

## Background

The Douglas County Rural Water Project Appraisal Report addresses the County's extremely low recharge into and high withdrawal amounts from the Denver Basin aquifers and proposes to resolve this issue by replacing current groundwater supplies with an alternative source of water. The proposed alternative includes water treatment, raw and finished water transmission, finished water storage, and aquifer storage and recovery for delivery of surface water from existing diversions and water impoundments on the South Platte River to this large rural region of central Colorado.

The Dry-Redwater Rural Water System project would serve a population of about 15,000 people in the project area, including the towns of Circle, Richey, Jordan, and Fairview; the unincorporated town of Lambert; the water districts of Highland Park, Forrest Park, Spring Grove, and Whispering Tree; and rural users in the service area. It examines opportunities to provide communities, unincorporated areas, and rural areas in east-central Montana with a present and future source of high quality water from North Rock Creek in the Big Dry Arm of Fort Peck Reservoir.

The Musselshell-Judith Rural Water System Appraisal Investigation was conducted by the Central Montana Regional Water Authority to assess the viability of developing a rural water system to serve about 4,500 people in 15 incorporated and unincorporated towns in central Montana. The proposed alternative would supply water to the system from a field of groundwater wells in the Utica, Montana area. Water pumped from the Madison Aquifer, a deep underground aquifer, would be distributed from the well field by a branch type system of pipelines, booster pump stations, and storage tanks.

The Lower Niobrara project area is located in Knox County in northeast Nebraska. There is a growing need for an improved water source because of rising nitrate levels in some areas. The proposed study area comprises approximately the central one-third of Knox County, which includes the West Knox Rural Water System (RWS), the Santee Sioux Reservation, and the towns of Creighton, Niobrara, and Center. The preferred alternative for Lower Niobrara consists of expanding the West Knox RWS Well Field to supply Creighton, Niobrara, Center, and the Santee Sioux Reservation.

The Southern Black Hills Water System (SBHWS) project is designed to provide a regional water supply and water delivery system for rural users,

special use needs, and community needs for southern Pennington County, all of Custer County, and all of Fall River County, in southwestern South Dakota. The SBHWS appraisal investigation evaluated a number of alternatives ranging from purchasing water from an existing entity, developing new infrastructure, and some non-structural alternatives which include water use policies (e.g., prohibit rural residential growth) and water conservation (e.g., leak detection surveys).

Dated: *July 11, 2011.*

**Roseann Gonzales,**

*Director, Policy and Administration.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Exemptions From Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security 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 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: D-11468 and D-11469, The Krispy Kreme Doughnut Corporation Retirement Savings Plan (the Savings Plan) and the Krispy Kreme Profit-Sharing Stock Ownership Plan the KSOP (together, the Plans), 2011-10; D-11634, The United Brotherhood of Carpenters Pension Fund (the Plan), 2011-11; and L-11651 and L-11652, Verizon Communications, Inc. (Verizon and Cellco Partnership, doing business as Verizon Wireless (Verizon Wireless; collectively the Applicants), 2011-12 *et al.*

**SUPPLEMENTARY INFORMATION:** A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to

submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), 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 exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

The Krispy Kreme Doughnut Corporation Retirement Savings Plan (the Savings Plan) and the Krispy Kreme Profit-Sharing Stock Ownership Plan the KSOP; together, the Plans) [Prohibited Transaction Exemption 2011-10; Located in Winston-Salem, North Carolina [Exemption Application Nos. D-11468 and D-11469, respectively]

### Exemption

The restrictions of section 406(a)(1)(A),(D),(E), section 406(a)(2), section 406(b)(2) and section 407(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) and (D) of the Code, shall not apply, effective January 16, 2007, to (1) the release by the Plans of their claims against Krispy Kreme Doughnut Corporation (KKDC), the sponsor of the Plans, Michael Phalen and Price waterhouseCoopers LLP (PwC), parties in interest with respect to the Plan, in exchange for cash, shares of common stock (the Common Stock) and warrants (the Warrants) issued by Krispy Kreme

Doughnuts, Inc. (KKDI), the parent of KKDC and also a party in interest, in settlement of certain litigation (the Securities Litigation) between the Plans and KKDC, Mr. Phalen and PwC; and (2) the holding of the Warrants by the Plans.

This exemption is subject to the following conditions:

(a) The receipt and holding of cash, the Common Stock and the Warrants occurred in connection with a genuine controversy in which the Plans were parties.

(b) An independent fiduciary was retained on behalf of the Plans to determine whether or not the Plans should have joined in the Securities Litigation and accept cash, the Common Stock and the Warrants pursuant to a settlement agreement (the Settlement Agreement). Such independent fiduciary—

(1) Had no relationship to, or interest in, any of the parties involved in the Securities Litigation that might affect the exercise of such person's judgment as a fiduciary;

(2) Acknowledged, in writing, that it was a fiduciary for the Plans with respect to the settlement of the Securities Litigation; and

(3) Determined that an all cash settlement was either not feasible or was less beneficial to the participants and beneficiaries of the Plans than accepting all or part of the settlement in non-cash assets.

