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Richard B. Chapman,

*Director, Telecommunications Services Staff,
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DEPARTMENT OF JUSTICE

Justice Management Division/ Information Resources Management/ Telecommunications Services Staff; Notification of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Global Criminal Justice Information Network Advisory Committee will be held on December 10-11, 1998. The Group will meet from 9:00 am-5:00 pm on December 10, 1998 and from 9:00 am-2:00 pm on December 11, 1998 at the Hyatt Dulles Hotel, 2300 Dulles Corner Boulevard, Herndon, VA, 20171. The Advisory Committee will meet to carry out its activities identified under National Performance Review "Access America" Initiative A07.

This meeting will be open to the public. Any interested person must register two (2) weeks in advance of the meeting. Registrations will then be accepted on a space available basis. For information on how to register, contact R.D. Robertson, the Designated Federal Employee (DFE), 600 E Street NW, 3rd Floor, Washington, DC 20530, or call (202) 514-1600. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the DFE.

If you need special accommodations due to a disability, please contact Tom Michalisko at (703) 713-1234 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from R.D. Robertson, the DFE, 600 E Street NW, 3rd Floor, Washington, DC 20530, or call (202) 514-1600.

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[FR Doc. 98-30001 Filed 11-6-98; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Violence Against Women Office; Meeting

AGENCY: United States Department of Justice and United States Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Council on Violence Against Women, co-chaired by the Attorney General and Secretary of Health and Human Services, will meet November 17 and 18, 1998 in the third floor conference room of the U.S. Department of Justice's Office of Justice Programs at 810 7th Street, NW, Washington, DC 20531. Scheduled to begin at 9:30 a.m. on November 17th and adjourn at 3:30 p.m. on November 18th, the meeting will include opening remarks by the Attorney General and Secretary Shalala, committee meetings, and an afternoon plenary session.

Committee meetings and the plenary session will be open to the public on a space-available basis. Reservations are required and a photo ID will be requested for admittance. To reserve a space and advise of any special needs, interested persons should call the U.S. Department of Justice Violence Against Women Office at (202) 616-8894. Sign language interpreters will be provided. Anyone wishing to submit written questions to the Council should notify the Violence Against Women Office by Thursday, November 12, 1998. The notification may be delivered by mail, telegram, or facsimile or in person. It should contain the requestor's name and his or her corporate or government designation or consumer affiliation along with a short statement describing the topic to be addressed. Interested parties may attend by calling Ms. Karen Noel at (202) 616-8894.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this meeting may be sent to the Violence Against Women Office, United States Department of Justice, Room 5302, 950 Pennsylvania Avenue, NW, Washington, DC 20530, by telephone to (202) 616-8894, or by facsimile to (202) 307-3911.

Bonnie J. Campbell,

*Director, Violence Against Women Office,
United States Department of Justice.*

[FR Doc. 98-30000 Filed 11-6-98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10535, et al.]

Proposed Exemptions; Moody-Day, Inc.

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 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 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

proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed 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 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (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 proposed exemption 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.

Moody-Day, Inc. Profit Sharing Plan, (the Plan), Located in Carrollton, Texas

(Application No. D-10535)

Proposed Exemption

The Department of Labor (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 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).¹ If the exemption is granted, 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(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale (the Sale) by the Plan of an unimproved three-acre tract of real property located in Austin, Texas (the Property) to Metroport Realty Corporation (Metroport), an affiliate of Moody-Day, Inc., the Plan sponsor and a party in interest with respect to the Plan,

provided the following conditions were satisfied:

(a) the Sale was a one-time transaction for cash;

(b) the Plan received the fair market value of the Property on the date of the Sale;

(c) the Property was appraised by qualified, independent real estate appraisers;

(d) a qualified, independent fiduciary determined that the Sale was in the best interests of the Plan; and

(e) the Plan paid no commissions or other expenses relating to the Sale.

Effective Date of Exemption: If granted, the effective date of this exemption will be May 24, 1995.

