than 1% of the Bank's total loans.

7. The Bank represents that the Bank alone will determine whether it will purchase any Leases in general and any individual Lease in particular. The Bank further represents that it will evaluate Leases it is considering, taking into consideration: (a) An appropriate rate of return to the Plans based on other comparable investments available to the Plans, considerations include safety of the investment, period required to amortize the investment and the returns being realized by the Bank on commercial installment loans; and (b) the rate of return that the Bank intends to realize will determine the amount of discount the Bank requires from the invoiced amount. The Bank represents that its decision making process will be ongoing in order that the Plans maintain actuarially sound liquidity and that there be diversification of non-cash investments. In the event the Bank acquires any Leases, the Bank represents that it will alternate the purchase of Leases between the Plans and that no more than 25% of either Plans' assets will ever be invested in Leases at any given time. The Bank represents that the Leases purchased will be of equal quality. In addition, the Bank represents that the purchase of Leases will be beneficial to the Plans for the following reasons: (a) The Leases are secured and guaranteed by the property, the lessee, the Employer and the Shareholders; (b) the Leases are of short duration—1, 2 or 3 years; (c) the Leases are amortized (except for minimal buyout) fully, there is no substantial balloon payment; (d) the Bank can determine any appropriate discount from the invoice to generate a substantial return to the Plans; and (e) the Lease amounts are relatively small—usually not over several thousand dollars each, and the lessees are located over a wide geographic area, adding to diversification. The Bank represents that it will monitor and enforce the Leases including all agreements of the Employer and the Shareholders.

8. At the end of the term of the Lease, the lessee has the option of purchasing the cabinets under a purchase option or returning them to the leasing Plan. If the lessee does not purchase the cabinets,

the Employer covenants that it will repurchase the cabinets at the higher of the buyout price set in the Lease or the fair market value of the cabinets at the date of the expiration of the Lease, as determined by the Bank.

9. In summary, the applicant represents that the proposed transactions meet the statutory requirements of section 408(a) of the Act because: (a) The Bank, acting as independent fiduciary on behalf of the Plans will have the sole authority to select, purchase and monitor the Leases and also to monitor the Employer's and Shareholders indemnification and repurchase agreement; (b) the sales of the Leases will be limited to a five year period and no more than 25% of the assets of either Plan will be invested in the Leases; (c) the Plans will have perfected security interests in each cabinet subject to a Lease; and (d) the Employer will indemnify the Plans for any loss suffered by the Plans as a result of a Lease default and repurchase both the Lease and the cabinets underlying the Lease.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Newspaper Agency Corporation Pension Trust (the Plan) Located in Salt Lake City, Utah

[Application No. D-5540]

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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 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: (1) The continued leasing of certain improved real property (the Property) from the Plan to Newspaper Agency Corporation (the Employer), a party in interest with respect to the Plan, (2) the guarantee by Kearns-Tribune Corporation and Deseret News Publishing Corporation (collectively, the Employer's Owners) of the Employer's obligations under such lease, and (3) the possible future sale of the Property by the Plan to the Employer pursuant to Articles 19 or 20 of such lease; provided the terms of each of these transactions are at least as favorable to the Plan as those the plan could obtain in similar transactions with unrelated parties, and

provided further that in the event of any such sale the sales price is not less than the fair market value of the Property on the date of the sale, disregarding any reduction in value attributable to the Employer's rights under Article 19 and 20 of such lease.

Effective Date: If the proposed exemption is granted, the exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan covering 765 participants as of June 15, 1984. The total fair market value of the Plan's assets as of August 16, 1984 was \$11,935,913.73. The Plan trustee is First Interstate Bank of Utah, N.A. (the Trustee), which is solely responsible for the investment of Plan assets. The Trustee has no common officers or directors with the Employer or the Employer's Owners. Although the Employer and one of the Employer's Owners are clients of the Trustee, their deposits represent only .00046% and .00057%, respectively, of the Trustee's total deposits as of August 3, 1984. On this same date, the Employer had no loans with the Trustee, and loans to one of the Employer's Owners represented .00515% of the Trustee's total outstanding loans. Various officers and directors of the Employer and one of the Employer's Owners have had deposit and loan relationships with the Trustee, neither of which exceeded 1/10 of 1% of the Trustee's total deposits and loans. The Trustee's Trust Department has many years experience managing assets and is currently responsible for managing assets of approximately \$450,000,000. The Trustee's employee benefit staff has had various experience regarding the Act. Mr. Anthony Vazulik, who oversees the administration of the Plan, has 23 years experience in managing various employee benefit programs and is very familiar with the Act, according to the Trustee, whose law firm (Jones, Waldo, Holbrook & McDonough) counsels the Trustee on its responsibilities under the Act.

2. The Property consists of land improved by a one-story commercial warehouse comprising approximately 52,500 square feet located at 656 South 300 West and 326 West 700 South in Salt Lake City Utah. The Property is not subject to an outstanding mortgage or any other indebtedness and constituted 11.39% of the Plan's total assets as of August 16, 1984. The Property constitutes an integral part of the Employer's business of producing two daily newspapers seven days a week. The Employer uses the Property to receive, by railroad and by truck,

newsprint and other supply items for printing newspapers and related functions; to store such supplies; and to house a five-unit Goss Urbanite offset press used to print various sections of the newspapers.

3. The Plan purchased the Property in 1971 and has leased the Property continuously to the Employer pursuant to a lease entered into on July 21, 1971 (the Original Lease). It is represented that the Employer has consistently complied with the terms of both the Original Lease and the existing lease (described in 5, below) in a timely manner. The applicant represents that the leasing of the Property has satisfied the conditions provided by section 414(c)(2) of the Act because the Original Lease was entered into before July 1, 1974 and was not a prohibited transaction within the meaning of section 503(b) of the Code and the terms under which the leasing has occurred have been as favorable to the Plan as those of an arm's-length transaction with an unrelated party.*

4. Mr. Ralph B. Wright, Member of the American Institute of Real Estate Appraisers, has estimated the Property's fair market value as of June 30, 1983, at \$1,252,500, and is fair market rental value as of July 1, 1984 at \$100,000 to \$110,000 per year under a triple net lease. Mr. Wright states that he is not related to the Employer, the Employer's Owners, or their principals and that after personally inspecting the Property, he finds it well maintained and in first class condition throughout. He explains that although the Property lacks finished office space and off-street parking, it is conveniently located, has rail service, is near the freeway, is dock-high, and has good overhead clearance, inside truck docks, overhead storage mezzanine, sprinkling and heating systems.

