

(7) Not applicable under section 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

- (1) The Jail Inmate Survey.
- (2) SIJ-43, SIJ-50. Bureau of Justice Statistics.
- (3) Other, quinquennially (approximate).
- (4) Individuals or households, State or local governments. Data used to profile jail inmates, determine trends in inmate characteristics, examine criminal and substance abuse history as it relates to criminal activity, to develop data on conditions of inmate housing and its effects, and to report on the victims of crime as described by jail inmates.
- (5) 6,400 respondents at .75 hours each.
- (6) 4,800 estimated annual public burden hours.

(7) Not applicable under section 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-7590 et al.]

Proposed Exemptions; Restated Profit Sharing Plan and Trust Agreement of Anesthesiologists Associated of Rome, P.A., et al.

AGENCY: Pension and Welfare Benefits Administration, 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 Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. 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-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

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.

Restated Profit Sharing Plan and Trust Agreement of Anesthesiologists Associated of Rome, P.A. (the Plan) Located in Rome, Georgia

[Application No. D-7590]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

and section 4975(a)(2) of the Code and in accordance with the procedures set forth in ERISA Procedures 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 cash sale by the Plan of certain real property located in Rome, Georgia to Park Professional Place (the Partnership), a partnership which is a party in interest with respect to the Plan; provided that all terms of such transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 20 participants and total assets of \$378,177 as of April 30, 1988. The Plan is sponsored by the Anesthesiologists Associated of Rome, P.A. (the Employer), a Georgia professional association engaged in a specialty medical practice in Rome, Georgia. The trustees of the Plan are Larry R. Cauthen, M.D. (Dr. Cauthen), Louise S. Hajosy, M.D., and Elaine L. Hajosy, M.D. (collectively, the Trustees). The Partnership is a Georgia general partnership whose partners (the Partners) are the Trustees and William Atha, M.D. Each of the Partners is a shareholder/employee of the Employer except Dr. Cauthen, a former shareholder/employee who remains as a Trustee.

2. Among the Plan's assets is a parcel of land (the Land) located at 13-A John Maddox Drive in Rome, Georgia. The Land features approximately eighty feet of street frontage and constitutes approximately one-third of an acre. The Plan acquired the Land in an unimproved state and has leased it continuously to the Partnership under a net lease (the Lease) effective July 7, 1972. The Lease provides for an initial term of fifteen years, renewable for up to two additional terms of five years each.

The Lease includes provisions which authorize the Partnership's construction of improvements on the Land and state that ownership of any such improvements would pass to the Plan upon expiration or termination of the Lease. Pursuant to such provisions, the Partnership constructed a medical office building and parking lot (the Improvements) on the Land and immediately commenced leasing the Improvements and subleasing the Land (the Sublease) to the Employer. The

Employer occupies the Land and the Improvements as its principal place of business. The Employer represents that the Lease and the Sublease were exempt until June 30, 1984 from the prohibitions of section 406 of the Act by virtue of section 414 of the Act.¹

The Lease and Sublease have continued after June 30, 1984. In order to terminate the ongoing Lease and Sublease, the Trustees propose to sell the Land to the Partnership. Since the Lease has become unenforceable due to the expiration of the protections afforded by section 414 of the Act on June 30, 1984, the Partnership recognizes that the Plan has acquired a property interest in the Improvements as a result of such expiration and that the Partnership's proposed purchase of the Land must include the purchase of the Plan's interest (the Interest) in the Improvements. The Trustees are requesting an exemption to permit such sale transaction under the terms and conditions described herein.

3. The Partnership will pay the Plan a cash purchase price for the Land and the Interest and will bear all costs and expenses related to the sale transaction. For the Plan's fee simple interest in the Land, the purchase price will be the greater of \$30,000 or the appraised fair market value of the Land on the sale date. As of June 3, 1988, the fair market value of the unencumbered fee simple title in the Land was \$30,000, according to Charles E. Griffin, Sr. (Griffin), an independent professional real estate appraiser in Rome, Georgia. Another independent professional real estate appraiser, Ben Lucas (Lucas) of Rome, Georgia, also determined that the Land had a fair market value of \$30,000 as of August 23, 1988.

For the Interest, the proposed purchase price will be cash in the amount of no less than the fair market value of the Interest. In order to determine the nature and value of the Interest, the Trustees appointed the First Bank of Rome, Georgia (the Bank), which represents that it is independent of and unrelated to the Employer and the Partnership except as trustee of a defined benefit plan maintained by the Employer. The Bank was also appointed to oversee the consummation of the proposed transaction to ensure, if the exemption is granted, that the transaction proceeds as described herein.