Summary of Facts and Representations

1. The Applicants are Donald J. Carter, William J. Hendrix, and M. Douglas Adkins in their capacity as trustees (Trustees) of the Moody-Day, Inc. Profit Sharing Plan, and Ronald L. Carter and Jeffery Fink who were directors of Moody-Day, Inc. (Moody-Day) on the date of the Sale.

2. The Applicants state that the Plan is a defined contribution plan which had 50 participants as of the end of the 1994 Plan year. The Applicants state further that at the time of consummation of the Sale, the fair market value of the total assets of the Plan was \$217,545. The fair market value of the Property was determined to be \$165,000 (see paragraph 8 below) at that time. Thus, approximately 76% of the Plan's assets was involved in the subject transaction.²

3. The Property was owned by the Plan at the time of the Sale free and clear of any encumbrances. The Property consists of approximately 3 acres of unimproved land at the Northeast corner of Middle Fiskville Road and Northcape Drive in the City of Austin, Travis County, Texas. The Property was not adjacent to any property owned by the Plan sponsor or a party in interest with respect to the Plan.

The Property was acquired by the Plan in 1977 from an unrelated party, for \$47,154. The Applicants represent that the Property has been held by the Plan since it was acquired in 1977 and it has not been leased to or used by any party in interest or other related party during such time.³

4. The Applicants represent that the motivation for the Sale of the Property by the Plan to Metroport was solely to benefit the Plan's participants and beneficiaries. The Plan had been frozen since 1991 and the participants and beneficiaries were requesting that distributions of their assets be made. The Plan had tried, without success, to sell the Property on the open market since 1989. The Applicants represent that the Sale of the Property was in the best interests of the Plan and its participants and beneficiaries. At the time of the Sale, the Property was the last remaining asset of the Plan. Thus, the Sale provided the necessary liquidity to allow for a termination of the Plan and a final distribution of its assets.

Prior to the Sale, the Applicants were advised by their legal counsel (Counsel) that the Property could be sold to Metroport pursuant to Prohibited Transaction Exemption (PTE) 84-14 (49 FR 9494, March 13, 1984), a class exemption for certain prohibited transactions by a plan whose assets are managed by a "qualified professional asset manager" or "QPAM" (the QPAM Exemption).⁴ The Applicants represent that they now believe that the conditions of PTE 84-14 may not have been satisfied with respect to the Sale. As a result, they request that the Department consider granting an individual exemption under section 408(a) of the Act, which would be effective as of May 24, 1995, the date of the Sale.

5. In order to fulfill what the Applicants, Moody-Day, Inc., Metroport and Counsel believed to be the requirements of PTE 84-14 with respect to the Sale, on or about December 19, 1994, the Applicants, on behalf of the Plan, hired Lucian L. Morrison (Mr. Morrison) as an independent fiduciary for the purpose of appointing a QPAM to sell the Property owned by the Plan. Prior to this time, Counsel had contacted Mr. Morrison, the past President of Heritage Trust Company in Houston, Texas, with regard to his willingness to act as an independent fiduciary for the Plan. Counsel, on behalf of the Applicants, had contacted Mr. Morrison because he had acted in a fiduciary capacity in a number of

provisions of Part 4 of Title I of the Act. The Department is providing no retroactive exemptive relief herein with respect to the acquisition and holding of the Property by the Plan.

⁴ PTE 84-14 provides relief from the restrictions of section 406(a) of the Act for transactions between parties in interest and plans where a QPAM (as defined in Part V(a) of that class exemption) is the decision-maker for the assets of the plan involved, and certain other conditions are met.

¹ Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

² It is represented that a high percentage of the Plan's assets was involved in the Sale because the Property was one of the only remaining assets of the Plan at the time of the transaction. In this regard, the Sale was carried out in connection with completing the affairs of the Plan for termination.

