

days after publication of the Notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Motta, 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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 4th day of November, 1999.

**Ivan Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99-44; Exemption Application No. D-10257, et al.]

#### Grant of Individual Exemptions; Pacific Life Corporation (Pacific Life), et al.

**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, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of 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.

#### Pacific Life Corporation (Pacific Life) Located in Newport Beach, California; Exemption

[Prohibited Transaction Exemption 99-44; Exemption Application No. D-10257]

### Section I—Transactions

(a) The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply:

(1) For the period from January 22, 1993 until October 31, 1998, to the sale by Pacific Life of an "actively-managed synthetic" guaranteed investment contract (Actively-Managed Synthetic GIC) to an employee benefit plan for which Pacific Life was a party in interest with respect to such plan (Plan) in instances where Pacific Life or an Affiliate manages the Plan's assets relating to the Synthetic GIC (an Affiliated-Manager GIC); and

(2) As of January 22, 1993, to the purchase or retention of the Affiliated-Manager GICs, described in section (a)(1) above, by the Plans and the payments made by Pacific Life to the Plans pursuant to the terms and conditions of the Affiliated-Manager GICs, provided that the general conditions set forth in section II, the specific conditions set forth in section III, the retroactive conditions set forth in section IV, and the record-keeping requirements set forth in section V below are met.

(b) The restrictions of sections 406(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply:

(1) As of January 22, 1993, to the sale by Pacific Life of an Actively-Managed Synthetic GIC to a Plan in instances where the Plan's assets relating to the Actively-Managed Synthetic GIC are managed by an investment manager who is unaffiliated with Pacific Life and

its Affiliates (an Unaffiliated-Manager GIC); and

(2) As of January 22, 1993, to the purchase or retention of the Unaffiliated-Manager GICs, described in section (b)(1) above, by the Plans and the payments made by Pacific Life to the Plans pursuant to the terms and conditions of the Unaffiliated-Manager GICs, provided that the general conditions set forth in section II and the record-keeping requirements set forth in section V below are met.

## Section II—General Conditions

(a) Prior to the sale of an Actively-Managed Synthetic GIC, an independent fiduciary of each Plan receives a full and detailed written disclosure of all material features of the Actively-Managed Synthetic GIC, including all applicable fees and charges;

(b) Following receipt of such disclosure, the Plan's independent fiduciary approves in writing the purchase of the Actively-Managed Synthetic GIC on behalf of the Plan;

(c) All fees and charges imposed under any such Actively-Managed Synthetic GIC are not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act;

(d) Each Actively-Managed Synthetic GIC will specifically provide an objective means of determining the fair market value of the securities owned by the Plan pursuant to the Actively-Managed Synthetic GIC;

(e) Each Actively-Managed Synthetic GIC will specifically provide an objective formula for determining the interest rates to be credited periodically under the Actively-Managed Synthetic GIC;

(f) Pacific Life does not maintain custody of the assets which are the subject of the Actively-Managed Synthetic GIC or commingle those assets with any other funds under its management;

(g) The assets subject to the Actively-Managed Synthetic GIC are invested in high quality fixed income investments specified in the investment guidelines agreed to, or provided by, the independent fiduciary;

(h) The Plan may, at any time, terminate the Actively-Managed Synthetic GIC;

(i) The fee charged under the arrangement is negotiated between Pacific Life and a Plan fiduciary independent of Pacific Life;

(j) At all times during the term of each Actively-Managed Synthetic GIC, a Plan may elect to receive such lump sum amount equal to the Contract Value Record and shall be entitled to receive a lump sum payment no more than 3

(three) years after making an election which will establish a maturity date;

(k) The Plan may establish a maturity date by notifying Pacific Life in writing of an intent to establish a maturity date. Each Actively-Managed Synthetic GIC will mature within three (3) years after the Plan notifies Pacific Life of its intent to establish a maturity date; and

(l) Actively-Managed Synthetic GICs are sold only to Plans which have at least \$25 million in assets.

## Section III—Specific Conditions

(a) With respect to any Affiliated-Manager GIC described in section I(a), Pacific Life will notify a Plan's independent fiduciary, in writing no later than 30 days prior to the date on which the Credited Rate is to be reset, advising such fiduciary that the Plan may replace Pacific Life or its affiliate as investment manager,<sup>1</sup> at no expense to the Plan, when the Credited Rate with respect to any Affiliated-Manager GIC described in section I(a) is expected to be less than three (3) percent at the next reset of the Credited Rate.