The Bank represents that after research and consultation with legal counsel over the application of Georgia

law, it has determined that the nature of the Interest, which the Plan acquired as of June 30, 1984, as properly characterized as a reversionary interest in the Improvements rather than a fee simple interest therein. According to Joseph W. Walker, SRA, MAI (Walker), a professional real estate appraiser in Atlanta, Georgia, the fair market value of the Interest is appropriately determined by discounting the present fair market value of the Improvements over the remaining term under the Lease by the applicable prevailing mortgage rate. The Bank represents that it has determined that this is the proper method of calculating the purchase price of the Interest and that it will ensure that the Plan is appropriately and adequately compensated in the proposed transaction for its property interest in the Improvements under applicable Georgia law. According to Lucas, the Improvements has a fair market value of \$71,100 as of August 23, 1987. The Employer represents that the calculation of the purchase price of the Interest will be based on a fair market valuation of the Improvements of no less than \$71,100. Therefore, it is proposed that the Employer pay the Plan a total cash purchase price for its interests in the Land and Improvements in the amount of (1) the greater of the Land's fair market value as of the sale date or \$30,000 plus (2) no less than \$71,100 discounted over the Lease's remaining term by the prevailing applicable mortgage rate as determined by the Bank.

4. The Bank represents that it has also investigated and considered whether the Plan has received fair market rentals under the Lease for its interests in the Land and the Improvements since June 30, 1984. The Bank maintains that there should have been an upward adjustment of the rentals paid to the Plan under the Lease as of June 30, 1984, the date on which the Interest arose in favor of the Plan, but that there was no such upward adjustment made by the parties. For this reason, the Bank represents that it undertook to determine the amount in which rentals paid to the Plan since June 30, 1984 have been deficient and has determined such deficiency to be in the amount of \$4,677 as of October 28, 1988. The Partnership agrees, as part of the proposed transaction, to pay the Plan the difference between the rentals actually paid to the Plan and the fair market rentals which the Plan should have been paid for the period commencing July 1, 1984 to the date of the proposed sale transaction, such amount to be cash of no less than \$4,677, together with interest on such amount at

a rate determined by the Bank to be appropriate to compensate the Plan for lost income on the rental underpayment.

5. The Department is not proposing herein any exemptive relief with respect to the continuation of the Lease after June 30, 1984 to the date of the proposed sale transaction. Accordingly, within 60 days of the publication in the **Federal Register** of a final grant of the exemption proposed herein, if granted, the Partnership will pay to the Internal Revenue Service all excise taxes which are applicable under section 4975(a) of the Code by reason of the continuation of the subject lease arrangements past June 30, 1984.

6. In summary, the applicants represent that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The Plan will receive cash for (a) the full fee simple title in the Land in the amount of the Land's fair market value as of the date of the sale transaction, in no event less than \$30,000, and (b) the fair market value of the Interest in an amount no less than \$71,100 discounted over the remaining term of the Lease by the prevailing applicable mortgage rate as determined by the Bank; (2) The Plan will recover back rent due under the Lease, representing the difference between rentals actually paid to the Plan and the fair market rentals which should have been paid, plus interest thereon; (3) The Partnership will pay all costs and expenses related to the proposed transaction; (4) The proposed transaction will terminate an ongoing prohibited transaction, the continuation of the Lease after June 30, 1984; (5) The Bank will oversee the proposed transaction to ensure that it proceeds as described herein; and (6) The Bank has determined that the proposed transaction will constitute an appropriate disposition of the Plan's property interests in the Land and Improvements as determined in accordance with applicable state law and that the proposed terms of the sale reflect the appropriate valuation of those interests.

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

Telephone Real Estate Equity Trust (the Trust). Located in New York, NY

[Application No. D-7745]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

¹ The Department expresses no opinion as to whether the Lease and Sublease satisfied the requirements of section 414 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: (1) the past and continued leasing of commercial office space (Lease One and Lease Two) in One Riverwalk Place (the Property), located in San Antonio, Texas, by One Riverwalk Center Joint Venture (the Joint Venture), an entity in which the Trust indirectly owns a 74 percent interest, to Smith, Barshop, Stouffer and Millsap, Inc. (Smith Barshop), a party in interest with respect to the Trust and employee benefit plans participating in the Trust (the Plans); (2) the proposed amendments, renewals or extensions by the Joint Venture to Smith Barshop of Lease One and Lease Two; and (3) the proposed leasing of commercial office space (the Future Leases)² in the Property to other persons or entities that may be parties in interest with respect to the Trust and the Plans (except for fiduciaries with respect to the Property)³ including amendments, renewals or extensions by the Joint Venture of such Future Leases, provided that the terms and conditions of any Leases subject to this exemption are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties; and provided further that any such Leases, including any amendments, renewals or extensions thereof, are approved on behalf of the Trust by Eastdil Advisers, Inc. (Eastdil).