³ The Department expresses no opinion herein regarding whether the acquisition and holding of the Property by the Plan violated any of the

situations for various entities. On July 11, 1994, Counsel informed the Applicants that Mr. Morrison was willing to act on behalf of the Plan in appointing a QPAM to have investment discretion with respect to the Sale. Counsel advised Moody-Day and the Applicants that in order to comply with PTE 84-14, the Sale would proceed as follows:

(1) Mr. Morrison would appoint a QPAM to represent the Plan with respect to the potential sale of the Property;

(2) the QPAM would hire its own appraiser or appraisers and attorney to represent it in the transaction and, if appropriate, to negotiate the terms of the sale between the Plan and Metroport; and

(3) after the final terms of any transaction were negotiated and approved, the sale would close with all appropriate documents properly executed.

Therefore, on December 19, 1994, Mr. Morrison was engaged as an independent fiduciary of the Plan to select and hire a QPAM to evaluate the proposed transaction and to negotiate the terms thereof. Mr. Morrison had full authority to select the QPAM and to allocate a portion of his fiduciary authority to the QPAM. No recommendations for the selection of the QPAM were made by either Moody-Day, the Applicants, or any other party in interest with respect to the Plan.

6. On December 19, 1994, a "Limited Purpose Independent Fiduciary Agreement" (the Limited Agreement) was formally entered into between Moody-Day, the Trustees, and Mr. Morrison. The purpose of the Limited Agreement was to facilitate the Sale of the Property. The Limited Agreement stated that the Sale would be a prohibited transaction unless an exemption from the prohibited transaction rules of the Act was utilized. The Limited Agreement further specified that the QPAM Exemption was available for this purchase if the conditions of that exemption were met.⁵

⁵ In this regard, Part I(a) of PTE 84-14 provides that:

(a) At the time of the transaction (as defined in section V(i)) the party in interest, or its affiliate (as defined in section V(c)), does not have, and during the immediately preceding one year has not exercised, the authority to—

(1) Appoint or terminate the QPAM as a manager of any of the plan's assets, or (2) negotiate the terms of the management agreement with the QPAM (including renewals or modifications thereof) on behalf of the plan; * * *

Part I(c) of PTE 84-14 provides that:

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general directions of, the QPAM, and

Mr. Morrison accepted his appointment as a limited purpose independent fiduciary and agreed to act as provided for under the Limited Agreement, the Plan Document, and the Act. Mr. Morrison selected Sarofim Realty Advisors (SRA) as a "QPAM" to transact the Sale of the Property by the Plan. SRA, as a fiduciary of the Plan, served as investment manager with exclusive investment discretion over the Property. The Applicants represent that SRA, as fiduciary of the Plan, was not related to or otherwise affiliated with Moody-Day, Inc., Metroport, Counsel or the Applicants.

7. On December 22, 1994, Mr. Morrison, SRA and Moody-Day entered into an "Investment Management Agreement" (the IMA). As independent fiduciary, Mr. Morrison appointed SRA as an Investment Manager (IM) of the Plan for purposes of the proposed transaction. In Section 2 of the IMA, SRA acknowledged that in acting as an

either the QPAM or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the QPAM, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest; * * *

Part V(c)(3) of PTE 84-14 provides, in relevant part, that a named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of Part I(a) if such an employer * * * has the authority * * * to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

Section 402(a) of ERISA provides that every employee benefit plan shall be established and maintained pursuant to a written instrument. This instrument must provide for one or more named fiduciaries who have the authority to control and manage the operation and administration of the plan. Under sections 402(c)(3) and 403(a) of ERISA, only a named fiduciary has the authority to appoint an investment manager, and such an appointment may be made only as specifically provided in the plan instrument.

The preamble to the proposed class exemption, 47 FR 56945 at 56947 (December 21, 1982), explains that the Department is prepared to grant broad exemptive relief only where an independent asset manager has, and in fact exercises, discretionary authority to cause an investment fund to enter into a transaction which is otherwise prohibited. Party in interest transactions that are negotiated by, e.g., an employer which sponsors a plan, and are then presented to a QPAM for approval would not qualify for the class exemption as proposed.

It is the view of the Department that the retention of a QPAM solely to approve a specific transaction presented for its consideration by a plan sponsor at the time of its engagement is inconsistent with the underlying intent of the exemption, i.e., the transfer of plan assets to an independent, discretionary manager free from the undue influence of the sponsor. Such a transaction also raises issues under section I(c) of the exemption which requires that the transaction not be a part of an agreement, arrangement or understanding designed to benefit a party in interest.