(4) Thoroughly reviewed and determined whether it would be in the best interests of the Plans and their participants and beneficiaries to engage in the covered transactions.

(5) Determined whether the decision by the Plans' fiduciaries to cause the Plans not to opt out of the Securities Litigation was more beneficial to the Plans than having the Plans file a separate lawsuit against KKDC.

(c) The terms of the Settlement Agreement, including the scope of the release of claims, the amount of cash and the value of any non-cash assets received by the Plans, and the amount of any attorney's fee award or any other sums to be paid from the recovery were reasonable in light of the Plans' likelihood of receiving full recovery, the risks and costs of litigation, and the value of claims foregone.

(d) The terms and conditions of the transactions were no less favorable to the Plans than comparable arm's length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.

(e) The transactions were not part of an agreement, arrangement, or

understanding designed to benefit a party in interest.

(f) All terms of the Settlement Agreement were specifically described in a written document approved by the United States District Court for the Middle District of North Carolina.

(g) Non-cash assets, which included the Common Stock and Warrants received by the Plans from KKDC under the Settlement Agreement, were specifically described in the Settlement Agreement and valued as determined in accordance with a court-approved objective methodology;

(h) The Plans did not pay any fees or commissions in connection with the receipt or holding of the Common Stock and the Warrants.

(i) KKDC maintains, or causes to be maintained, for a period of six years such records as are necessary to enable the persons described in paragraph (j)(1) below to determine whether the conditions of this exemption have been met, except that—

(1) If the records necessary to enable the persons described in paragraph (j)(1) to determine whether the conditions of this exemption have been met are lost, or destroyed, due to circumstances beyond the control of KKDC, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest with respect to the Plans other than KKDC 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 such records are not maintained or are not available for examination as required by paragraph (i).

(j)(1) Except as provided in this paragraph (j) and notwithstanding any provision of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (i) above are unconditionally available at their customary locations for examination during normal business hours by:

(A) Any duly authorized employee, agent or representative of the Department or the Internal Revenue Service, or the Securities and Exchange Commission (SEC);

(B) Any fiduciary of the Plans or any duly authorized representative of such participant or beneficiary;

(C) Any participant or beneficiary of the Plans or duly authorized representative of such participant or beneficiary;

(D) Any employer whose employees are covered by the Plans; or

(E) Any employee organization whose members are covered by such Plans.

(2) None of the persons described in paragraph (j)(1)(B) through (E) shall be authorized to examine trade secrets of KKDC or commercial or financial information which is privileged or confidential.

(3) Should KKDC refuse to disclose information on the basis that such information is exempt from disclosure, KKDC shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

**DATES:** *Effective Date:* This exemption is effective as of January 16, 2007.

#### Written Comments

In the Notice of Proposed Exemption (76 FR 14083, March 15, 2011)(the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty (40) days of the date of the publication of such Notice in the **Federal Register**. All comments and requests for a hearing from interested persons were due by April 24, 2011. However, KKDC required additional time to mail the Notice to interested persons. Therefore, the Department extended the comment period until May 15, 2011.

During the comment period, the Department received one written comment and no requests for a hearing. KKDC submitted the comment on March 31, 2011 that it supplemented by e-mails dated April 19, 2011 and April 21, 2011.

In its comment, KKDC stated that the proposed exemption should be extended to include PwC and Mr. Phalen, the former Chief Financial Officer of KKDI and a member of the Plans' Investment Committee. Both were parties to the Securities Litigation and parties in interest with respect to the Plans. In regard to PwC and Mr. Phalen, the KKDC asserts the following:

It is possible that each Plan's (A) failure to opt of the [Securities Litigation], and any corresponding release of claims thereby effected, and (B) subsequent filing of a Proof of Claim and Release in favor of parties in interest KKDC, Phalen and PwC, in exchange for the Plan's right to receive its pro rata portion of the settlement proceeds in the Securities Litigation could have resulted in a violation of [the] prohibited transaction restrictions of ERISA and the Code. Notwithstanding the fact that the release of KKDC, Phalen, and PwC could each be viewed as a prohibited transaction, the proposed relief published in the **Federal Register** on March 15, 2011 provides an exemption only with respect to the release of KKDC, and leaves open the possibility that the releases of Phalen and PwC are

prohibited transactions with respect to the Plans.

KKDC further explains that the Plans' decision to enter into the Settlement Agreement to grant the releases of claims against the party in interest defendants was primarily based on the advice of Independent Fiduciary Services (IFS), the independent fiduciary for the Plans. Based on IFS' conclusions and the Department's determination that it was appropriate to grant an exemption for the Plans' release of claims against KKDC, KKDC explains that it is important that similar exemptive relief be provided with respect to the Plans' release of claims against PwC and Mr. Phalen.

If the exemption is not extended to these parties, KKDC believes the Plans' participation in the settlement of the Securities Litigation would have to be reversed and the Plans would be required to return their share of the settlement proceeds received. Additionally, KKDC notes that the Plans would lose a significant economic benefit if compelled to pursue separate litigation on this matter.