Effective Date: If granted, this proposed exemption will be effective June 2, 1982 with respect to Lease One and January 1, 1987 with respect to Lease Two. In addition, this proposed exemption will be temporary in nature and will not apply to any Leases which are originated after five years from the date on which the Final Grant of this proposed exemption is published in the Federal Register.

Summary of Facts and Representations

1. The parties involved in the subject transactions are as follows:

a. The Trust is a group trust qualified under section 401(a) of the Code pursuant to Revenue Ruling 81-100. The

Trust is utilized for the investment, on an undivided basis, of certain real estate assets of its participating plans. The Plans are employee benefit plans established by seven regional holding companies resulting from the reorganization of AT&T and its subsidiaries pursuant to the Plan of Reorganization approved by the United States District Court for the District of Columbia in the matter of *United States v. Western Electric Co., Inc., et al.* (Civil Action No. 82-0192). The assets of predecessor entities to the Plans were formerly held in the Bell System Pension Plan Trust (the BSPP) and the Bell System Management Plan Trust (the BSMPP). On January 1, 1984, the trusts for the BSPP and the BSMPP were merged into the Bell System Trust (the BST). Substantially all of the non-real estate assets in the BST were transferred to a new AT&T trust. The BST, which retained the real estate assets, was amended and restated as the Trust. As of January 1, 1986, the Trust covered approximately 1,226,000 participants. As of December 31, 1987, the Trust had assets having an approximate fair market value of \$3.99 billion.

b. AT&T, the named fiduciary of the Trust, is a corporation organized and incorporated in the State of New York with its headquarters located in New York City. AT&T's business objective is to meet customer needs, both within the United States and in foreign markets, for voice and data information movement and management. AT&T, through several lines of business, provides a wide variety of national and international telecommunications services. AT&T also designs, manufactures, markets and services transmission and switching equipment, central office products, apparatus for use in residential and business markets, computers and products and services sold primarily to the Department of Defense and related agencies. The primary business of the seven regional holding companies and their subsidiaries, which maintain plans participating in the Trust, is the furnishing of exchange telecommunications and exchange access services within specific geographic areas. The regional holding companies are also active in the provision of advanced mobile communications services as well as publishing and marketing of telecommunications equipment.

c. Eastdil is a Delaware corporation and a New York City-based investment adviser registered under the Investment Advisers Act of 1940, as amended.

Eastdil is a wholly owned subsidiary of Eastdil Realty, Inc. Eastdil was incorporated in 1978 for the purpose of investing in and managing real estate assets for large pension plans. Eastdil manages approximately \$1 billion in pension plan assets primarily on an individual account basis but also on a pooled basis. Investments made by Eastdil on behalf of such plans consist mostly of multitenant commercial and industrial properties. As of December 31, 1987, Eastdil was managing approximately \$450 million of the assets of the Trust. Eastdil is totally unrelated to the parties involved in the subject transactions.

d. Rivertel (Rivertel) is a Delaware corporation wholly-owned by the Trust and exempt from Federal income taxation under section 501(c)(2) of the Code. Rivertel was organized by Eastdil as investment manager for the Trust for the purpose of holding the Trust's interest in the Joint Venture described herein, to collect the income therefrom and to distribute such income to the Trust. All of the officers and directors of Rivertel are employees of Eastdil. As trustee on behalf of the Trust, all of the stock of Rivertel is held by State Street Bank and Trust Company, a Massachusetts banking corporation with its principal office in Boston, Massachusetts.

e. The Joint Venture is an entity formed on November 19, 1981 by and between Rivertel and Riverwalk Center Joint Venture (RCJV). The Joint Venture was formed to take title to, operate, lease, dispose of and otherwise deal with the Property, the sole asset of the Joint Venture. The Joint Venture maintains its principal office at 1900 One Riverwalk Place, 700 North St. Mary's Street, San Antonio, Texas. Rivertel has a 74 percent equity interest in the Joint Venture. RCJV, the other coventurer which holds a 26 percent equity interest in the Joint Venture, is an entity comprised of two other joint ventures. To the best of Eastdil's knowledge, neither RCJV nor any of its Joint Venture partners has ever been a party in interest with respect to the Trust or any of the participating Plans.

f. Smith Barshop is a full service law firm with fourteen attorneys. Its sole office is located in the building comprising the Property. Smith Barshop leases office space in the Property from the Joint Venture. By virtue of performing legal services for the Joint Venture, Smith Barshop has become a party in interest with respect to the Trust and the Plans under section 3(14) of the Act. Smith Barshop has no discretionary authority or responsibility

² Lease One, Lease Two and the Future Leases are collectively referred to as the Leases.