5. The Plan and the Employer have entered into an agreement dated August 1, 1983 (the Current Lease), which supersedes the Original Lease on condition that the proposed exemption is granted. The Current Lease is a triple-net lease for a term of 10 years. The Employer is obligated to pay all taxes levied against the Property, all utility charges, the cost of installing any fixtures and equipment, all maintenance and repair costs, and premiums for both liability and casualty insurance for the benefit of the Plan as an additional named insured. All trade fixtures and

equipment installed by the Employer remain the Employer's property and may be removed by the Employer, who must repair any damage caused by such removal. The Employer has agreed to indemnify the Plan from all liabilities for personal injury or property damage occurring on the property and not caused by the Plan's negligence.

6. The Current Lease gives the Employer the option to extend the Current Lease for two additional terms of 10 years each. It requires a rental payment of \$8,900 per month (\$106,800 per year) for the first 3 years of the Current Lease. For every subsequent 3-year period, rental payments will be adjusted to reflect the fair rental value of the Property at the beginning of each such period as determined by a qualified (i.e., M.A.I.) appraiser who is not related, directly or indirectly, to the parties to the Current Lease. In no event, however, will the monthly rental payment be reduced below \$8,900 per month. The Employer's Owners, each of whom owns half of the Employer, have guaranteed performance of all conditions of the Current Lease, including the payment of rent, by the Employer and have agreed to perform such conditions themselves if the Employer is unable to do so.

7. Article 19 of the Current Lease permits the Employer, under certain circumstances, to purchase the Property from the Plan for cash during the term of the Current Lease or any extension thereof, at a price offered to and accepted by the Plan under a bona fide offer (the Right of First Refusal). If such offer is not in the form of cash but in the form of any other valuable consideration, the Employer may exercise the Right of First Refusal by tendering the reasonable cash value of the other valuable consideration offered by the third party offer. The Employer may not exercise the Right of First Refusal unless the trustee or other independent fiduciary, having determined that the sale to the Employer is in the best interests of the Plan, approves of the sale.

8. Article 20 of the Current Lease gives the Employer an option to purchase the Property for cash (the Purchase Option) at any time during the term of the Current Lease and extensions thereof at a price equal to the Property's fair market value. The Purchase Option shall not be exercised unless the trustee or other independent fiduciary to the Plan, having determined that the sale to the Tenant is in the best interests of the Plan, approves the sale. To determine the fair market value of the Property, the Employer and the Plan shall each

appoint an MAI appraiser (each at their own expense) who shall appoint a third MAI appraiser; all 3 MAI appraisers, working together, shall then determine the Property's fair market value.

9. The Trustee states that in many respect the Current Lease is more favorable to the Plan and its participants and beneficiaries than other leases negotiated by the Trustee. For example, the Property is located in an area of Salt Lake City which has an excellent opportunity to appreciate because of inflation and demand for warehouse space. Additionally, rents are adjusted throughout the term of the Current Lease to generate a good return, according to the Trustee, on the Property's fair market value. Also, the Current Lease insures that any sale of the Property will be completed at its fair market value. By diversifying approximately 11% of the total Plan assets into real estate, the Trustee asserts that it is taking steps to protect the Plan participants and beneficiaries from stock and bond market fluctuations. For these reasons, the Trustee believes the Current Lease to be in the best interests of the Plan and its participants and beneficiaries.

10. The Trustee's investment personnel review the Plan's assets at least monthly. In addition, the real estate section of the Trustee's Trust Department take an active role in analyzing the Property as part of the Plan's entire portfolio. The Trustee's Investment Committee after reviewing the real estate section's suggestions, makes the final decision to hold or to sell any Plan asset (including the Property). The Trustee represents that diversification, investment return, safety and market conditions are some of the considerations which are reviewed before the final investment decision is made. The Trustee will monitor the Current Lease throughout its duration on behalf of the Plan, taking any appropriate actions to safeguard the interests of the Plan.

11. The Trustee explains that it has agreed to give the Employer the Right of First Refusal under Article 19 of the Current Lease as a necessary condition to attract good quality tenants and that such provision is appropriate and commercially acceptable in Salt Lake City. The Trustee represents further that the Property will not be offered for sale and the Employer would not be allowed to exercise the Right of First Refusal unless it is in the best interest of the Plan. Pursuant to the Trustee's standard policy, the Property would be appraised to determine its fair market value before it is offered for sale. In determining such

*Section 414(c)(2) of the Act provided a transitional exemption ending June 30, 1984 for certain leases meeting specified conditions. The Department expresses no opinion herein as to the applicability of section 414(c)(2) to the past leasing of the Property.

fair market value, any reduction in value attributable to the Right of First Refusal and the Purchase Option will be disregarded. The Trustee states that the Employer would pay cash in the full amount of the sales price on the date of the sale. The Trustee also represents that all of the statements in this paragraph apply to the Purchase Option, as well as to the Right of First Refusal.

12. In summary, the applicant represents that the subject transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the current rental rate is within the range of fair market rental value of the Property as determined by a qualified appraiser unrelated to the Employer, the Employer's Owners, or their principals; (b) the rental rate will be adjusted every 3 years to reflect the fair rental value of the Property at the beginning of each such period as determined by an M.A.I. appraiser who is not related, directly or indirectly, to the parties to the Current Lease, but will never be less than the current rental rate; (c) the Current Lease does not require the Plan to pay any costs relating to the Property and requires the Employer to indemnify the Plan for certain liabilities relating to the Property; (d) the Employer will maintain both liability and casualty insurance, naming the Plan as an additional insured, with respect to the Property; (e) the Trustee, an independent fiduciary with respect to the Plan, represents that the Current Lease is in the best interests of the Plan and its participants and beneficiaries; (f) the Trustee will monitor the Current Lease throughout its duration on behalf of the Plan, taking any appropriate actions to safeguard the interests of the Plan; (g) neither the Right of First Refusal nor the Purchase Option may be exercised unless the Trustee determines that such exercise would be in the best interest of the Plan; (h) the Trustee represents that the Right of First Refusal and the Purchase Option are appropriate and commercially acceptable in Salt Lake City; and (i) if either the Right of First Refusal or the Purchase Option is exercised, the sales price (I) will not be less than the fair market value of the Property on the date of the sale—disregarding, in determining such fair market value, any reduction in value attributable to the Right of First Refusal or the Purchase Option, and (II) will be paid in cash in full on the date of the sale.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Armstrong Rubber Company Pension Plan (the Plan) Located in New Haven, Connecticut

[Application No. D-5588]

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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 408(a) and 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 by the Plan of a \$1,000,000 Series B note (the B Note) to Armstrong Rubber Company (the Employer), the sponsor of the Plan, provided that the sales price is not less than the fair market value of the B Note at the time the sale is consummated.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan. As of September 30, 1983, the Plan had 2,150 participants and net assets of \$55,717,087. Chemical Bank (Chemical) was the trustee of the Plan from January 2, 1964 through September 30, 1982. Effective October 1, 1982, Manufacturers Hanover Trust Company became trustee of the Plan. However, Chemical retained investment management over the B Note. On October 1, 1983, Favia Hill and Associates, Inc. (Favia Hill), a wholly owned subsidiary of Chemical New York Corporation, a bank holding company and an affiliate of Chemical became the investment manager for the B Note and has sole discretion with respect to any disposition of the B Note.

