

Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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Signed at Washington, DC this 30th day of January, 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98-2680 Filed 2-5-98; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10355, et al.]

Proposed Exemptions; Equitable Life Assurance Society

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, 2847, 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.

Equitable Life Assurance Society of the United States (Equitable) Located in New York, New York

[Application No. D-10355]

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 32847, August 10, 1990). 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 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past and continuing lease (the Lease) of commercial space in One Boston Place by Equitable Separate Account No. 8, also known as the Prime Property Fund (PPF), to an Equitable affiliate, Equitable Real Estate Investment Management, Inc. (ERE), provided the following conditions are met:

(A) All the terms and conditions of the Lease are at least as favorable to PPF as could be obtained in an arm's length transaction with an unrelated party;

(B) The interests of PPF for all purposes under the Lease is represented by an independent fiduciary, Lawrence A. Bianchi, a principal of the Codman Company in Boston, Massachusetts;

(C) The rent paid by ERE at all times under the Lease is no less than the fair market rental value of the property; and

(D) The independent fiduciary will continue to monitor the Lease on behalf of PPF.

EFFECTIVE DATE: If granted, this exemption will be effective as of July 24, 1996.

Summary of the Facts and Representations

1. Equitable is a life insurance company organized under the laws of the State of New York. It is represented that Equitable is one of the largest life insurance companies in the United States and it offers a wide variety of insurance products and services. It is represented that Equitable provides funding, asset management and other services for several thousand employee benefit plans. In addition, Equitable sells interests in separate accounts as investments for qualified and governmental plans.

Equitable maintains several pooled separate accounts, including PPF, in which pension, profit-sharing, and thrift plans participate. Equitable also offers several single customer separate accounts, and investment management services pursuant to which Equitable invests plan assets in various separate accounts. In particular, Equitable maintains PPF for the investment of corporate qualified and governmental pension plan assets in real estate and real estate related investments.

2. It is represented that PPF is an insurance company separate account, as defined in section 3(17) of the Act, which was established on August 20, 1973. As of December 31, 1995, PPF held 171 investments in wholly-owned properties or equities in real estate partnerships with an aggregate net value of \$3.1 billion. In addition, as of December 31, 1995, PPF had eight investments in mortgage loans with an aggregate value of \$311 million, or 9.2% of PPF's total net asset value. PPF's portfolio is diversified by property type and by geographic region.

3. As of December 31, 1995, approximately 206 plans were invested in PPF. No plan holds more than a 20 percent interest in PPF. In particular, the Equitable Retirement Plan for Employees, Managers and Agents (the

Plan) is invested in PPF. The Plan is a defined benefit plan which as of December 31, 1995, had invested 4.36% of its assets in PPF. As of the same date, 2.2 percent of the fair market value of the assets of PPF were represented by the Plan's investment.

4. ERE provides investment advice to Equitable relating to origination, evaluation and monitoring of real estate investments for Equitable's pooled and single customer separate accounts that invest in real estate and real estate-related investments (the Accounts). ERE was an indirect wholly owned subsidiary of Equitable until it was sold on June 10, 1997, to Neptune Real Estate, Inc., a Delaware corporation which is wholly-owned by Lend Lease Corporation, an Australian Corporation. In connection with the sale, Equitable and ERE have entered into several separate advisory agreements setting forth the terms of ERE's provision of investment advisory services to Equitable with respect to the Accounts.

It is represented that, even though ERE is no longer an affiliate of Equitable, the exemptive relief proposed herein is still required because ERE will continue to be a fiduciary to Equitable with respect to PPF.

5. Among the assets owned by the PPF is One Boston Place, a 41 story office building with a total of 769,570 square feet of rentable space. On July 24, 1996, PPF entered into a lease for 8,962 square feet of office space (Leased Space) in One Boston Place to ERE. The lease provides for a non-renewable 5-year term at an annual fixed rent of \$269,452, with ERE's tenancy beginning October 1, 1996, the date of estimated completion of the remodeling of the premises in accordance with ERE's plans and specifications. The cost of the remodeling was paid for by One Boston Place and it was factored into the rental rate.

6. Prior to entering into a lease agreement for the Leased Space, Equitable hired Lawrence A. Bianchi to act as Independent Fiduciary for PPF with regard to the transaction for which exemptive relief is proposed, herein. Mr. Bianchi is a principal in the Codman Company, Inc., a Boston-based real estate development company. It is represented that Mr. Bianchi has over 32 years experience in all aspect of real estate development, real estate management and valuation. It is further represented that he is experienced and familiar with the real estate market in downtown Boston and has particular experience in the area of commercial leasing, having leased in excess of 8 million square feet of office space. Mr. Bianchi states that he receives less than

1 percent of his total fees from income attributable to business dealings with Equitable and its affiliates.