³ The term "fiduciary", as used here, includes the American Telephone and Telegraph Company (AT&T) and its affiliates and Eastdil Advisers, Inc. and its affiliates.

with respect to the Property. In addition, Smith Barshop has no affiliation with Eastdil.

2. Among the assets that are indirectly owned by the Trust is the Property which consists of an eighteen-story commercial office building and adjacent parking lot. The Property is located at 700 North St. Mary's Drive, San Antonio, Texas and contains 263,623 square feet. The Property is the sole asset of the Joint Venture. RCJV was responsible for the development, construction and ownership of the Property prior to the formation of the Joint Venture. Upon the formation of the Joint Venture in November 1981, Rivertel contributed \$17.2 million in cash. RCJV contributed the Property and \$1.1 million in cash. The Property is not currently encumbered by a mortgage.

3. The Joint Venture Agreement provides under section 6.2 that all leases of space in the Property must be in form and substance satisfactory to Rivertel and all tenants must be satisfactory in all respects to Rivertel. Section 6.2 of the Joint Venture Agreement also requires that all leases must be submitted to Rivertel at least ten business days prior to the anticipated execution date thereof and Rivertel has the right to approve or disapprove of such leases in its sole discretion. Based upon the Joint Venture Agreement, approximately 76 percent of the office space in the Property is leased, primarily to unrelated parties. Aside from the Smith Barshop Leases which are described below, to the best of Eastdil's knowledge, no other parties in interest lease space in the Property.

4. On June 2, 1982, the Joint Venture entered into a lease agreement with Davis and Smith Incorporated, a law firm which became known as Smith Barshop in 1986. Lease One provided for occupancy beginning August 1, 1982 with respect to the leased premises and was to terminate on July 31, 1987. Smith Barshop was also given options to renew such lease for two five year terms on practically the same terms and conditions as provided in Lease One.

Under Lease One, Smith Barshop leased approximately 6,672 rentable square feet of office space or approximately 2.5 percent of the space in the Property. The base rental was subject to periodic upward adjustments that were proportionate to increases in the operating expenses and real estate taxes associated with the Property. The Joint Venture was also permitted to terminate Lease One if Smith Barshop engaged in an "event of default" which included the nonpayment of rent.

5. After arm's-length negotiations between Smith Barshop and the Joint Venture, the parties entered into Lease

Two effective January 1, 1987. The demised premises under Lease Two constitute the entire tenth floor of the Property and total 14,871 rentable square feet of office space or approximately 5.6 percent of the rentable space in the Property. Lease Two will terminate on December 31, 1991, unless sooner amended, terminated or extended by the Joint Venture. Lease Two provides that the Joint Venture may terminate such lease upon an "event of default" which is defined in a manner substantially similar to the definition of the term as in Lease One. Lease Two also provides for periodic upward rental adjustments representing a proportionate share of the Property's operating expenses and real estate taxes.

6. In view of the party in interest relationship existing between Smith Barshop and Rivertel, Eastdil requests exemptive relief from the Department with respect to Lease One and Lease Two. Eastdil also requests prospective exemptive relief for the continuation of the present leasing arrangement existing between Smith Barshop and the Joint Venture under Lease Two. Eastdil represents that rentals under both Leases have been paid in a timely manner and Smith Barshop has otherwise complied with the terms of such Leases.

7. According to Eastdil, the Leases, which were standard commercial leases typically used by Lessees in the Property, were negotiated and entered into in arm's-length transactions between the Joint Venture and Smith Barshop. Eastdil, on behalf of Rivertel, reviewed, approved and has monitored the terms of each Lease. Eastdil represents that the rental rates provided for in the Leases were, at the time each was entered into, not less than the fair rental value of the demised space and comparable to the rental rates paid by lessees in the Property and in other similar buildings in the area at such time. Eastdil further states that the other terms and conditions of the Leases have also been comparable to those of similar leases of space in the Property and in similar commercial buildings in the San Antonio, Texas area entered into at such time. In addition, it is Eastdil's judgment as an experienced real estate manager that Smith Barshop is an excellent lessee for the Property.

8. Eastdil also requests exemptive relief, on a prospective basis, for any lease to a party in interest with respect to the Trust or any participating Plan. AT&T, Eastdil and other fiduciaries with respect to the Property will be specifically precluded from leasing space in the Property. Each such Future

Lease will, in form and substance, be a standard commercial lease generally used by lessees in the Property. Each Future Lease will be for a fixed term that will be negotiated on an arm's-length basis on behalf of the Trust by Eastdil. The terms and conditions of any such Future Lease will also be comparable to those of similar leases of space in the Property and in similar buildings in the area entered into at such time.