2. In 1970, the Employer constructed its corporate headquarters (the Building) on a parcel of land (the Land) it owned in New Haven, Connecticut. On February 28, 1973, Chemical Bank, the then trustee of the Plan, acting through Second New Haven Bank as its subtrustee (the Subtrustee), purchased the Land from the Employer for \$1,000,000 in cash. Immediately following this purchase, the Subtrustee conveyed the Land to Long Wharf, Inc. (Long Wharf) in consideration for the B Note. Also on February 28, 1973, the Employer conveyed the Building to Long Wharf for \$6,000,000 in cash. Long Wharf is a corporation all of whose shareholders are employees or partners of Goldman, Sachs and Company, investment bankers. Long Wharf's sole

purpose is to act as an intermediary in the transaction.

3. Long Wharf raised the \$6,000,000 it paid the Employer through the sale of notes (the Series A Notes). The Series A Notes mature on March 1, 2003 and yield 8½% interest with full amortization of principal over the 30 year period. The Series A Notes were sold to third party institutional investors for \$6,000,000. The B Note matures on March 1, 2003 and yields 8½% interest plus partial amortization of principal over the 30 year period. The total quarterly payment is \$20,687.07. The principal is amortized at the rate of ⅓ of 1% per year. At maturity, the scheduled unpaid principal balance of the B Note will be \$812,493.82. At that time the Land will be deeded to the Plan in lieu of repayment of the remaining principal. Should the appraised value of the Land be less than \$812,493.82, the difference will be paid to the Plan by the Employer pursuant to a collateral agreement (the Agreement) between the Subtrustee and the Employer.

4. Payment of principal and interest on the A Notes and the B Note (collectively, the Notes) is funded by a 43 year lease (the Lease) of the Land and the Building (collectively, the Property) dated February 28, 1973, between the Employer and Long Wharf. The rent during the initial 30 year term of the Lease is set so as to equal the amount required by Long Wharf to make its principal and interest payments. Upon maturity of the B Note, the Land reverts to the Plan and the Lease provides a formula for determining the rental payments for the remaining thirteen year term of the Lease. Upon the expiration of the Lease, the Building will revert to the Plan.

5. The Notes are secured by a Deed of Trust and Indenture of Mortgage (the Mortgage) from Long Wharf to First New Haven Bank (First New Haven, now known as Connecticut National Bank). At the closing, February 28, 1973, the Lease was assigned by Long Wharf to First New Haven as collateral security for the Mortgage and rental payments have been made directly to First New Haven which has then made all debt service payments. The applicant represents that on February 28, 1973, in order to be insulated against Connecticut taxes, Long Wharf conveyed the Property by quitclaim deed containing a non-merger provision to the Employer. The Employer expressly assumed and agreed to be bound by the Lease, the assignment of the Lease to First New Haven and the Mortgage (with the exception of the obligation to pay the principal and

interest due or to become due on the Notes). In addition, the Employer and the Subtrustee executed the Agreement and had it recorded. In the Agreement, the Employer again assumed and agreed to be bound by the Lease, the assignment of the Lease to First New Haven, the Mortgage (with the exception mentioned above), and also agreed that upon expiration or sooner termination of the Lease, it will convey the Building and any other improvements on the Land to the Plan.

6. The Employer now seeks to purchase the B Note from the Plan for its appraised value. The applicant submitted two appraisals, both of which establish the fair market value of the B Note by combining the present value of the income stream to be generated by the B Note and the present value of the Plan's reversionary interest in the Property, as of March 1, 2003. The applicant represents that the appraisers did not reduce their appraisals of the B Note as a result of the terms of the Lease between the years 2003 and 2016.

7. On June 30, 1984, Arthur B. Estrada, MAI determined that the present value of the income stream to be generated by the B Note was \$614,444 and the present value of the Plan's reversionary interest in the Property was \$2,346,719. Mr. Estrada concluded that the fair market value of the B Note as of June 30, 1984 was \$2,960,000. Also on June 30, 1984, Norman R. Benedict, MAI determined that the present value of the income stream to be generated by the B Note was \$578,708 and the present value of the Plan's reversionary interest in the Property was \$1,521,364. Mr. Benedict concluded that the fair market value of the B Note as of June 30, 1984, was \$2,100,000. Favia Hill, acting as independent fiduciary on behalf of the Plan, represents that the two appraisals will be updated as of the date of closing and that it will use the higher of the two appraisals to establish the value of the B Note. The updated appraisals will not be reduced as a result of the terms of the Lease between the years 2003 and 2016.

8. As mentioned in representation 1 above, Favia Hill, the Plan's investment manager with respect to the B Note, is a wholly owned subsidiary of Chemical New York Corporation which is an affiliate of Chemical. The applicant represents the following with respect to business relationships between the Employer and Chemical: (a) the average checking account balances for the period June 1, 1983 through May 31, 1984, that the Employer had with Chemical totaled \$993,000 which was less than 1% of the checking account balances held by Chemical; (b) the average loan

balances for the period June 1, 1983 through May 31, 1984, totaled \$7,300,000 which was less than 1% of the average loan balances for all Chemical loans; (c) Chemical is the registrar and transfer agent for the Employer's stock; (d) Chemical is the trustee of the Employer's Sinking Fund Debentures due April 15, 1996 (as of July 1, 1984, the sinking fund balance was \$14,999,000 and \$1,350,000 is being paid into the sinking fund annually); (e) neither Chemical New York Corporation nor any of its affiliates owns any stock of the Employer for its own portfolio, and although Chemical is custodian for 65,202 shares of stock of the Employer, it does not have voting or investment authority over those shares; (f) the Employer does not own any shares of Chemical New York Corporation; and (g) no members of the boards of directors of Chemical New York Corporation and the Employer sit on both boards.

Finally, Chemical is the agent and major participant for a revolving credit and term loan agreement into which the Employer entered on June 15, 1984. The revolving credit period will end on approximately June 14, 1988 and the payback period is for an additional four year period beginning approximately June 15, 1988. Chemical will provide 46.67% of the credit under this agreement, and if the Employer utilizes all of the available credit, the credit extended by Chemical will be approximately 1% of its outstanding credit.

