

a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of May 1996.

Ivan Strasfeld,

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

[FR Doc. 96-12985 Filed 5-22-96; 8:45 am]

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**[Prohibited Transaction Exemption 96-38;
Exemption Application No. D-09410, et al.]**

**Grant of Individual Exemptions;
RREEF USA Fund**

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of

Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

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

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

Statutory Findings

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

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

RREEF USA Fund—I (The Trust),
Located in San Francisco, California

[Prohibited Transaction Exemption 96-38;
Exemption Application No. D-09410]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason

of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the receipt by RREEF America L.L.C., the investment manager of the Trust (the Manager), of a certain performance compensation fee (the Performance Fee) in connection with the liquidation of the Trust, provided that the following conditions are satisfied:

(a) The terms and the payment of the Performance Fee shall be approved in writing, through approval of an amendment to the Group Trust Agreement, by independent fiduciaries of the plans that participate in the Trust (the Participating Plans);

(b) The terms of the Performance Fee shall be at least as favorable to the Participating Plans as those obtainable in an arm's-length transaction between unrelated parties;

(c) The total fees paid to the Manager by the Participating Plans that have invested in the Trust, shall constitute no more than reasonable compensation;

(d) The Performance Fee will be payable only when all of the assets of the Trust have been completely liquidated;

(e) The Performance Fee received by the Manager will be based on distributions, adjusted for inflation and present value, and will be calculated using two real hurdle rates of return. The Performance Fee will equal 10% after the Participating Plans have earned a 5% real return on the initial value of their investment and 20% after the Participating Plans have earned an 8% real return on the initial value of their investment;

(f) In the event of the Manager's resignation or termination as the investment manager to the Trust, the Investment Management Agreement would also terminate¹ and the Manager will not receive a Performance Fee;

(g) The Manager or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (2) of this Section (g) to determine whether the conditions of this exemption have been met, except that:

(1) (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (b) no party in interest, other than the Manager, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code if the records are not

¹ Unless termination was in bad faith wherein the Manager may seek legal recourse.

maintained or are not available for the examinations required from (2) below.

(2) (a) Except as provided in paragraph (3) and notwithstanding any provisions of section 504 (a)(2) and (b) of the Act, the records referred to in paragraph (1) of this Part (g) shall be unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Participating Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Participating Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Participating Plan or any duly authorized employee or representative of such participant or beneficiary.

(3) None of the persons described above in paragraph (2)(a)(i)–(iv) shall be authorized to examine the trade secrets of the Manager and its affiliates or any commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: This exemption will be effective as of January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

Timberland Investment Group, Inc. (Timberland) and Wachovia Bank of Georgia, N.A. (the Investment Manager), Located in Atlanta, GA

[Prohibited Transaction Exemption 96–39; Exemption Application Nos. D–09969 and D–09970]

Exemption

Section I. Covered Transaction

The restrictions of section 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)(E) of the Code, shall not apply to the payment of an incentive fee (the Incentive Fee) by Timberland, a special purpose corporation which holds plan assets from the American Telephone and Telegraph Master Trust (the AT&T Trust) and the BellSouth Master Pension Trust (the BellSouth Trust),² to the Investment Manager of Timberland, a party in interest with respect to the Trusts.

This exemption is conditioned upon the requirements set forth below in Section II.

Section II. General Conditions

(a) The investment of the assets of each Trust in Timberland, including the terms and payment of the Incentive Fee, is approved in writing by a Trust fiduciary who is independent of the Investment Manager and its affiliates (the Independent Fiduciary).

(b) Each Trust participating in Timberland has total assets that are in excess of \$50 million and no Trust has invested more than one percent of its assets in Timberland.

(c) The terms of the Trusts' investment management agreements for Timberland, including the Incentive Fee, are at least as favorable to the Trusts as those obtainable in an arm's length transaction with an unrelated party.

(d) Prior to investing in Timberland, each Independent Fiduciary entered into an agreement with the Investment Manager disclosing all material facts concerning the purpose, structure and operation of Timberland including the fee arrangements.

(e) With respect to its ongoing participation in Timberland, each Trust receives the following written documentation from the Investment Manager:

(1) Audited financial statements of Timberland prepared by independent, qualified public accountants on an annual basis, which disclose the fees that are paid to the Investment Manager and its affiliates.