9. Eastdil further requests exemptive relief for prospective amendments, extensions, or renewals of Lease Two and the Future Leases. However, before any amendments, extensions or renewals of the Leases can be made, they must be reviewed, approved, negotiated and monitored by Eastdil. Eastdil must also make a prior determination that such amendments, renewals and extensions are in the best interests of the Trust and the Plans. In addition, the terms and conditions thereof must be comparable to the terms and conditions then negotiated with regard to similar Leases of space in the Property and in similar commercial office buildings in the San Antonio, Texas area and reflect common industry practice. Finally, Eastdil represents that it will apply the same standards of review and professional judgment it has applied previously with regard to possible amendments, extensions and renewals associated with Lease Two and the Future Leases.

10. Eastdil states that its request for prospective exemptive relief is necessitated by practical business considerations stemming from the large size of the Trust and the Plans and the large number of parties in interest who deal with them. Eastdil maintains that Rivertel requires the ability to negotiate and enter into Leases of the Property in the ordinary course of business. Eastdil also represents that the requested prospective relief for amendments, renewals or extensions of Lease Two and the Future Leases will provide Rivertel with additional flexibility which will expand the potential value of lease transactions involving the Property, thereby increasing the investment return to the Trust.

11. In summary, it is represented that the subject transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) Lease One and Lease Two were negotiated in arm's-length transactions on behalf of the Trust by Eastdil, an independent fiduciary of the Trust which is unrelated to Smith Barshop; (b) any amendments, renewals or extensions of Lease Two and any

Future Leases of the Property with parties in interest with respect to the Trust, including amendments, renewals or extensions thereof, will require the review, approval, negotiation and monitoring by Eastdil; (c) the Leases that are subject to this proposed exemption will continue to be standard commercial office leases which are utilized generally for all lessees of the Property and which reflect common industry practices; and (d) the rentals under the Leases will continue to be no less than the fair market rental values of the demised premises at the times of their executions.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Mead Retirement Master Trust (the Trust) Located in Dayton, Ohio

[Application No. D-7789]

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 (1) the proposed sale by the Trust of certain real property located in Michigan (the Timberlands), including certain timber rights pertaining thereto, to the Mead Corporation (Mead), a party in interest with respect to the Trust; and (2) the proposed sale by the Trust of all outstanding common stock of Copmead, Inc. to Mead; provided that all terms of such transactions are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties.

Summary of Facts and Representations

1. Mead is an Ohio publicly-owned corporation with its principal office in Dayton, Ohio. Mead and its subsidiary entities sponsor several employee pension benefit plans (the Plans), the assets of which are commingled for investment purposes in the Trust, which is exempt from taxation under section 501(a) of the Code. The trustee of the Trust is the Wachovia Bank and Trust Company, N.A. (the Trustee), a national banking association with its principal place of business in Winston-Salem, North Carolina. All control over the investment of the Trust's assets is

exercised by Mead through its Investment Policy Committee (IPC), which develops investment policies and procedures, implements investment programs and monitors designated activities of the Trust.

2. Among the assets of the Plans in the Trust are the Timberlands, which constituted approximately 4.3 percent of the total assets in the Trust as of December 31, 1987. The Timberlands consist of approximately 429,000 acres of land located in the Upper Peninsula of Michigan, together with certain timber and timber rights with respect to such land. The Timberlands were acquired and are owned by Copmead, Inc. (Copmead), Lamead, Inc., USMead, Inc., and Michland, Inc. (together, the Timberland Companies), each of which is a tax-exempt title-holding company of which the Trust owns 100 percent of the issued and outstanding common stock. The sole and stated purpose of each of the Timberland Companies is the ownership of the Timberlands on behalf of the Trust.

Since the acquisitions of the Timberlands in 1966 and 1982, the Timberland Companies have leased the Timberlands (the Leases) either to Escanaba Paper Company (Escanaba), a wholly-owned subsidiary of Mead, or to Mead and Upper Peninsula Land Company (UPLCo) as joint lessees. UPLCo is a partnership between Escanaba and another wholly-owned Mead subsidiary, the UPL Corporation. Mead represents that the acquisitions and the Leases of the Timberlands by the Timberland Companies on behalf of the Trust satisfy the requirements of section 408(e) of the Act relating to "qualifying employer real property" and, therefore, are exempt from the prohibitions of section 406 of the Act.⁴

3. Under the Leases, Mead and its subsidiaries actively manage the Timberlands on a continuous basis. However, Mead represents that the separate ownership of the Timberlands among the Timberland Companies constitutes an impediment to efficient management of the Timberlands. Mead maintains that the future efficient management of the Timberlands will require greater management flexibility in an ongoing program of sales, purchases and trades among the Timberland parcels to consolidate some tracts with parcels not presently owned and to dispose of other parcels which are either too remote for users or have

greater economic value for uses other than timber cutting. In order to enable a more efficient management of the Timberlands, Mead has expressed a desire to purchase the Timberlands from the Trust. Concurrently, the members of the IPC have expressed an interest in selling the Timberlands in order to achieve for the Trust greater liquidity and flexibility of investment. Therefore, Mead is proposing to purchase the Timberlands from the Timberland Companies and is requesting an exemption to permit such transaction under the terms and conditions described herein.⁵