IM under the IMA, it would be acting as a fiduciary of the Plan as defined under section 3(21) of the Act. Section 4 of the IMA provides, in pertinent part, that the IM shall: (1) Evaluate the proposed transaction and, if appropriate; (2) negotiate the terms of the Sale. Section 4 also provides that the IM shall sell the Property to Metroport if, in the IM's judgement, the sale price negotiated by the IM represented the fair market value of the Property as determined by the IM after considering one or more appraisals obtained from qualified, independent appraisers. Finally, section 6 of the IMA provides that the agreement shall terminate on the closing date of the proposed sale in the event that the IM directs the Plan to enter into the sale of the Property to Metroport.

8. In order to determine the fair market value of the Property, SRA, in its capacity as IM, retained the independent appraisal firm of Bach Thoreen McDermott, Inc., of Houston, Texas, to appraise the Property. Mr. Steven N. Bach (Mr. Bach), MAI, prepared the appraisal that was used to establish the value of the Property for the Sale.⁶ Using the Sales Comparison Approach (i.e. which relied on recent sales of similar properties in the open market) to value the Property, Mr. Bach determined that the fair market value of the Property, as of January 30, 1995, was \$165,000. Mr. Bach reported his finding to SRA on the same date.

9. On February 1, 1995, SRA in its capacity as IM, opined that \$165,000 represented the fair market value of the Property and determined that the Sale to Metroport at that price would be in the best interests of the Plan and its participants and beneficiaries.

10. Pursuant to SRA's findings and instructions for the Sale, the Plan sold the Property to Metroport for \$165,000 in cash on May 24, 1995. In this regard, a Special Warranty Deed conveying title to the Property from the Plan to Metroport was signed on May 24, 1995 by a Trustee of the Plan. With respect to the Sale, the Plan paid no commissions or other expenses.

Moody-Day represents that all parties involved in the Sale recognized that Metroport was paying the Plan an amount which represented no less than the current fair market value of the Property.

11. In summary, the Applicants represent that the requested exemption

⁶ SRA also secured an appraisal from Crosson Dennis, Inc., an independent real estate appraisal firm, who determined that the Property had a fair market value of \$95,000 as of December 22, 1994. However, after consulting with Counsel and the Trustees, SRA selected Mr. Bach for the purpose of securing a second appraisal of the Property.

will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Sale was a one-time transaction for cash; (b) the Plan received the fair market value of the Property on the date of the Sale; (c) the fair market value of the Property was determined by an independent, qualified real estate appraiser at the time of the Sale; (d) a qualified, independent fiduciary acting on behalf of the Plan appointed an independent investment manager who negotiated the terms of the transaction, determined that the Sale was in the best interests of the Plan, and assured that the Plan received an amount in cash equal to the fair market value of the Property; and (e) the Plan paid no commissions or other expenses relating to the Sale.

FOR FURTHER INFORMATION CONTACT:

Janet L. Schmidt of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

Mohammad J. Iqbal Employee Profit Sharing Plan and Trust (the Plan), Located in Elizabethtown, KY

(Application Number D-10614)

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 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of 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 (the Sale) of 12 Krugerrand gold coins (the Coins) by the individually directed account (the Account) in the Plan of Dr. Mohammad J. Iqbal (Dr. Iqbal), to Dr. Iqbal, a party in interest and disqualified person with respect to the Plan, provided that the following conditions are met:

- (a) The Sale is a one-time transaction for cash;
- (b) The terms and conditions of the Sale are as least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party;
- (c) The Account receives the fair market value of the Coins as of the date of Sale; and
- (d) The Account is not required to pay any commissions, costs, or other expenses in connection with the Sale.