(2) Quarterly valuations, transmitted routinely to the Trusts, which indicate the fair market value of Timberland's assets as established by appraisers who are independent of the Investment Manager and its affiliates.

(3) Upon request, valuations performed by independent appraisers at three year intervals which determine the underlying land value of Timberland.

(4) Upon request, a timber inventory valuation of Timberland performed every five years by independent, registered consulting foresters in order to determine timber volume and growth rates.

(f) The total fees paid to the Investment Manager constitute no more than reasonable compensation.

(g) The Incentive Fee is payable to the Investment Manager upon the complete liquidation of the Trusts' account in Timberland (the Timberland Account) and only if the Trusts recover distributions equal to their initial investments in Timberland.

(h) In the event that the Investment Manager resigns or is removed prior to the complete liquidation of the Timberland Account,

(1) The Trusts will appoint a successor Investment Manager to effect the liquidation of such account.

(2) The Incentive Fee will not be paid to the former Investment Manager until the complete liquidation of the Timberland Account takes place.

(3) The Incentive Fee will only be paid to the former Investment Manager if it represents the lowest of three fee amounts.

(i) The Investment Manager maintains, for a period of six years, the records necessary to enable the persons described in paragraph (i) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Investment Manager and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Investment Manager shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (i) below.

(i)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this Section shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(B) Any fiduciary of a plan (the Plan) participating in the Trusts or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan participating in the Trusts or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any Plan participating in the Trusts, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph (i) shall be authorized to examine the trade secrets of the Investment Manager or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) An "affiliate" of the Investment Manager includes—

² The AT&T Trust and the BellSouth Trust are collectively referred to herein as the Trusts.

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Investment Manager. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director, employee, relative of, or partner of any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An "Independent Fiduciary" is a Trust fiduciary which is independent of the Investment Manager and its affiliates.

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 December 8, 1995 at 60 FR 63065.

Written Comments

The Department received 54 written comments with respect to the notice of proposed exemption and no requests for a public hearing. The written comments were submitted by participants in the BellSouth Trust and were essentially the same, with the commentators expressing their concern that the granting of the exemption would somehow jeopardize the security of the participants' pension rights under Plans investing in the BellSouth Trust.

In response to these concerns, the Investment Manager represented that participants' pension rights would not be adversely affected by the granting of the exemption because the estimated annualized rate of return attributed to assets of the Trusts invested in Timberland, net of expenses, would be 11.02 percent if the Incentive Fee was imposed and 10.49 percent if the exemption was not granted. The Investment Manager noted that these estimates were based on both actual and estimated earnings generated by the timberland under its management to date.

The Investment Manager noted that if the value of any remaining timberland held by Timberland was to decline significantly before the liquidation of Timberland was completed, the rate of return to the Trusts also would be reduced. Such a reduction, according to the Investment Manager, would occur

whether or not the exemption was granted. If the exemption was granted, the Investment Manager stated that it would receive a lower Incentive Fee assuming the investment return to the Trusts was reduced.

Thus, after giving full consideration to the entire record, the Department has decided to grant the subject exemption. The comment letters have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Herzog, Heine, Geduld, Inc., Located in New York, New York

[Prohibited Transaction Exemption 96-40; Exemption Application No. D-10018]

Exemption

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 extension of credit between Herzog, Heine, Geduld, Inc. (HHG) and various individual retirement accounts for which HHG serves as passive trustee or custodian (the HHG IRA or HHG IRAs) resulting from the in-kind transfer to HHG IRAs at the direction of the owners of such HHG IRAs of certain senior subordinated notes (the Notes) issued by HHG, and thereafter the holding of such Notes by the HHG IRAs; provided that: (1) officers, directors, and employees in HHG who are also owners of HHG IRAs do not participate in the transactions; (2) the owners of the HHG IRAs have exclusive responsibility and control over the investment of the assets of such accounts; (3) HHG has no discretionary authority or control with respect to the investment of the assets of the HHG IRAs involved in the transactions, nor does HHG render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets; (4) a separate accounting of the assets in the HHG IRAs, including the Notes which have been acquired by such accounts, will be maintained by HHG; (5) the value of the Notes in each HHG IRA will at no time exceed 25 percent (25%) of the value of the assets of each HHG IRA; (6) the HHG IRAs will pay no fees or commissions in

connection with the transactions; and (7) the combined total of all fees received by HHG for the provision of services to the HHG IRAs is not in excess of "reasonable compensation" within the meaning of section 4975(d)(2) of the Code.³