4. According to Mead's representations, on March 5, 1987 the IPC authorized its chairman, William W. Wommack (Mr. Wommack) to represent the Trust in negotiations with Mead representatives regarding a proposed sale of the Timberlands. Mead maintains that Mr. Wommack's extensive experience in finance and investment figured prominently in this authorization. Mr. Wommack is the retired vice-chairman of the board of directors of Mead and prior to his retirement in 1981, he served as Mead's Chief Strategic Officer. Mead represents that because the Timberlands constitute a long-term fixed investment of the Trust, the IPC determined that in any sale of the Timberlands the Trust must receive a price which includes the present value of future economic benefits under the Leases, benefits which are summarized as (1) the current income streams under the Leases, and (2) the fair market value of the Timberlands at the expiration of the Leases. According to Mead's representations, after extensive discussion and analysis Mr. Wommack and representatives of Mead reached agreement on an appropriate method for valuation of each of these economic factors in order to determine an appropriate purchase price. Mead represents that, based on this agreement, the parties have determined an appropriate purchase price for the Timberlands (the Determination). Mead proposes to pay the Timberland Companies cash for their interests in the Timberland in an amount established in accordance with the Determination.

5. Mead maintains that the Determination largely reflects the position proposed on behalf of the Trust and notes that the Determination was

⁴ The Department expresses no opinion as to whether the Timberlands constitute "qualifying employer real property" or whether the acquisitions and Leases of the Timberlands satisfy the requirements of section 408(e) of the Act.

⁵ The Department is proposing exemptive relief herein solely for Mead's proposed purchase of the Timberlands and is not proposing any exemptive relief with respect to the Trust's acquisitions of the Timberlands or the Leases to Mead.

reviewed, approved and in part suggested by Rogers, Casey and Barksdale, Inc., an investment advisory and research firm providing specialized financial and consulting services to tax-exempt entities. Mead also represents that the Trustee reviewed the Determination and found it to be appropriate. The Determination includes a study commissioned by IPC from Salomon Brothers, Inc. on the appropriateness of various calculations involved in the Determination and Mead represents that the parties also consulted with the investment banking firm of Smith Barney, Harris, Upham and Company and reviewed long range forecasts of inflation and real returns on Treasury Bonds.

Appraisals of the Timberlands were conducted by George Banzhaf and Company (Banzhaf), a commercial real property appraisal firm based in Milwaukee, Wisconsin which is represented to have extensive experience in appraisals of timber property in Michigan's Upper Peninsula. Mead represents that Mr. Wommack and representatives of Mead carefully reviewed the appraisals and discussions with the Banzhaf representatives and agreed to use Banzhaf's appraisals in the Determination for calculating the Timberlands' present fair market value and the real growth rate of their future value. Mead represents that the Determination also includes specific valuations of the Leases' income streams and the Timberlands' residual, or post-Lease, values to the Trust. The Trust's total investment in the Timberlands is \$14.1 million and calculations made as of January 1, 1988 pursuant to the Determination result in a proposed purchase price of \$43,744,060. The purchase price will be adjusted upward as of the sale date to account for rentals accrued on and after January 1, 1988 and to reflect the reinvestment potential of the purchase price as of January 1, 1988.

6. Mead represents that the proposed transaction will consist of Mead's cash purchase of the Timberlands directly from all of the Timberland Companies except Copmead. Mead's purchase of that portion of the Timberlands owned by Copmead will be accomplished by means of Mead's cash purchase of all of the common stock of Copmead. Mead explains that during the negotiations over the proposed Timberlands sale there were 69,000 outstanding shares of sinking-fund preferred stock (the Copmead Preferred) which Copmead had sold to unrelated parties in 1982 after its purchase of certain Timberlands property and which, by its terms,