9. Favia Hill, acting as independent fiduciary on behalf of the Plan, represents that the proposed sale is prudent and in the best interest of the participants and beneficiaries of the Plan. Favia Hill further represents that it concluded that the proposed sale is as favorable to the Plan as could be obtained in arm's-length negotiations between totally unrelated parties and that the sale should occur as soon as practicable after taking into account several factors, including the following: (a) the MAI appraisals submitted to the Department; (b) concern about holding an investment which yields 8½% which is less than current market rates and does not provide liquidity and cash flow returns when compared to other real estate investments; (c) concern about being locked into an investment until the year 2003, where the investment is backed by real estate located in New Haven, Connecticut, without regard to changes in commercial real estate values in New Haven; and (d) the appraised value of the B Note is higher than the value of the B Note to a third

party because it represents the fair market value of the Property without taking into account any diminution in value based upon the favorable lease terms between the years 2003 and 2016 which would result in a third party paying a lower value for the B Note. In addition, Favia Hill represents that it will review the value of the Property and the updated appraisals as of the date of the sale and it will complete the sale only if the sale is in the best interests of the Plan, its participants and beneficiaries as of that date.

10. In summary, the applicant represents that the proposed sale meets the statutory criteria of section 408(a) of the Act because (a) this is a one time transaction for cash; (b) the sales price will be determined by qualified, independent appraisers; and (c) Favia Hill, acting as independent fiduciary on behalf of the Plan has determined and will determine at the time of the sale, that the proposed transaction is in the best interests and protective of the Plan, its participants and beneficiaries.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Stamford Computer Group, Inc. Defined Benefit Pension Trust (the Plan) Located in Stamford Connecticut

[Application No. D-5599]

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 Rev. Proc. 75-26, 1975-1 C.B. 722. 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 for a period of five years from the date of an exemption grant to: (1) the purchase by the Plan of certain leases of computer equipment (the Leases) from Stamford Computer Group, Inc. (the Employer); and (2) the agreement by the Employer to indemnify the Plan against any loss relating to the Leases and also to repurchase any Leases that are in default in accordance with paragraph (C) below, provided that the following conditions are met:

A. Any sale of Leases to the Plan will be on terms at least as favorable to the Plan as an arm's length transaction with an unrelated third party would be.

B. The acquisition of a Lease from the Employer shall not, immediately following the acquisition, cause the Plan to hold more than 25 percent of the

current value (as that term is defined in section 3(26) of the Act) of Plan assets in Leases sold by the Employer.

C. Upon default by the lessee on any payment due under a Lease, the Employer guarantees in writing the immediate payment of all remaining rental payments and all other amounts due and owing under the Lease. A Lease shall be deemed to be in default for purposes of this section, if a payment due under the terms and conditions of the Lease is past due for 10 days; or in the event the lessee shall become insolvent, commit an act of bankruptcy, make an assignment for the benefit of creditors or a liquidating agent, offer a composition or extension to creditors, make a bulk sale; or in the event any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or of amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation, or dissolution shall be begun by or against the lessee; or in the event of appointment under any jurisdiction at law or in equity of any receiver of any property of the lessee; or in the event the condition of affairs of the lessee shall so change as to, in the opinion of the independent fiduciary (discussed below), impair its security or increase its credit risk.

D. The Plan receives adequate security for the property underlying the Lease. For purposes of this exemption, the term adequate security means that the property is secured by a perfected security interest in the property leased, so that, if there is a default on the Lease, and the security is foreclosed upon, or otherwise disposed of, the value and liquidity of the security is such that it may reasonably be anticipated that the Plan will experience no loss.

E. Insurance against loss or damage to the leased property from fire or other hazards will be procured and maintained by the lessee, and the proceeds from such insurance will be assigned to the Plan.

Temporary Nature of the Exemption: This exemption, if granted, will be temporary in nature and will expire 5 years after the date of grant with respect to the acquisition of Leases from the Employer.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with 2 participants, Lawrence Goichman and his wife, Jennifer Goichman. Mr. Goichman is the sole shareholder of the Employer and is co-trustee of the Plan with Mrs. Goichman.⁷ As of August 31,

1983, the Plan had net assets of \$237,033.61.

2. The Employer is engaged in the business of purchasing and leasing IBM computer equipment. The Leases that the Plan proposes to purchase from the Employer will involve equipment which is leased to third parties. These Leases vary in length from 24 months to a maximum of 72 months, with an average length of 36 months, depending on the useful life of the equipment. The Leases will be sold to the Plan for cash. The Plan proposes to invest up to 25% of its assets in such Leases. The Leases are completely net to the Plan and similar Employer leases have been yielding a net return of approximately 13% per annum.

3. When the Employer leases a specific computer to a lessee, that lease is generally evidenced by four documents. The Lease Agreement (the Agreement) describes the type of equipment leased and the terms of the lease, including the monthly rental payments. The lessee's obligation to make rental payments is absolute and unconditional. The lessee is responsible for maintaining the equipment through a maintenance contract with the manufacturer of the equipment. The lessee can not assign, sublease or encumber the equipment. The lessee bears the risk of physical damage to or loss on destruction of the equipment, however caused. During the term of the lease, the lessee must keep in effect risk insurance on the equipment.

4. In addition to the Agreement, an Employer lease is also evidenced by a Delivery and Acceptance Certificate wherein the lessee certifies that the equipment described in the Agreement was satisfactorily installed and accepted as satisfactory in all respects. The Secretary's Certificate of Incumbency acknowledges the lessee's obligation under the Agreement and the ability of the signer to so bind the lessee. The Lessee's Acknowledgement acknowledges the Employer's right to assign the Agreement to a financing entity and consents to make the rental payments to the assignee absolutely and unconditionally, regardless of any termination of the lease and regardless of any defenses the lessee may have against the Employer. Any Lease which the Plan purchases shall be evidenced by the four above mentioned documents. In addition, the Employer will forward a Notice of Assignment of the Lease

notifying the lessee that all payments under the Agreement are to be made to the Plan. The lessee shall acknowledge and return the Notice of Assignment of Lease.

5. The purchase price of a Lease will be based upon the retail price of the equipment being leased. In addition, no commissions will be paid to anyone as a result of the sale of Leases to the Plan. The rental for the Leases purchased by the Plan will be calculated by the same method used to calculate the rental for the Employer's leases. Rentals will be comparable to what the Plan could obtain in a direct transaction with an unrelated third party. Title to the equipment does not pass to the Plan upon the purchase of a Lease. However, a UCC-1 Financing Statement will be filed naming the lessee as the debtor, the Employer as the secured party and the Plan as the assignee of the secured party. This perfects the Plan's security interest in the leased equipment. In the event of default, if the security would be foreclosed upon, the applicant represents that the value and liquidity of the security will be such that it may reasonably be anticipated that loss of principal or interest will not result.