Summary of Facts and Representations

1. The Plan is a defined contribution profit-sharing plan that provides its 3

participants with the opportunity to direct the investment of their individual accounts. The Plan is sponsored by Dr. Iqbal, who also serves as Plan Trustee and Plan Administrator. As of December 31, 1997, the Plan held assets valued at approximately \$2,199,000. As of the same date, Dr. Iqbal's Account held assets valued at approximately \$2,110,000.

2. Among the assets in the Account are 12 Krugerrand gold coins. The Coins, issued by the South African government, were purchased by the Account on March 6, 1992, for \$4,848 from the Gumer & Company brokerage firm located in Louisville, Kentucky.⁷ As of Friday, October 23, 1998, the asking price in the Wall Street Journal was \$300 per coin.

3. The applicant requests an exemption for the proposed Sale of the Coins by the Account to Dr. Iqbal. Dr. Iqbal represents that he will pay fair market value for the Coins on the date of the Sale, as determined by the asking price listed in the "Cash Prices" table in the Wall Street Journal on such date. The applicant wishes to engage in the proposed transaction because the Coins have steadily declined in value.⁸ Dr. Iqbal wishes to have the Account reinvest the proceeds from the proposed Sale in assets which may generate a higher rate of return.

4. The applicant represents that the proposed transaction would be administratively feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the Account because the Sale of the Coins would enable the Account to invest the proceeds from the Sale in other assets and potentially achieve a higher rate of return. Finally, the applicant asserts that the transaction will be protective of the rights of the participant and beneficiary as indicated by the fact that the Account will receive the fair market value of the Coins as of

⁷ The applicant represents that, at the time of the original acquisition, the Plan was not an "individually directed account plan." The Department notes that section 408(m) of the Code provides, in pertinent part, that "[t]he acquisition * * * by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible." Section 408(m)(2)(A) includes coins in the definition of the term collectible. In this regard, the Department is not providing any exemptive relief to the extent section 408(m) is applicable to the facts in this case.

⁸ The Department expresses no opinion in this proposed exemption as to whether the acquisition and the subsequent holding of the Coins by the Account violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

the date of Sale, and will incur no commissions, costs or other expenses as a result of the Sale.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Sale will be a one-time transaction for cash; (b) the terms and conditions of the Sale will be at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party; (c) the Account will receive the fair market value of the Coins as of the date of Sale; and (d) the Account will not be required to pay any commissions, costs, or other expenses in connection with the Sale.

Notice to Interested Persons: Because Dr. Iqbal is the only participant to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219-8881. (This is not a toll-free number.)

Individual Retirement Accounts (Collectively, the IRAs) for William N. Albright, Victor Hamre, and Richard Pearson, (Collectively, the Participants) Located in Westerville, Ohio; Chicago, Illinois; and New York, New York, Respectively

(Application No. D-10656, 10657, 10658)

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 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). 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 cash sales (the Sales) of certain shares of stock (the Stock) in the First Community Bancshares Corp. (First Community) by each IRA to its respective Participant, a disqualified person with respect to the IRA,⁹ provided that the following conditions are met:

- (a) The terms and conditions of the Sales will be at least as favorable to each

⁹ There is no jurisdiction under 29 CFR § 2510.3(b) since the IRAs have only one participant. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

IRA as those obtainable in arm's length transactions with an unrelated party;

(b) The Sales will be one-time transactions for cash;

(c) The IRAs will receive the fair market value of the Stock as established by a qualified, independent appraiser; and

(d) The IRAs will pay no commissions, costs or other expenses with respect to the Sales.

Summary of Facts and Representations

1. The IRAs are individual retirement accounts, as described in Section 408(a) of the Code. Each IRA owns shares of Stock in First Community. First Community is a bank holding company located in Milton, Wisconsin with 230,789 shares of Stock issued and outstanding. First Community's primary assets are First Community's 100% ownership of two banks: Citizens Savings Bank located in Anamosa, Iowa with approximately \$37.6 million in total assets and First Community Bank located in Milton, Wisconsin with approximately \$62.7 million in total assets.