required that any transfer of Copmead real property assets be approved by the holders of the Copmead Preferred. Mead represents that the transfer of the Copmead common stock originally was proposed in lieu of the transfer of Copmead assets in order to avoid this procedural obstacle and the potential objections of the Copmead Preferred holders. The transaction proposed herein remains structured as a transfer of Copmead common stock even though the Copmead Preferred has been redeemed by Copmead and is no longer outstanding. Mead represents that the proposed transfer of the Copmead common stock will be tantamount to a transfer of the Copmead-owned Timberlands and that either of these transfers would accomplish the same economic result: the transfer of ownership of the Copmead-owned Timberlands from Copmead to Mead.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Trust, through the Timberland Companies, will receive a cash purchase price for the Timberlands in the amount of no less than the Timberlands' fair market values including the present value of future economic benefits under the Leases; (2) the Trust is represented in the Determination, which defines the proposed transaction, by Mr. Wommack, who has extensive experience in finance and investment; (3) the Determination has been reviewed and approved by the Trustee on behalf of the Trust; (4) the Trust's position and the valuation methods in the Determination were reviewed on behalf of the Trust and approved by the investment advisory and research firm of Rogers, Casey and Barksdale, Inc., which specializes in financial and consulting services to tax-exempt entities; (5) The final purchase price will be adjusted as of the sale date to reflect rentals accrued under the Leases and to reflect the reinvestment potential of the purchase price as of that date; and (6) The proposed transaction will achieve for the Trust greater liquidity and flexibility of investment.

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

**The Lincoln Savings Bank, FSB
(Lincoln) Located in New York, New York**

[Application No. D-7827]

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 to the sale by Lincoln of its subordinated capital notes (the Notes) to the Keogh Plans (the Keoghs) and Simplified Employee Plans (the SEPs) for which Lincoln serves as custodian or trustee, 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 sale by Lincoln of the Notes to the individual retirement accounts (the IRAs) for which Lincoln serves as custodian or trustee, provided the Keoghs, IRAs and SEPs pay no more than the fair market value of the Notes on the date of the sale.⁶

Summary of Facts and Representations

1. Lincoln is a federally-chartered stock savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC), primarily involved in providing retail bank and residential and commercial lending services in the New York City area. Lincoln was organized in 1866 as a New York State chartered mutual savings bank and converted to a federal charter in 1983. As of June 30, 1988, Lincoln had total assets of \$2.6 billion, deposits of \$2.3 billion and stockholder equity of \$139.5 million. Lincoln was acquired by a wholly-owned subsidiary of Unicorp American Corporation (Unicorp) on December 31, 1987 and converted to a federal stock savings bank. The conversion was supervised and approved by the Federal Home Loan Bank Board (FHLBB) and the FDIC. In connection with the acquisition, the Unicorp subsidiary purchased all of the outstanding stock of Lincoln for \$135 million and \$15 million aggregate principal amount of Lincoln's subordinated debentures.

2. Lincoln is in the process of registration with the FHLBB for the sale of up to \$30 million of the Notes, which are unsecured subordinated general obligations of Lincoln. The Notes are being offered for sale to the general public and to all existing Lincoln depositors. Lincoln also intends to offer

⁶ Pursuant to 29 CFR 2510.3-2(d), there is no jurisdiction with respect to the IRAs under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

the Notes to the Keoghs, SEPs and IRAs for which it acts as trustee or custodian.

3. Lincoln currently acts as custodian and/or trustee for 22, 443 IRA customers, 1,271 Keoghs and 65 SEPs with assets, in the aggregate, of approximately \$219,600,000. These assets represent slightly less than 10% of the total deposits held by Lincoln. Lincoln has no discretionary authority with respect to investment of IRA, Keogh and SEP assets. All investments are made at the direction of the account holder within the range of investment alternatives permitted by the plan documents. Lincoln represents that no single IRA, Keogh or SEP account will be permitted to invest more than 25% of the assets of such account in the Notes in connection with the offering by Lincoln.

4. The Notes will be issued in registered form in minimum amounts of \$2,500, without limitation on the size of incremental amounts thereof. Interest will be paid monthly, on the first business day of each month. The Notes will mature on dates offered by Lincoln of at least 7 and not more than 15 years from the date of issue. The pricing supplements to the offering circular will contain information as to the maturities then offered by Lincoln.

5. The Notes will be redeemable at the option of Lincoln, at any time after three years from the date of issuance, at the following redemption prices: 102% of the principal amount if redeemed during the fourth year after the date of issuance; 101% of the principal amount if redeemed during the fifth year after issuance; and 100% of the principal amount if redeemed thereafter, in each case with accrued interest to the date of payment. No redemption may be made without the prior written consent of the FHLBB or if, after giving effect to such redemption, Lincoln would fail to meet its then applicable regulatory capital requirements. The Notes are subordinated to other debts of Lincoln including deposit accounts.

6. The Notes will be sold by certain officers and other full-time employees of Lincoln. Written orders for the Notes will be solicited at the Bank's executive offices and at all branch offices. No commissions will be paid to such employees for offering and selling Notes and no fees or commissions will be payable to Lincoln by any purchaser of the Notes, including the IRAs, Keoghs and SEPs. Lincoln may also elect to offer all or a portion of the Notes through underwriters or dealers, although it does not currently intend to do so. The offering of the Notes will terminate no later than October 1, 1989 unless previously terminated or extended

(subject to FHLBB approval) by Lincoln, and is not subject to any minimum amount of Notes being sold. It is anticipated that Lincoln will offer the Notes in three series in the aggregate principal amount of \$10,000,000 each during the one year period of registration.