6. An indemnification agreement will be entered into between the Employer and the Plan under which, upon default by the lessee on any payment due under a Lease, the Employer agrees to indemnify the Plan against any loss resulting from such default (including repurchasing such Lease at a price equal to the remaining unpaid rental for the term of the Lease that would otherwise have been paid by the defaulting lessee). The agreement will provide that a Lease shall be deemed in default under the terms of the lease if: (1) Lessee fails to pay any installment payment due under the Lease within 10 days after the date such payment becomes due and payable; (2) a lessee defaults in the performance of any other term or condition of the Lease for a period of 10 days after written notice and demand to correct same; or (3) the lessee ceases doing business or becomes insolvent or bankrupt.

7. Edmund Pilla, CPA has agreed to serve as independent fiduciary on behalf of the Plan with respect to the proposed transactions. Mr. Pilla represents that he is a principal in the firm of Tackman, Pilla, Arnone & Company, P.C. and that his firm provides accounting services for the Employer, the Plan and Mr. Goichman individually. Mr. Pilla further represents that the income derived by his firm from the Employer, the Plan and Mr. Goichman is not in excess of 1% of the total income derived from all of the

Mrs. Goichman, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

⁷ Since Mr. Goichman is the sole shareholder of the Employer and the only participants are Mr. and

firm's clients. Mr. Pilla represents that he has over three years experience with investments by pension plans and with investments in computer leasing. Mr. Pilla further represents that he is familiar with the stringent rules of the Act governing prudent investments and that he was advised by counsel of the obligations and responsibilities as independent fiduciary of the Plan.

8. Mr. Pilla represents that as independent fiduciary acting on behalf of the Plan he will (a) be responsible for the selection of Leases to be acquired by the Plan; (b) review all proposed transactions in order to confirm in each case that the Plan is acquiring only "top quality" leases, e.g. leases with companies having top credit ratings and good prior leasing experience; (c) review lessee's credit application; (d) review lessee's financial condition; (e) review lessee's credit references and make a determination regarding appropriate credit limits; (f) determine the appropriate discount rate and purchase price for a Lease; and (g) monitor and enforce the terms of the transactions including the Employer's indemnification agreement.

9. Mr. Pilla represents that the Plan's purchase of Leases is in the best interest of the Plan, its participants and beneficiaries because: (a) the lessees will be solid and reputable companies; (b) the investment is safe and fully secured; (c) the Leases are negotiated at arm's length and guarantee and assured annual investment return to the Plan which is higher than the rate of return available in other investments; and (d) there will be ample liquidity and diversification of assets.

10. The applicant represents that in the event that new participants enter the Plan, a new trust will be established to fund the benefits of the new participants. This action will be taken in order to assure that any new participant will not be prejudiced by the investment in the Leases.

11. In summary, the applicant represents that the proposed transactions meet the requirements of section 4975(c) (2) of the Code because: (a) the purchase of Leases will be limited to a five-year period and will be limited to 25% of Plan assets; (b) the decision to purchase a Lease will be made by Mr. Pilla acting as independent fiduciary on behalf of the Plan; (c) the Plan will have a perfected security interest in the equipment underlying the Lease; and (d) the Employer will repurchase any Lease in default, indemnifying the Plan against any loss in case of default.

Notice to Interested Persons

Because Mr. Goichman is the sole shareholder of the Employer and the Goichmans are the only participants in the plan, it has been determined that there is not need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For further information contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Employee Retirement Plan of Doubleday & Company, Inc. and Associated Companies (the Plan) Located in New York City, New York

[Application No. D-5638]

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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 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 the continuation, beyond June 30, 1984, of a guaranty made to the Plan by Doubleday Broadcasting Company, Inc. (DBC), a party in interest with respect to the Plan, in order to secure the obligation of Christian Broadcasting Network (CBN), under a lease by the Plan to CBN, provided that the terms and conditions of such guaranty are at least as favorable to the Plan as those obtainable by the Plan in a similar transaction with an unrelated party.

Effective Date: If granted, the exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan which had approximately 3,350 participants and net assets of approximately \$53,436,543 as of June 30, 1984. The sponsor of the Plan is Doubleday & Company, Inc. (Doubleday) and certain affiliated companies, including DBC. Chemical Bank New York Trust Company (the Trustee) is the trustee of the Plan's assets pursuant to a trust agreement with Doubleday dated October 27, 1960, and Interfirst Bank Dallas, N.A. (the sub-Trustee), formerly First National Bank in Dallas, serves as a secondary trustee under a secondary trust

agreement (the Secondary Trust Agreement) with the Trustee dated January 16, 1968. DBC and the Sub-Trustee are financially independent unrelated entities which have no common officers or directors and no contractual arrangements, formal or informal, between them.

2. Until January 23, 1968, DBC owned and occupied certain improved real property (the Property) located at 3900 Harry Hines Boulevard, Dallas, Texas, where it operated a television broadcasting facility known as Station KDTV. On January 23, 1968, DBC conveyed the Property to the Sub-Trustee for the Plan, and subsequently entered into a lease of the Property from the Sub-Trustee dated March 15, 1968. In November, 1973, CBN, an unrelated party, acquired Station KDTV and executed a new lease of the Property from the Sub-Trustee.⁸ As a condition to permitting the Plan to enter into the new lease with CBN and releasing DBC from liability under its lease, the Sub-Trustee required DBC to guaranty CBN's obligations under the new lease between the Plan and CBN. For this reason, DBC executed a Surrender, Release and Lease Guaranty Agreement (the Guaranty Agreement) with the Sub-Trustee dated November 15, 1973. Under the Guaranty Agreement, DBC unconditionally guaranteed to the Sub-Trustee the full and punctual performance and observance by CBN of each term, covenant and condition of its lease, including any modification, renewal or extension thereof.⁹ The sole consideration for DBC's guaranty under the Guaranty Agreement was the Sub-Trustee's agreement to cancel DBC's lease, to accept DBC's surrender of such lease and to enter into the new lease with CBN.

3. The Sub-Trustee is a national bank chartered in 1929 with resources in excess of \$11 billion. The application states that the Sub-Trustee has regularly and frequently exercised discretion as a trustee or other fiduciary with respect to the assets and administration of employee benefit plans and is an experienced and qualified fiduciary fully familiar with its statutory duties, responsibilities and liabilities as a

⁸ In this proposed exemption the Department is not proposing exemptive relief for the lease by the Plan to CBN, nor is the Department expressing any opinion as to whether the lease is within the scope of any of the provisions of Part 4 of Title I of the Act.