2. The Participants of the IRAs are: William N. Albright, the president of First Community Bank; Victor Hamre, the president of Citizens Savings Bank; and Richard Pearson, a director at both First Community Bank and Citizens Savings Bank. The Participants describe the IRAs as follows:

(a) The IRA of William N. Albright (the Albright IRA) currently holds total assets valued at approximately \$289,538. The Albright IRA's ownership of 9,200 shares of the Stock comprises 99.74% of the Albright IRA's total assets and represents a 3.99% interest in First Community.¹⁰ The Albright IRA acquired the Stock in 1995 for investment purposes from an existing First Community shareholder for \$23.00 per share.

(b) The IRA of Victor Hamre (the Hamre IRA) currently holds total assets valued at approximately \$82,907. The Hamre IRA's ownership of 1,087 shares of the Stock comprises 41.16% of the Hamre IRA's total assets and represents a 0.47% interest in First Community.

The Hamre IRA acquired the Stock in 1995 for investment purposes from an existing First Community shareholder for \$23.00 per share.

(c) The IRA of Richard Pearson (the Pearson IRA) currently holds total assets valued at approximately \$413,084. The Pearson IRA's ownership of 5,941 shares of the Stock comprises 41.73% of the Pearson IRA's total assets and represents a 2.57% interest in First Community. The Pearson IRA acquired the Stock for investment purposes from First Community when First Community issued new shares in 1991 and 1992 for \$17.15 and \$19.14 per share, respectively.¹¹

3. The Participants represent that business considerations have recently caused First Community to elect to be taxed as a Subchapter S corporation. This election is tentatively scheduled to become effective as of the close of business on December 31, 1998. The Participants propose to purchase the Stock from their respective IRAs to avoid the violation of section 1361 of the Code which prohibits IRAs from holding stock in a Subchapter S corporation.

4. Mr. Kent Fisher and Mr. Neal Richardson (collectively, the Appraisers) appraised the Stock on June 30, 1998. The Appraisers are both experienced business appraisers for Lindgren, Callihan, Van Osdol & Co., Ltd., an appraisal company independent of the IRAs and the Participants. The Appraisers represent that they have no present or contemplated financial interest in First Community and their fees were not contingent upon the results of their findings. In their evaluation of the Stock, the Appraisers relied solely on the Private Market

Method.¹² The Appraisers concluded that the fair market value of the Participants' interest in the non-marketable, non-controlling Stock was \$31.39 per share.¹³

5. The Participants propose to purchase the Stock from their respective IRAs in one-time transactions for cash. The Participants represent that the Sales will be in the best interest of the IRAs because the Sales will allow for greater diversification of the IRAs' assets and the Stock will be purchased at a price per share greater than the price per share initially paid by the IRAs. Additionally, the Participants represent that the Sales will be protective of the rights of each IRA's participant because each IRA will receive cash equal to the fair market value of the Stock, as determined by a qualified, independent appraiser, and each IRA will incur no commissions, costs, or other expenses as a result of the Sales.

6. In summary, the Participants represent that the Sales satisfy the statutory criteria of section 4975(c)(2) of the Code because:

(a) The terms and conditions of the Sales will be at least as favorable to each IRA as those obtainable in arm's length transactions with an unrelated party;

(b) The Sales will be one-time transactions for cash;

(c) The IRAs will receive the fair market value of the Stock as established by a qualified, independent appraiser; and

(d) The IRAs will pay no commissions, costs or other expenses with respect to the Sales.

Notice to Interested Persons: It has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons since the Participants are the only participants in the IRAs. Comments and requests for a hearing are

¹¹ To the extent that First Community or other sellers of the Stock were not disqualified persons with respect to the IRAs under section 4975(e)(2), the purchase of the Stock by the IRAs does not constitute a prohibited transaction under section 4975(c)(1)(A) of the Code. However, the purchase and holding of the Stock raises questions under section 4975(c)(1)(D) and (E) depending on the degree (if any) of the IRA participant's interest in the transaction. Section 4975(c)(1)(D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the assets of a plan and prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. The IRA sponsors, as presidents or director of the First Community Bank or Citizens Savings Bank, may have interests in the proposed transactions which may have affected their best judgment as fiduciaries of their IRAs. In such circumstances, the transactions may have violated 4975(c)(1)(D) and (E) of the Code. See Advisory Opinion 90-20A (June 15, 1990). Accordingly, to the extent there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the purchases and holdings of the Stock by the IRAs, the Department is extending no relief for these transactions herein.