7. The interest payable on the Notes will be at a fixed rate established by Lincoln. The rate offered on the Notes will be based upon then-existing market conditions. It is currently anticipated that the Notes will bear interest at rates between 11% and 13% per annum. The interest on Notes acquired by Lincoln's IRAs, Keoghs and SEPs will be the same as the interest rate on Notes from the same series sold to the other Lincoln depositors and the general public. The terms and conditions of the Notes issued will be the same for IRAs, Keoghs and SEPs as for all other Lincoln depositors and the general public. The interest rate on the Notes at the time of issuance will be higher than that paid by Lincoln at that time on any of its certificates of deposit. The Notes will be transferrable by purchasers. Each purchaser of a Note will have the right to rescind his or her purchase within three business days from the date the order to purchase is received by Lincoln.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) All decisions to purchase the Notes are to be made by the IRA, Keogh and SEP account holders or fiduciaries other than Lincoln, which will have no discretion over such decision; (2) no fees or commissions will be paid with respect to the transaction; (3) no more than 25% of the assets of any IRA, Keogh or SEP account will be invested in the Notes; and (4) the Notes will be offered to the Keoghs, IRAs and SEPs at the same interest rates, terms and conditions as to other Lincoln depositors and the general public.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest 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, DC, this 25th day of January 1989.

Robert J. Doyle,

Director of Regulations and Interpretations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.

[FR Doc. 89-2061 Filed 1-27-89; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 89-5;
Exemption Application No. D-7386]

**Grant of Individual Exemptions;
Truman Arnold Co. Profit Sharing Plan
and Trust**

AGENCY: Pension and Welfare Benefits
Administration, Labor.

ACTION: Grant of individual exemptions.

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

Internal Revenue Code of 1954 (the Code).

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

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

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

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

Truman Arnold Company Profit Sharing Plan and Trust (the Plan) Located in Texarkana, Texas

[Prohibited Transaction Exemption 89-5; (Exemption Application No. D-7336)]

Exemption

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 past contribution of two buildings to the Plan

and leaseback of the buildings by Truman Arnold Companies (the Employer), nor to the agreement by the Employer and Mr. Truman Arnold to indemnify the Plan against any decline in the market value of the buildings, provided that the terms of the transactions were at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated person at the time the transactions were entered into.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 10, 1988 at 53 FR 45626.

Effective Date: June 1, 1988.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and 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.

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

Signed at Washington, DC, this 25th day of January 1989.

Robert J. Doyle,

Director of Regulations and Interpretations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.

[FR Doc. 89-2062 Filed 1-27-89; 8:45 am]

BILLING CODE 4510-29-M

MONITORED RETRIEVABLE STORAGE REVIEW COMMISSION

Meeting

ACTION: Notice of meeting.

SUMMARY: The Monitored Retrievable Storage Review Commission, pursuant to its authority under Subtitle A of Pub. L. 100-203, the Nuclear Waste Policy Amendments Act of 1987, will hold an additional public hearing in Atlanta, Georgia to obtain the views of the public on the need for a monitored retrievable storage (MRS) facility as part of the nation's nuclear waste management system. To date, the Commission has held public hearings in Washington, DC; Denver, Colorado; San Francisco, California; and Atlanta, Georgia. An additional hearing is being scheduled to accommodate all of the people who requested to testify in Atlanta, Georgia. This notice announces the date and location of the hearing, provides procedures for participating in the hearing, and lists some of the issues that participants may want to address in their remarks.

DATES: The date, location, and time of the hearing is:

- February 16, 1989 in Atlanta, Georgia at the Westin Plaza, Peachtree and International Boulevard, Atlanta, GA 30343 (404-659-1400), from 9:00 a.m. to 5:00 p.m. and,
- February 17, 1989 in Atlanta, Georgia at the Westin Plaza, Peachtree and International Boulevard, Atlanta, GA 30343 (404-659-1400), from 9:00 a.m. to 5:00 p.m.

ADDRESSES: Requests to testify should be made in writing to Ms. Paula N. Alford, Director, External Affairs, MRS Review Commission, 1825 K Street NW., Suite 318, Washington, DC 20006. Requests to testify must be received no later than February 6, 1989. The written request should specify the following: Name, title, organization and telephone number of the person who will be testifying; name, title, organization, and telephone number of the person to contact regarding the testimony if different from the presenter; and length of time desired to present testimony.