⁹ The Sub-Trustee represents that the Guaranty Agreement was exempted until June 30, 1984 by section 414(c)(1) of the Act. The Department expresses no opinion as to whether the Guaranty Agreement met the requirements of section 414(c)(1) of the Act.

fiduciary under the Act. The Secondary Trust Agreement with the Trustee provides the Sub-Trustee with the power to own, hold and manage the Property for the Plan, and further provides that the Sub-Trustee has full authority to take an action on behalf of the Plan which it deems necessary to ensure the performance of, enforce and carry out any of the provisions of any existing or future leases of the Property.

4. Pursuant to this authority, the Sub-Trustee negotiated and executed the Guaranty Agreement with DBC and has continued to monitor and enforce its provisions on behalf of the Plan. The application states that the Sub-Trustee considers the Guaranty Agreement to be in the best interest of the Plan and its participants and beneficiaries because it secures CBN's duties under the lease and therefore serves to protect Plan assets. As of June 30, 1984, the fair market value of the Property with respect to which DBC unconditionally guaranteed the lessee's lease obligations, constituted less than 1% of the Plan's net assets. The lease to CBN provides for a term of twenty years, to expire in 1993, subject to certain extension and purchase options of the lessee.

5. The applicants state that they are concerned that DBC's guaranty of CBN's lease obligations to the Plan may constitute a prohibited extension of credit between the Plan and a party in interest with respect to the Plan after June 30, 1984, and therefore request relief, effective July 1, 1984, for the continuation of the guaranty pursuant to the Guaranty Agreement. The Sub-Trustee has approved the Guaranty Agreement, and will continue to monitor and enforce its terms.

6. In summary, the applicants represent that the transaction satisfies the criteria of section 408(a) of the Act because (a) the Sub-Trustee, as an independent fiduciary for the Plan, negotiated and executed the guaranty on the Plan's behalf; and (b) the Sub-Trustee has approved, monitored and enforced the guaranty and will continue to monitor and enforce the guaranty on the Plan's behalf.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8972. (This is not a toll-free number.)

A.F. Abdullah, M.D., P.A. Pension Plan (the Plan) Located in Hagerstown, Maryland

[Application No. D-5678]

Proposed Exemption

The Department is considering 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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) 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 (D) of the Code shall not apply to the proposed borrowing by the Plan of the maximum loan values of life insurance policies held by the Plan on the lives of Plan participants, provided that the terms and conditions of such loans are at least as favorable to the Plan as those it could obtain from an unrelated party.

Summary of Facts and Representations

1. The Plan covers four participants and, as of May 1, 1984, has assets totalling \$342,886.85. The trustee of the Plan (the Trustee) is Hagerstown Trust Company. Dr. A. Abdullah (the Administrator) is the administrator of the Plan. John Hancock Mutual Life Insurance Company (the Insurer) is the issuer of the life insurance policies in question and also provides services to the Plan. The Insurer does not serve in the capacity of a fiduciary to the Plan with respect to the proposed loans, according to the Trustee.

2. The proposed loans, one for each participant, will total \$30,662.78 and will bear interest, payable yearly, at the rate of 8.0% per year. There is no repayment schedule for the principal amount of each proposed loan. Each proposed loan matures on the death of the participant or at the election of the Trustee to pay the loan. All loan proceeds will be invested in a group deferred annuity contract yielding approximately 13% per year.

3. Upon the death or retirement of a participant for whom such an annuity was purchased with such loan proceeds, there would be a partial surrender of the group annuity contract, the loan from the life insurance policy insuring such participant would be repaid, and the participant or beneficiary would receive the full face amount of the life insurance policy plus allocations from a side fund held by the Trustee as part of the Plan's benefits. It is represented that the terms and conditions of the proposed loans are the same as those of similar policy loans made by the Insurer to other policy holders.

4. The Trustee made the decision to borrow on these policies after consulting with the Administrator. The Trustee states that the proposed loans will be administratively feasible as policy loans involve nominal paperwork and are simple transactions, and that the proposed loans will benefit and protect

plan participants and beneficiaries by producing a return in excess of the interest payable on the proposed loans, thereby providing increased benefits to participants in the Plan. The Trustee represents that any loans for future participants in the Plan will be made under the same terms and conditions as those of the proposed loans for the present participants in the Plan.

5. In summary, the Trustee represents that the proposed loans meet the exemptive criteria provided by section 408(a) of the Act (a) for the reasons stated in 4, above; (b) because the loan terms and conditions are the same as those of similar policy loans made by the Insurer to other policy holders; and (c) the decision to make the proposed loans will be made by the Trustee, who has determined that the transactions are appropriate for the Plan.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

J. Michael Pisias, Jr., a Professional Corporation Pension Plan Located in San Francisco, California

[Application No. D-5679]

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 Rev. Proc. 75-26, 1975-1 C.B. 722. 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 the proposed sale by the Plan of a limited partnership interest (the Interest) in the Western Mud Co., Limited (the Partnership) to J. Michael Pisias, Jr., the trustee of the Plan, provided that the sales price is no less than the fair market value of the Interest at the time the sale is consummated.¹⁰

Summary of Facts and Representations

1. The Plan is a defined benefit plan with one participant, J. Michael Pisias. As of February 28, 1984, the Plan had net assets of \$120,626. Mr. Pisias is engaged in the practice of law.

2. Among the assets of the Plan is the Interest in the Partnership. The

¹⁰ Since Mr. Pisias is the sole shareholder of J. Michael Pisias, Jr., A Professional Corporation (the Employer), the Plan sponsor, and the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

Partnership which is located in Elk City, Oklahoma, manufactures a special mud used in drilling natural gas and oil wells. The Plan purchased its interest in the Partnership on September 13, 1982, from Capital Concepts Investment Corp. (Capital), a party unrelated with respect to the Plan. Mr. Pisas represents that the Plan purchased the interest after he was introduced to James H. Hunt III (Mr. Hunt), Senior Financial Advisory to Capital. Mr. Pisas further represents that, except in connection with the Partnership, he has no business relationship with any of the general partners. Besides Mr. Hunt, and Beverly Igoe his personal and corporate accountant, Mr. Pisas states that he does not have any knowledge as to the identities of any other limited partners.