¹² Although the Appraisers considered the Public Market Method in their evaluation, they determined that this method was too difficult to implement due to First Community's geographic location and financial structure. The Appraisers additionally considered the prices paid for the Stock in previous Stock purchases but determined that there were no recent purchases which would provide an accurate valuation of the Stock.

¹³ The Appraisers calculated the price of the Stock by first adjusting the equity levels of a comparable group of recently sold banks to reflect 8% or "normal" capitalization levels. The Appraisers then determined the average price to "normal" equity ratio for this group of banks and multiplied this ratio against First Community's adjusted book value. After subtracting First Community's debt from this amount to calculate First Community's value, this value was then divided by the number of outstanding shares to determine the Stock's price per share. Finally, the Appraisers discounted the resulting price per share to reflect the Stock's non-marketable and non-controlling nature.

¹⁰ The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions with respect to the exclusive benefit rule under section 401(a) of the Code. See, e.g., Rev. Rul. 73-632, 1973-2 C.B. 128. The Department further notes that section 408(a) of the Code, which describes the tax qualification provisions for IRAs, mandates that a trust be created for the exclusive benefit of an individual or his beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the purchase and subsequent retention of the Stock by the Participants.

due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Motta 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 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 4th day of November, 1998.

Ivan Strasfeld,

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

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BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10574]

Notice of Proposed Individual Exemption to Amend Prohibited Transaction Exemption (PTE) 94-50 Involving Salomon Smith, Barney Inc. (Salomon Smith Barney) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Notice of proposed individual exemption to modify PTE 94-50.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend PTE 94-50 (59 FR 32024, June 21, 1994), an exemption granted to Smith Barney, Inc. (Smith Barney), the predecessor of Salomon Smith Barney. PTE 94-50 relates to the operation of the TRAK Personalized Investment Advisory Service product (the TRAK Program) and the Trust for TRAK Investments (subsequently renamed the Trust for Consulting Group Capital Markets Funds) (the Trust). If granted, the proposed exemption would affect participants and beneficiaries of and fiduciaries with respect to employee benefit plans (the Plans) participating in the TRAK Program.

EFFECTIVE DATE: If granted, the proposed amendments will be effective as of November 9, 1998.

DATES: Written comments and requests for a public hearing should be received by the Department on or before December 24, 1998.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attention: Application No. D-10574. The application pertaining to the proposed exemption and the comments received will be available for public

inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would amend PTE 94-50. PTE 94-50 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 94-50 provides exemptive relief from 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, for the purchase or redemption of shares in the Trust by an employee benefit plan, an individual retirement account (the IRA), or a retirement plan for a self-employed individual (the Keogh Plan). PTE 94-50 also provides exemptive relief from the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, with respect to the provision, by the Consulting Group of Smith Barney (the Consulting Group), of investment advisory services to independent fiduciaries of participating Plans (the Independent Plan Fiduciaries) that might result in such fiduciary's selection of an investment portfolio (the Portfolio) under the TRAK Program for the investment of Plan assets.¹

¹ On October 5, 1992, the Department granted PTE 92-77 at 55 FR 45833. PTE 92-77 permitted Shearson Lehman Brothers, Inc. (Shearson Lehman) to make the TRAK Program available to Plans that acquired shares in the Trust. In this regard, PTE 92-77 permitted Plans to purchase or redeem shares in the Trust and allowed the Consulting Group to provide investment advisory services to an Independent Fiduciary of a Plan which might result in such fiduciary's selection of a Portfolio in the TRAK Program for the investment of Plan assets.

Subsequent to the granting of PTE 92-77, on July 31, 1993, Smith Barney acquired certain assets of Shearson Lehman associated with its retail business, including the TRAK Program, and applied for and received a new exemption (PTE 94-50) for

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