## Section IV—Retroactive Conditions

(a) At no time between January 22, 1993 and October 31, 1998, was the Credited Rate with respect to any Affiliated-Manager GIC described in section I(a) less than 3% (three percent) per annum; and

(b) At no time between January 22, 1993 and October 31, 1998, did a Plan elect to receive an amount equal to the Contract Value Record pursuant to an Affiliated-Manager GIC described in section I(a).

## Section V—Recordkeeping

(a) The Applicant maintains or causes to be maintained for a period of six years from the date of the transaction such records as are necessary to enable the persons described in paragraph (b) of this section V of this exemption, to determine whether the conditions of this exemption have been met, except that: (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the Applicant or its affiliates, such records are lost or destroyed prior to the end of such six year period; and (2) no party in interest, other than the Applicant or an affiliate, 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

<sup>1</sup> Although Pacific Life must approve the new investment manager selected by the Plan, Pacific Life represents that it will not unreasonably withhold such approval.

examination as required by paragraph (b) below.

(b)(1) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (a) of this section V are unconditionally available at their customary location for examination during normal business hours by: (i) any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; (ii) any fiduciary of the plan or any duly authorized employee or representative of such fiduciary; (iii) any participant or beneficiary of the plan or duly authorized representative of such participant or beneficiary; (iv) any employer of plan participants and beneficiaries; and (v) any employee organization any of whose members are covered by such plan; and

(2) None of the persons described in paragraph (b)(1)(ii) through (v) shall be authorized to examine trade secrets of the applicant, or commercial or financial information which is privileged or confidential.

## Section VI—Definitions

For purposes of this exemption:

(A) "Actively-Managed Synthetic GIC" means: a synthetic guaranteed investment contract, which under certain circumstances provides a guarantee that a pool of underlying plan assets which may be managed by Pacific Life, an affiliate of Pacific Life, or an unrelated investment manager, will perform at a specified rate of return.

(B) "Affiliated-Manager GIC" means: an Actively-Managed Synthetic GIC under which Pacific Life guarantees the performance of an related investment manager.

(C) "Unaffiliated-Manager GIC" means: an Actively-Managed Synthetic GIC under which Pacific Life guarantees the performance of an unrelated investment manager.

(D) "Contract Value Record" means: a bookkeeping account maintained by Pacific Life, pursuant to each Actively-Managed Synthetic GIC. Initially, the Contract Value Record will be credited with the value of the Investment Assets (defined in (F) below), and subsequently with a credited rate of interest (Credited Rate, defined in (E) below), which shall be reset periodically as agreed to at the inception of the Actively-Managed Synthetic GIC.

(E) "Credited Rate" means: the interest rate credited to the Contract Value Record. The Credited Rate is reset periodically, in accordance with an objective formula established under the

terms of the Actively-Managed Synthetic GIC.

(F) "Investment Assets" means: the underlying portfolio of investment assets, title to which remains with the Plan.

(G) "Managed Portfolio" means: the total of all Investment Assets which comprise the portfolio which is managed by either an Affiliated-Manager or an Unaffiliated-Manager.

(H) "Withdrawals" means: a participant initiated payment or transfer to other investment options available under the Plan.

**EFFECTIVE DATE:** This exemption is effective for the period from January 22, 1993, until October 31, 1998, for the transactions described in section I(a)(1). Section I(a)(2) of the exemption will be effective for the retention by the Plan of the Affiliated-Manager GICs until the maturity date of such GICs. Lastly, the exemption is effective as of January 22, 1993, for the transactions described in section I(b) (including the continuing retention of any Unaffiliated-Manager GICs).

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 July 22, 1999, at 64 FR 39533.

**Written Comments:** One written comment, addressing two issues, was received from the applicant, Pacific Life, regarding the notice of proposed exemption (the Notice).

With respect to the first issue, the applicant states that the relief provided for in the operative language of the Notice regarding "synthetic" guaranteed investment contracts that are actively-managed by Pacific Life or an Affiliate (i.e., Affiliated-Manager GICs) is effective only for contracts sold on or before August 12, 1998. The applicant represents that this date was established based on the belief that no existing Affiliated-Manager GICs had been entered into after that date. After the Notice was published in the **Federal Register** on July 22, 1998, the applicant discovered that one Plan client, which had previously held a traditional GIC issued by Pacific Life, requested conversion of that GIC contract to an Affiliated-Manager GIC prior to August 12, 1998, but the parties did not actually execute this Affiliated-Manager GIC until October 1998. Therefore, Pacific Life requests that references in the Notice to August 12, 1998 be changed to October 31, 1998 in order to accommodate the execution of this Affiliated-Manager GIC.