3. The original purchase price for the interest was \$46,875, including an initial cash contribution of \$12,500; an interest free promissory note (the Note) by the Plan to the Partnership in the sum of \$18,750 payable in three installments of \$6,250 each and due on June 1, 1983, June 1, 1984 and June 1, 1985; and an assumption agreement (the Agreement) in the amount of \$15,625 representing the Plan's proportionate share of the Partnership's debt to the Commerce Bank. Mr. Pisas represents that when he purchased the interest on behalf of the Plan he was informed that the Agreement would never be called and that the cash flow of the Partnership was so high that the Plan would probably not need to make the three \$6,250 contributions required under the Note. However, the Partnership's cash flow was insufficient to alleviate the Plan from making the \$6,250 contributions due in June, 1983 and June, 1984. As of September 14, 1984, the Plan's total cash expenditure with respect to the acquisition and holding of the interest was \$25,000. The Plan has paid no brokerage commissions or any other fees with respect to the acquisition or holding of the interests. The Partnership has used a portion of the Plan's capital contributions to reduce the Plan's debt liability under the Agreement. As of July 30, 1984, the Plan's remaining debt under the Agreement was \$4,418.75 which accrues interest at Commerce Bank prime plus 1½% per annum.

4. Mr. Pisas will purchase the interest from the Plan for cash at the higher of its fair market value or the total cash expenditure of the Plan in connection with the acquisition and holding of the interest. Mr. Hunt who is currently a Vice President of Winthrop Securities Co., Inc. and was previously a Senior Financial Advisor to Capital has

appraised the interest and determined that the fair market value of the interest on September 24, 1984, was \$6,250. Mr. Hunt has an MBA in Economics and represents that he has 13 years of experience in the securities field and 12 years of experience in the banking field. Mr. Hunt further represents that he is a limited partner of the Partnership and that he is familiar with the operations of the Partnership. In addition, Mr. Hunt represents that he concurs with the analysis of the general partners of the Partnership which is as follows: (a) due to the severely depressed conditions in and around Elk City, Oklahoma, the assets currently held by the Partnership have a value of approximately 25% of their original cost; (b) the company will continue to generate losses for at least three more years; (c) the type of equipment owned by the Partnership has glutted the market by virtue of repossession and default, causing a large drop in value; and (d) the present mortgage on the equipment exceeds the value of the equipment. The Plan will incur no fees in connection with the sale.

5. In summary, the applicant represents that the proposed sale meets the statutory criteria of section 408(a) of the Act because (a) this is a one time transaction for cash; (b) the Plan will incur no expenses in connection with the sale; (c) the fair market value of the interest is only 25% of the amount expended by the Plan in connection with the acquisition and holding of the interest but the Plan will not incur a loss on the sale; and (d) the general partners of the Partnership anticipate that the Partnership will continue to generate losses for at least three more years.

Notice to Interested Persons: Because Mr. Pisas is the sole shareholder of the Employer and the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of the proposed exemption.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

**Rumph Chiropractic Clinic, P.C.
Employees' Pension Plan and Trust (the Plan) Located in Waterford, Michigan**
(Application No. D-5687)

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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 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 the proposed cash sale of an unimproved parcel of real property (the Property) by the Plan to a partnership, as described herein, which will be a party in interest with respect to the Plan, provided that the sales price of the Property is not less than its fair market value at the time the sale is consummated.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 5 participants. Mr. Paul A. Rumph (Mr. Rumph) is the sole shareholder and officer of Rumph Chiropractic Clinic, P.C., the sponsor of the Plan, and serves as the trustee of the Plan. As of September 30, 1983, the Plan has total assets of \$165,533.

2. On September 23, 1977, the Plan purchased the Property from Weinberger & Wilsek, an unrelated party for \$20,000. The Property consists of .74 acres of vacant land and is located in the Waterford Township, Oakland County, Michigan. The Property was purchased pursuant to a land sales contract providing that the Plan make a down payment of \$500 and pay the balance of the purchase price with interest at 8½% per annum in seven annual payments. Payments on the land have been made in full and the Plan currently owns the Property free and clear of any debt.¹¹ Since the date of purchase the Plan has paid real estate taxes with respect to the Property totalling approximately \$943.00.

On January 1, 1977, Mr. Rumph and his wife purchased a parcel of property which is located adjacent (the Adjacent Parcel) to the Property. The Adjacent Parcel currently has approximately 8,400 square feet of retail space and is leased, in part, to the Plan sponsor.

3. The applicant represents that there has been interest in the construction and lease of new retail space in the area of the properties, and that construction of new space on the Property would provide approximately 4,100 square feet of additional retail space. The applicant therefore seeks an exemption for the Plan to sell the Property to a developer

¹¹ In this proposed exemption the Department expresses no opinion as to whether the Plan's acquisition of the Property violated any provision of Part 4 of Title I of the Act.

which will be a partnership in which Mr. Rumph will have an interest. The exact composition of the Partnership is not known at this time pending approval of this exemption request.

4. Mr. Robert R. Butcher, ASA, an independent appraiser located in Madison Heights, Michigan, appraised the Property and determined that, as of June 26, 1984, it had a fair market value of \$40,000. Mr. Butcher then specifically evaluated the value of the Property if sold to an adjoining owner, and determined that the Property would have an added increment of value to the owner of 19%, which would cause the final sales price to be \$48,000.

5. The Plan proposes to sell the Property for cash at its full appraised value of \$48,000 provided that this amount is not less than its fair market value on the date of sale. The Plan will not pay any commissions or expenses with regard to the sale of the Property.

6. The Michigan National Bank of Detroit (the Bank) has been appointed to serve as the independent fiduciary for the Plan with respect to the proposed sale of the Property. The Bank acknowledges its duties, responsibilities, and liabilities as a fiduciary for the Plan with respect to the Property. The Bank is independent of and unrelated to the Plan sponsor and Mr. Rumph except for certain depository relationships which represent less than .0013% of its total deposits and loans which represent less than .0045% of its total loans. The Bank has completely reviewed all relevant documents involving the proposed sale, including the Plan's financial statements and the appraisal, and has determined that the sale of the Property at this time is in the best interests of the Plan and their participants and beneficiaries. In this regard the Bank states that the Property's value represents at least 34% of the Plan's assets and this is an undue concentration of the Plan's assets in a single, non-income producing asset which is not readily marketable. The Bank also represents that the sale of the Property would result in a substantial return on investment to the Plan. The Bank further represents that a cash sale of the Property would enable the Plan to reinvest the proceeds in diversified, readily marketable income-producing assets which will be more beneficial to the Plan than the continued investment in real estate.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the sale will be a one-time transaction for cash; (b) the Bank will serve as the fiduciary for the Plan with respect to the Property

and has determined that the sale of the Property will be in the best interests of the Plan; (c) the Plan will receive the fair market value of the Property as determined by an independent appraiser; and (d) the Plan will not incur any expenses with respect to the sale.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Sheboygan Oral and Maxillofacial Associates, Ltd. Defined Contribution Plan (the Plan) Located in Sheboygan, Wisconsin

[Application No. D-5756]

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 ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). 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 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 individually directed account (the Account) of Richard F. Morrissey (Dr. Morrissey) in the Plan, of five units in the Limited Partnership of Doctors Park Investment Club for cash in the amount of \$34,398.45 to Dr. Morrissey, provided that such amount is not less than the fair market value of the units on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which had six participants and net assets of approximately \$985,859 as of July 31, 1983. The trustees of the Plan (the Trustees) are John J. Keller, D.D.S. and Dr. Morrissey. A provision in the Plan permits participants to direct the Trustees with respect to the investment of all or a portion of the assets in their accounts.