In response to this comment, the operative language of this exemption has been amended accordingly. The Department notes that the sentence in the Notice identifying PwC and Mr. Phalen as party in interest defendants was inadvertently omitted from the Notice. In this regard, the last sentence of the first paragraph of Representation 6 of the Notice, located in the third column of page 14085, should have read: "The class action defendants (the Class Defendants) included KKDC, PwC, and Mr. Phalen, who served as the Chief Financial Officer of KKDI and a member of each Plan's committee." Additionally, a new sentence should have been added to the end of the first paragraph of Representation 6 of the Notice located in the third column of page 14085, stating: "With the exception of KKDI, Mr. Phalen and PwC, none of the other Class Defendants was a party in interest with respect to the Plans." The Department, therefore, wishes to clarify that the requested relief includes all the party in interest Class Defendants with respect to the Securities Litigation. Furthermore, although the Department has determined that the exemption sufficiently covers the potential prohibited transaction engaged by KKDC in its capacity as a fiduciary, it does not provide exemptive relief for any prohibited transactions that resulted from the events leading to the filing of the Securities Litigation.

Accordingly, after giving full consideration to the entire record,

including the KKDC written comment and supplemental statements, the Department has determined to grant the exemption as clarified herein. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on March 15, 2011 at 76 FR 14083.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anh-Viet Ly of the Department at (202) 693-8648. (This is not a toll-free number.)

The United Brotherhood of Carpenters Pension Fund (the Plan), Located in Las Vegas, Nevada, [Prohibited Transaction Exemption 2011-11; Exemption Application No. D-11634].

### Exemption

The restrictions of sections 406(a)(1)(A), (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) and (D) of the Code, shall not apply to the proposed sale (Sale) of a 10.89 acre parcel of real property (the Parcel), which is part of larger parcel of real property (the Nevada Property), from the Plan-owned Bermuda Hidden Well, LLC to the Southwest Regional Council of Carpenters, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) The Sale is a one-time transaction for cash;

(c) As consideration, the Plan receives the greater of \$5,383,577, or the fair market value of the Parcel as determined by a qualified, independent appraiser (the Appraiser) in an appraisal of the Nevada Property, which is updated on the date of Sale;

(d) The Plan pays no commissions, costs or fees with respect to the Sale, except for customary closing costs and 50% of certain rental credits that are paid to unrelated parties; and

(e) The Plan fiduciaries review and approve the methodology used by the Appraiser, ensure that such methodology is properly applied in determining the fair market value of the Parcel, and also determine whether it is prudent to go forward with the proposed transaction.

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 May 5, 2011 at 76 FR 25714.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anh-Viet Ly of the Department at (202)

693-8648. (This is not a toll-free number.)

Verizon Communications, Inc. (Verizon) and Cellco Partnership, doing business as Verizon Wireless (Verizon Wireless; collectively, the Applicants), Located in Basking Ridge, New Jersey, [Prohibited Transaction Exemption 2011-12; Exemption Application Nos. L-11651 and L-11652].

### Exemption

The restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Exchange Indemnity Company (EIC), a wholly-owned subsidiary of Verizon, in connection with an insurance contract sold by Prudential Life Insurance Company (Prudential) or any successor insurance company to Prudential which is unrelated to Verizon, to provide group-term life insurance to certain employees and retirees of Verizon and Verizon Wireless under The Plan for Group Insurance maintained by Verizon and the Verizon Wireless Health and Welfare Benefits Plan maintained by Verizon Wireless (collectively, the Plans), provided the following conditions are met:

(a) EIC—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Verizon that is described in section 3(14)(E) or (G) of the Act,

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act, (3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended,

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of Vermont within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred, and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) In subsequent years, the formula used to calculate premiums by Prudential or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(d) The Plans only contract with insurers with a rating of A or better from A.M. Best Company. The reinsurance arrangement between the insurer and EIC will be indemnity insurance only, *i.e.*, the insurer will not be relieved of liability to the Plans should EIC be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(e) No commissions, costs or other expenses are paid with respect to the reinsurance of such contracts; and

(f) For each taxable year of EIC, the gross premiums and annuity considerations received in that taxable year by EIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which EIC is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by EIC. For purposes of this condition (f):

(1) the term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by EIC. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by EIC.

(2) all premium and annuity considerations written by EIC for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

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 May 5, 2011 at 76 FR 25721.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department,

telephone (202) 693-8546. (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 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) This exemption is 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 this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 4th day of August, 2011.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

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#### DEPARTMENT OF LABOR

##### Employee Benefits Security Administration

##### Proposed Exemptions From Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security 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 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D-11601, BB&T Asset Management, Inc. (BB&T AM); and D-11661, Bayer Corporation (Bayer or the Applicant) *et al.*

**DATES:** All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

**ADDRESSES:** 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.

All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: [moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov), or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**Warning:** If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to