In response to the applicant's comment, the Department has modified

Section I(a)(1) and Section IV(a) and (b) of the exemption, as well as the effective date paragraph at the end of the operative language of the exemption, by substituting October 31, 1998 for August 12, 1998.

With respect to the second issue, Section II(g) of the Notice requires that the assets subject to the Actively-Managed Synthetic GIC (i.e., Investment Assets) must be invested only in high quality fixed income investments specified in the investment guidelines agreed to, or provided by, the independent fiduciary. The summary of facts and representations (the Summary) contained in the Notice also states that the Investment Assets will be invested in securities issued or guaranteed by the Federal government, or an instrumentality thereof, or other investment grade debt securities whose value is readily determinable and which can thus be objectively valued (e.g., see Paragraph 8 of the Summary, 64 FR at 39535).

The applicant's comments state that certain Plans have requested that a portion of the Investment Assets be allocated to non-investment grade securities in order to enhance the rate of return to such Plans, pursuant to certain investment guidelines established by independent Plan fiduciaries. However, the applicant represents that at least 90% of the Investment Assets will be allocated to investment grade securities at all times. Thus, for purposes of this exemption, Pacific Life wishes to clarify that while the Investment Assets will be primarily allocated to investment grade securities, a small percentage of such Assets may be non-investment grade securities.

The Department acknowledges the applicant's clarification to the information and representations contained in the Summary regarding investment grade securities. In this regard, the Department notes that the requirements of Section II(g) of the exemption, relating to the need for " \* \* \* high quality fixed income investments," will be deemed to be met if at least 90% of the Investment Assets are allocated at all times to investment grade securities. Further, in response to the applicant's comment, the Department has modified the language of Section II(g) of the exemption by deleting the word "only" from the phrase referring to high quality fixed income investments.

Accordingly, the Department has determined to grant the exemption as modified herein.

**FOR FURTHER INFORMATION CONTACT:** Janet Schmidt of the Department,

telephone (202) 219-8883. (This is not a toll-free number.)

**Donaldson, Lufkin & Jenrette Securities Corporation (DLJ) Located in New York, NY; Exemption**

[Prohibited Transaction Exemption (PTE) 99-45; Application No. D-10772]

**Section I. Covered Transactions**

A. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 24, 1999, to any purchase or sale of a security between certain affiliates of DLJ which are foreign broker-dealers (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, DLJ or a Foreign Affiliate provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer;

(2) The terms of any transaction are at least as favorable to the Plan as those which the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets, and the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 24, 1999, to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in

connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to any Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder if such Act, rules or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 24, 1999, to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery or by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day on which the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either (a) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings)<sup>2</sup> had it remained the record owner of such securities.

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change;

<sup>2</sup> The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not lent the securities.

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively such period as permitted by Prohibited Transaction Class Exemption (PTCE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded.<sup>3</sup>

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (9), the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan, the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b-1. However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of section 404(b) of the Act, the Foreign

<sup>3</sup> PTCE 81-6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein).

Affiliate shall not be subject to the civil penalty which 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 Foreign Affiliate fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

## Section II. General Conditions

A. The Foreign Affiliate is a registered broker-dealer subject to regulation by a governmental agency, as described in Section III. B., and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a-6 (17 CFR 240.15a-6) of the 1934 Act, and Securities and Exchange Commission interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements.

C. Prior to the transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions.

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E. to determine whether the conditions of this exemption have been met except that—

(1) A party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination, as required by paragraph E.; and

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of the Foreign Affiliate, such records are lost or destroyed prior to the end of such six year period;

E. Notwithstanding the provisions of subsections (a)(2) and (b) of section 504

of the Act, the Foreign Affiliate makes the records referred to above in paragraph D., unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

- (1) The Department, the Internal Revenue Service or the SEC;
- (2) Any fiduciary of a Plan;
- (3) Any contributing employer to a Plan;
- (4) Any employee organization any of whose members are covered by a Plan; and
- (5) Any participant or beneficiary of a Plan.

However, none of the persons described above in paragraphs (2)–(5) of this paragraph E. shall be authorized to examine trade secrets of the Foreign Affiliate, or any commercial or financial information which is privileged or confidential.

F. Prior to any Plan's approval of any transaction with a Foreign Affiliate, the Plan is provided copies of the proposed and final exemption with respect to the exemptive relief granted herein.