2. The Account had assets of approximately \$833,803 on July 31, 1983. Pursuant to the Plan provision permitting individually directed investments, Dr. Morrissey directed the Trustees of the Plan to invest \$50,000 of the assets in the Account in five units (at \$10,000 each) in the Limited Partnership of Doctors Park Investment Club (the Partnership) on February 1, 1981. The Account has incurred no additional expenses in connection with the holding of the Partnership units. The Partnership was formed on February 1, 1981 for the purpose of acquiring a portfolio of numismatic materials, i.e.,

collectible coins. Each limited partner contributed at least \$30,000 in cash for three units of \$10,000 per unit. The Partnership currently consists of thirty-two units.

3. The applicant represents that as of July 31, 1983 the value of the Partnership units was \$7,500, or \$37,500 for the five units held by the Account. Other than approximately \$2,000 in working capital, the only asset of the Partnership is its portfolio of collectible coins. The Partnership has no outstanding liabilities. The application states that the fair market value of the Partnership's portfolio plus the \$2,000 in working capital divided by the thirty-two Partnership units represents the fair market value per unit. The Partnership's portfolio was appraised on August 30, 1984 by Mr. Maurice Rosen, president of Numismatic Counseling, Inc., 1975 Hempstead Turnpike, East Meadow, New York, who determined that the fair market value of the portfolio as of July 31, 1984 was \$218,150. Mr. Rosen is independent of the Partnership and Dr. Morrissey and has been appraising coins since 1968. Mr. Rosen states that he based his determination of value on his own expertise and experience, current market conditions and data provided in *Numismatic News* and *Coin Magazine*. Based upon Mr. Rosen's appraisal of the Partnership's portfolio and the Partnership's approximately \$2,000 of working capital, the Partnership units each had a fair market value of approximately \$6,879.69 as of July 31, 1984.

4. Dr. Morrissey proposes to purchase the units from the Account for cash in the amount of \$6,879.69 per unit, for a total of \$34,398.45, provided that such amount is not less than the fair market value of the units on the date of sale. No Commissions or fees will be paid by the Account with respect to the sale and no accounts of any other participants in the Plan will be affected by the sale. Dr. Morrissey represents that the sale of the Partnership units is in the best interest of the Account and because they have declined in value since their purchase by the Account.

5. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act because: (a) this is a one-time transaction for cash; (b) the Account will incur no expenses in connection with the sale; (c) the Account will receive the fair market value of the Partnership units as based upon an appraisal by a qualified independent appraiser; and (d) the only person to be affected by the transaction is Dr.

Morrissey and he desires that the transaction be consummated.

Notice to Interested Persons: Since the only assets of the Plan involved in the proposed transaction are those of Dr. Morrissey's Account, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests are due 30 days after the date of publication in the Federal Register.

For Further Information Contact: Katherine D. Lewis of the Department, telephone (202) 523-8972. (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; and

(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.

(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, D.C., this 29th day of November, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 84-31653 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-29-M

Pension Fund Investments and Corporate Governance; Hearings

Pursuant to section 513 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1143, public hearings on pension fund investments and corporate governance will be held by the Office of Pension and Welfare Benefit Programs beginning at 9:30 a.m. on Wednesday and Thursday, January 9 and 10, 1985 in the Terrace Room, Plaza Hotel, 768 Fifth Avenue, New York, New York and at 9:30 a.m. Monday and Tuesday, January 14 and 15, 1985 in the Washington Room, Holiday Inn, 760 Kearny Street, San Francisco, California.

The hearing will be concentrated on two subjects. The hearing on the first day in each city will concentrate on the investment performance of pension funds. It will explore various aspects of pension fund performance. Among the questions to be explored are the following:

1. What has been the historic performance of pension funds?
2. How has this performance compared to the performance of other institutional investors and indices (e.g. mutual funds, U.S. Treasury bills, S&P 500, consumer price index)?
3. To the extent there is any difference between rates of return earned by pension funds and other investors, what may explain the difference?
4. Is there any reason to believe in light of overall rate of return experience over the past 20 years, that an active investment policy for pensions has produced superior results to a passive (index fund) investment policy, after management and turnover costs are netted-out? Is there any evidence of a difference in results for pension plans actively managed by in-house managers from results of pension plans actively managed by outside investment managers?
5. What is a legitimate target rate of return for a pension fund? Why?
6. What is the relationship of investment performance of pension funds to participant benefits?

The second day in each city will be devoted to issues relating to the role of corporate pension funds with respect to issues of corporate governance. The Office of Pension and Welfare Benefit Programs (OPWBP) wants to develop a record on the experience of those pension funds that have been actively involved in corporate governance issues, including especially:

1. Voting on proposals of management to discourage takeovers (such as "fair price" provisions, "super majority" provisions, and the creation of new classes of stock).
2. Initiation or participation in shareholder initiatives relating to corporate governance (such as initiatives relating to executive compensation, "targeted buybacks," or requirements for committees composed of outside directors to consider merger offers).
3. Voting on other matters which may be brought before corporate shareholders.

OPWBP is especially interested in testimony concerning the basis for those investment managers' decision to take an active role in voting shares, the basis for selecting the proposals or initiatives to vote on, the process for determining how to vote in each particular case, the difference (if any) in voting shares held by a pension fund versus shares held in other fiduciary capacities, and decisions to take action beyond voting, such as bringing or joining in a lawsuit against management.

OPWBP emphasizes that its purpose is to explore the experience of those managers that have taken a role with respect to corporate governance.

Individuals, or representatives of organizations wishing to appear at the hearing on any of the above issues should submit written requests to be heard, copies of their statements, and an outline indicating the time to be allocated to each topic, on or before December 28, 1984 to Edward F. Lysczek, Office of the Administrator, U.S. Department of Labor, Room S-4522, Third and Constitution Avenue, NW., Washington, D.C. 20210. Telephone number (202) 523-8753.

Individuals or organizations wishing to submit written statements on any aspect of the hearing should send 10 copies to Mr. Lysczek at the above address. Papers will be included in the record of the meeting if received on or before January 7, 1985.

The Department will prepare an agenda indicating the order of presentation of oral comments and the time allotted to each person making oral comments. In the absence of special