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 22, 1996 at 61 FR 11892.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

The Buchanan Broadcasting Co., Inc. Profit Sharing Plan and Trust (the Plan), Located in Birmingham, AL

[Prohibited Transaction Exemption 96-41; Exemption Application Nos. D-10133 and D-10134]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the leasing of certain office space in a building (the Property) by the individual account of Robert M. Buchanan, Jr. (the Account) in the Plan to Buchanan Broadcasting Co., Inc. (Buchanan Broadcasting) and to Westwood Square, Ltd. (Westwood Square), both parties in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the leases are and continue to be at least as favorable to the Account as those the Account could obtain in comparable arm's length transactions with unrelated parties;

(b) The rent charged by the Account under the leases is and continues to be no less than the fair market rental value of the Property, as established every three years by the independent property manager;

(c) At all times, the fair market value of the leased premises represents no more than 25 percent of the total assets of the Account;

(d) Mr. Buchanan is the only participant of the Plan to be affected by the proposed transactions; and

(e) Within 90 days of the publication in the Federal Register of a notice granting this proposed exemption, both Buchanan Broadcasting and Westwood Square file Form 5330 with the Internal Revenue Service (the Service) and pay

³ Pursuant to 29 CFR 2510.3-2(d), the HHG IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

all excise taxes applicable under section 4975(a) of the Code that are due by reason of certain prior prohibited lease transactions.

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 April 4, 1996 at 61 FR 15142.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

James Flynn & Associates, Ltd. Pension Plan (the Plan), Located in Scottsdale, Arizona

[Prohibited Transaction Exemption 96-42; Exemption Application No. D-10164]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the transfer of a parcel of real property (Lot 1) to the Plan by James T. and Britt Marie Flynn (the Flynnns), disqualified persons with respect to the Plan, together with a cash payment by the Flynnns to the Plan of \$29,000, and (2) the transfer of a parcel of real property (Lot 2) by the Plan to the Flynnns, provided the following conditions are satisfied: (a) the Plan receives not less than the fair market value of Lot 2 as of the date of the transfers; (b) the fair market values of Lots 1 and 2 are determined by a qualified, independent appraiser; and (c) the Flynnns are the only participants in the Plan to be affected by the transactions, and they both desire that the transactions be consummated.⁴

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 April 4, 1996 at 61 FR 15144.

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

Pierre W. Mornell, M.D., A Sole Proprietorship, Defined Benefit Plan (the Plan), Located in Mill Valley, California

[Prohibited Transaction Exemption 96-43; Exemption Application No. D-10170]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain unimproved real property located in Mill Valley, California (the Property) by the Plan to Pierre W. Mornell and Linda C. Mornell, parties in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price for the Property in the amount of the fair market value of the Property; and

(C) The Plan does not incur any expenses or suffer any loss with respect to the transaction.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on March 22, 1996 at 61 FR 11894.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/

or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, D.C., this 20th day of May, 1996.

Ivan Strasfeld,

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

[FR Doc. 96-12984 Filed 5-22-96; 8:45 am]

BILLING CODE 4510-29-P

Advisory Council on Employee Welfare and Pension Benefits Plans; Full Council Meeting Notice

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a full council meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on June 19, 1996, in Room N3437 C&D, U.S. Department of Labor building, Third and Constitution Avenue NW., Washington, D.C. 20210.

The purpose of the meeting, which will be from 3:30 until 4:30 p.m., is to hear progress being made by the three working groups of the council.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 27, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue NW., Washington, D.C. 20210.

Individuals or representatives or organizations wishing to address the Advisory Council should forward their request to the Acting Executive Secretary of telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 27 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the

⁴ Since Mr. Flynn is the sole stockholder of JFA and the Flynnns are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3 (b) and (c). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.