## Section III. Definitions

For purposes of this exemption,

A. The term "DLJ" as referred to in Parts A., B., and C. of Section I., means Donaldson, Lufkin & Jenrette Securities Corporation.

B. The term "affiliate" of another person shall include:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner. (For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

C. The term "Foreign Affiliate," shall mean a current or future affiliate of DLJ that is subject to regulation as a broker-dealer by—

(1) The Securities and Futures Authority, in the United Kingdom; or

(2) The Australian Securities & Investments Commission in Australia.

C. The term "security" shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The

term "security" does not include swap agreements or other notional principal contracts.

**EFFECTIVE DATE:** This exemption is effective as of September 24, 1999.

For a more complete statement of the facts and representations supporting this exemption, refer to notice of proposed exemption (the Notice) published on September 24, 1999 at 64 FR 51797.

## Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment, which was submitted by DLJ, requested that the exemption be made retroactive to September 24, 1999, the date the Notice was published in the **Federal Register**, to ensure that any transactions entered into on or after the publication date of the Notice by Plans and the Foreign Affiliates would be covered by the requested exemption. In response to this comment, the Department has made the exemption effective as of September 24, 1999.

For further information regarding DLJ's comment or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-10772) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are 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.

Accordingly, after giving full consideration to the entire record, including the written comment provided by the DLJ, the Department has made the aforementioned change to the Notice and has decided to grant the exemption subject to the modification described above.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady 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 are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 4th day of November, 1999.

**Ivan Strasfeld,**

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

[FR Doc. 99-29266 Filed 11-8-99; 8:45 am]

BILLING CODE 4510-29-P

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meeting

**AGENCY HOLDING MEETING:** National Science Foundation, National Science Board.

**DATE AND TIMES:**

November 18, 1999: 11:30 a.m.—Closed Session

November 18, 1999: 1 p.m.—Closed Session

November 18, 1999: 2 p.m.—Open Session

**PLACE:** The National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

**STATUS:**

Part of this meeting will be closed to the public

Part of this meeting will be open to the public

**MATTERS TO BE CONSIDERED:**

**Closed Session (11:30 a.m.—12 Noon)**

Closed Session Minutes  
NSB Member Proposal  
Personnel

**Closed Session (1 p.m.—2 p.m.)**

Awards and Agreements  
FY 2001 Budget

**Open Session (2 p.m.—6 p.m.)**

Minutes, July 1999  
Closed Session Items for February 2000  
Chair's Report  
Director's Report  
Committee Reports  
NSB Delegation of Authority  
NSF Strategic Plan  
NSB/EHR Workplan  
NSB Interim Report on the Environment  
International Task Force Status Report  
Science & Engineering Indicators  
Committee on Communication & Outreach  
Status Report  
NSB February 2000 Policy Meeting & Retreat  
NSB 2000 Calendar  
Presentation: Nanoscience & Engineering

**Marta Cehelsky,**

*Executive Officer.*

[FR Doc. 99-29490 Filed 11-5-99; 3:54 pm]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *The title of the information collection:* 10 CFR part 55, "Operators' Licenses."

2. *Current OMB approval number:* 3150-0018.

3. *How often the collection is required:* As necessary for NRC to meet its responsibilities to determine the eligibility of applicants for operators' licenses, prepare or review initial operator licensing and requalification examinations, and perform a review of

applications and reports for simulation facilities submitted to the NRC.

4. *Who is required or asked to report:* Holders of and applicants for facility (i.e., nuclear power, research, and test reactor) operating licenses and individual operators' licenses.

5. *The number of annual of respondents:* 231.

6. *The number of hours needed annually to complete the requirement or request:* 25,937 (approximately 19,840 hours of reporting burden and approximately 6,097 hours of record-keeping burden).

7. *Abstract:* 10 CFR part 55, "Operators' Licenses," of the NRC's regulations, specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing and requalification of operators for nuclear reactors, as necessary to promote public health and safety. The reporting and record-keeping requirements contained in 10 CFR part 55 are mandatory for the licensees and applicants affected.

Submit, by January 10, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (<http://www.nrc.gov/NRC/PUBLIC/OMB/index.html>). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 E6, Washington, DC 20555-0001, by telephone at 301-415-7233, or by Internet electronic mail at [bjs1@nrc.gov](mailto:bjs1@nrc.gov).

Dated at Rockville, MD, this 3rd day of November, 1999.