7. It is represented that Mr. Bianchi was authorized to determine on behalf of PPF, whether it was in the best interest of PPF to enter into the One Boston Place Lease. Pursuant to this authority, Mr. Bianchi represented PPF in negotiations regarding the One Boston Place lease. In addition, he had sole authority to determine whether and on what terms, PPF would enter into the Lease with ERE.

8. Mr. Bianchi represents that he inspected the Leased Space on June 24, 1996. On July 18, 1996, Mr. Bianchi issued a preliminary report to PPF, regarding the Lease. This report, which contained conclusions regarding the appropriate rental rate and other lease terms, served as Mr. Bianchi's basis for the negotiation of the Lease. Mr. Bianchi's conclusions and recommendations were incorporated into the Lease as executed, on July 24, 1996. On July 31, 1996, he finalized the report and confirmed that the July 24, 1996 agreement covering the Leased Space was fair to PPF and the rental rate constituted fair market rent. In order to determine that the Lease was fair and the rent to be paid under the Lease was fair market rent, Mr. Bianchi reviewed recent rentals of similar office space located in comparable downtown Boston office buildings.

In addition to accepting responsibility for determining that the Lease is in the best interest of the PPF, Mr. Bianchi accepted the continuing duty to monitor compliance with the lease terms by ERE under its lease in One Boston Place. Mr. Bianchi represents that he will take any action necessary to assure that ERE's obligations as lessee are being fully performed.

9. Mr. Bianchi represents that the Lease is in the best interest of PPF because it is a fair market lease and no commissions were paid as a result of the transaction.

Equitable represents that the Leased Space now occupied by ERE was vacant for 8 months prior to ERE's occupancy and the Leased Space was actively marketed to unrelated parties during the 15 months prior to ERE's occupancy. While it was actively marketed, approximately 90 unrelated prospective tenants inspected the Leased Space. Equitable also represents, that because the Leased Space was only available for a five-year term, without the possibility of renewal, and because the Leased Space was encumbered by an expansion option in favor of an unrelated third party, prospective

tenants selected other spaces in One Boston Place.

10. In summary, the applicant represents that the transaction satisfies the 408(a) of the Act for the following reasons: (a) All the terms and conditions of the Lease are at least as favorable to PPF as could be obtained in an arm's length transaction with an unrelated party; (b) The interests of PPF for all purposes under the Lease are represented by an independent fiduciary; (c) The independent fiduciary has determined that the rent paid by ERE under the Lease is no less than the fair market rent; and (d) The independent fiduciary will continue to monitor the Lease on behalf of PPF.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

Knoxville Surgical Group Qualified Retirement Plan (the Plan) Located in Knoxville, Tennessee

[Exemption Application No: D-10506]

The Department of Labor 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 section 406(a) and 406(b) and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale (the Sale) of a medical office condominium (the Property) by the Plan to Hugh C. Hyatt, M.D., Richard A. Brinner, M.D., Randal O. Graham, Michael D. Kropilak, M. D., and P. Kevin Zirkle, M.D. (the Purchasers), parties in interest with respect to the Plan provided the following conditions are satisfied: (1) the Sale will be a one time transaction for cash; (2) the Property will be sold at a price equal to the greater of \$780,000 or the fair market value of the Property on the date of the Sale; and (3) the Plan will pay no commissions or expenses associated with the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 21 participants. The Plan sponsor is the Knoxville Surgical Group. As of October 17, 1997, the value of the Plan's assets was \$6,747,255.72. The Trust Company of Knoxville is the Plan trustee. In 1996, the Plan sponsor merged with another medical practice by the name of Premier Surgical Group. Once the Sale is complete, the Plan will

be merged into the Premier Surgical Plan. The Plan proposes to sell the Property to divest itself of real estate investments for a cash price of \$780,000 with no commissions or expenses of the sale to be paid by the Plan. The Purchasers are shareholders of the Plan sponsor.

2. The Property is a medical office condominium located in Knoxville Tennessee. The Plan acquired the Property in 1994 pursuant to Prohibited Transaction Exemption (PTE) 94-53 (59 FR 35759, July 13, 1994). PTE 94-53 provided that the Plan exchange a certain parcel of improved real property valued at \$425,000 for the Property and lease the Property to the Plan sponsor subject to certain conditions. The applicant represents that all terms and conditions of PTE 94-53 have been satisfied. The Property has been leased to the Plan sponsor since this time. The lease requires that the lessee pay all taxes, insurance and maintenance expenses. The applicant represents that the Plan's total holding costs related to the Property is \$242,792.

3. On August 1, 1997, Charles Wesley of Wallace & Associates, a State Certified General Real Estate Appraiser, valued the property at \$780,000 using the market value method. Market value is defined as "the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably assuming that price is not affected by undue stimulus."

4. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) the Sale will be a one time transaction for cash; (2) the Plan will pay no commissions or fees associated with the Sale; (3) the Plan will receive the greater of \$780,000 or the fair market value of the Property at the time of the Sale; and (4) the Plan will receive a sales price amount greater than the acquisition and holding costs of the Property.

FOR FURTHER INFORMATION CONTACT: Allison Padams, U. S. Department of Labor, telephone (202) 219-8971. (This is not a toll-free number.)

Overland, Ordal, Thorson & Fennell Pulmonary Consultants, P.C. Profit Sharing Plan & Trust (the Plan) Located in Medford, OR 97501

[Application No. D-10523]

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 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 proposed cash sale (the Sale) of a certain parcel of real property (the Property) by the individually directed account (the Account) in the Plan of Eric S. Overland, M.D. (Dr. Overland) to Dr. Overland, 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 at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party;

(c) The Account receives the greater of the fair market value of the Property as of the date of sale or \$105,000; and

(d) The Account is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Factual Representations

1. The Plan is a defined contribution 401(k) profit-sharing plan that provides its 13 participants with the opportunity to direct the investment of their individual accounts. The Plan is sponsored by Overland, Ordal, Thorson, & Fennell Pulmonary Consultants, P.C. The trustees of the Plan are Dr. Overland, Dr. John C. Ordal, Dr. Stuart H. Thorson, and Dr. Dan F. Fennell. As of the Plan year ending September 30, 1996, the Plan held assets valued at approximately \$1,305,917. As of the same date, Dr. Overland's Account had assets valued at \$491,126.

2. The Property consists of a five (5) acre parcel of undeveloped real estate located in the Gardner Subdivision at 1234 Gardner Way, Medford, Oregon. A well has been installed on the Property and there is an outbuilding located on the southeast corner of the Property.

3. According to the applicant, the Account acquired the Property on June 14, 1994, from an unrelated third party in a cash transaction for \$95,770.77, including closing costs. Since purchasing the Property, the Account has incurred \$15,069 of maintenance costs and real estate taxes.

4. The applicant represents that Dr. Overland does not own any land adjacent to the Property and that the Property has not been leased or used by any parties in interest or disqualified persons.

5. The applicant requests an exemption for the proposed sale of the Property by the Account to Dr. Overland. The applicant desires to sell the Property due to the illiquid nature of the asset, and because the investment has failed to appreciably increase in value. In this regard, Dr. Overland is concerned about continual Plan expenses concomitant with holding the Property such as property taxes, utility costs and fire maintenance. Finally, the applicant states that he is apprehensive regarding potential property liability issues, and possible changes in zoning regulations that could affect the future development and value of the Property.

6. The Property was appraised by two independent, qualified appraisers. Both appraisers utilized the market value approach, which involves an analysis of similar recently sold properties in the area surrounding the Property in question, so as to derive the most valid sales price of the Property. On April 1, 1997, Mr. Roy Wright, a Senior Residential Appraiser and member of the Appraisal Institute, determined a fee simple interest in the Property to be worth \$120,000. On April 20, 1997, David W. Isom, also a Senior Residential Appraiser and member of the Appraisal Institute, determined a fee simple interest to be worth \$90,000. Because of the significant disparity in the two appraisals, it has been decided that the average of the two, \$105,000, should be used as a benchmark with respect to the value of the Property.

7. The applicant represents that the proposed transaction would be 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 if the Property were sold, the Account would be able to invest the proceeds from the Sale in other assets and 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 not less than the fair market value of the Property as of the date of sale or \$105,000, and will incur no commissions, costs, or other expenses as a result of the Sale.

8. 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 terms and conditions of the Sale would be at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale would be a one-time cash transaction permitting the Account to

invest in assets with a higher rate of return; (c) the Account would receive not less than the fair market value of the Property as of the date of sale or \$105,000; and (d) the Account would not be required to pay any commissions, costs or other expenses in connection with the Sale.

NOTICE TO INTERESTED PERSONS: Because Dr. Overland 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 (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).

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 2nd day of February 1998.

Ivan Strasfeld,

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

[FR Doc. 98-3051 Filed 2-5-98; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10396]

Notice of Proposed Exemption for Certain Transactions Involving the Massachusetts Mutual Life Insurance Company (MM), Located in Springfield, MA

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption would exempt certain transactions that may occur as a result of the sharing of real estate investments among various Accounts maintained by MM, including the MM general account and the general accounts of MM's affiliates which are licensed to do business in at least one state (collectively, the General Account), and the ERISA-Covered Accounts with respect to which MM is a fiduciary. As an acknowledged investment manager and fiduciary, MM is primarily responsible for the acquisition, management and disposition of the assets allocated to the ERISA-Covered Accounts.

DATES: Written comments and requests for a public hearing must be received by the Department on or before April 7, 1998.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent of the Office of Exemption Determinations, Pension and