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: 2015–16, Red Wing Shoe Company Pension Plan for Hourly Wage Employees, Red Wing Shoe Company Retirement Plan, and the S.B. Foot Tanning Company Employees' Pension Plan, D–11763, D–11764, D–11765; 2015–17, Frank Russell Company and Affiliates, D–11781; 2015–18, The Les Schwab Tire Centers of Washington, Inc. *et al,* D–11788 thru D–11792; 2015–19, New England Carpenters Training Fund, L–11795; 2015–20, Virginia Bankers Association Defined Contribution Plan for First Capital Bank, D–11818; 2015–21 Idaho Veneer Company/Ceda-Pine Veneer, Inc. Employees' Retirement Plan, D–11823; 2015–22, United States Steel and Carnegie Pension Fund, D–11825; and 2015–23, Roberts Supply, Inc. Profit Sharing Plan and Trust, D–11836.

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 (76 FR 66637, 66644, October 27, 2011) [1] 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.

Red Wing Shoe Company Pension Plan for Hourly Wage Employees, the Red Wing Shoe Company Retirement Plan and the S.B. Foot Tanning Company Employees' Pension Plan (collectively, the Plans) Located in Red Wing, MN, [Prohibited Transaction Exemption 2015–16; Application Nos. D–11763, D–11764, and D–11765]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act), and the sanctions resulting from the application of section 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (the Code), by reason of section 4975(c)(1)(A), (B), (D) and (E) of the Code,[2] shall not apply to: (1) The in-kind contribution (the Contribution) of shares (the Shares) in Red Wing International, Ltd. (RWI) to the Plans by Red Wing Shoe Company, Inc. (Red Wing or the Applicant), a party in interest with respect to the Plans; (2) the sale of the Shares by the Plans to Red Wing or an affiliate of Red Wing in connection with the exercise of the Terminal Put Option, the Call Option, or the Liquidity Put Option in accordance with the terms thereof; and (3) the deferred payment of: (i) The price of the Shares by Red Wing or its affiliate to the Plans in connection with the exercise of the Liquidity Put Option, the Terminal Put Option and the Call Option; and (ii) any Make-Whole Payments by Red Wing; provided that the conditions described in Section II below have been met.

Section II. Conditions for Relief

(a) The Plans acquire the Shares solely through one or more in-kind Contributions by Red Wing;

(b) An Independent Fiduciary acts on behalf of the Plans with respect to the acquisition, management and disposition of the Shares. Specifically, such Independent Fiduciary will: (1) Determine, prior to entering into any of the transactions described herein, that each such transaction, including the Contribution, is in the interest of the Plans; (2) negotiate and approve, on behalf of the Plans, the terms of the Contribution Agreements, and the terms of any of the transactions described herein; (3) manage the holding and sale of the Shares on behalf of the Plans, taking whatever actions it deems necessary to protect the rights of the Plans with respect to the Shares; and (4) ensure that all of the conditions of this exemption are met;

(c) An Independent Appraiser selected by the Independent Fiduciary determines the fair market value of the Shares contributed to each Plan as of the date of the Contribution, and for purposes of the Make-Whole Payments, the Terminal Put Option, the Liquidity Put Option, and the Call Option;

(d) Immediately after the Contribution, the aggregate fair market value of the Shares held by any Plan will represent no more than 10 percent (10%) of the fair market value of such Plan's assets;

(e) The Plans incur no fees, costs or other charges in connection with any of the transactions described herein;

(f) For as long as the Plans hold the Shares, Red Wing makes the Periodic Make-Whole Payments and, if applicable, a Terminal Make-Whole Payment to the Plans in accordance with the terms thereof;

(g) The Liquidity Put Option and the Terminal Put Option are exercisable by the Independent Fiduciary in its sole discretion in accordance with the terms thereof;

(h) Each year, Red Wing will make a cash contribution to each Plan that is the greater of: (1) The minimum required contribution, as determined by section 430 of the Code; or (2) the lesser of: (i) The minimum required

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[2] For purposes of this exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

contribution, as determined by section 430 of the Code, as of the Plan's valuation date, except that the value of the assets will be reduced by an amount equal to the value of a Share, multiplied by the number of Shares in the Plan at the end of the Plan year, and (ii) the contribution that would result in the respective Plan attaining a 100% FTAP funded status (reflecting assets reduced by the credit balance) at the valuation date determining the contributions based on the value of all Plan assets, including the Shares. Any cash contributions in excess of the minimum required contribution described above will not be used to create additional prefunding credit balance;

(i) The terms of any transactions between the Plans and Red Wing are no less favorable to the Plans than terms negotiated at arm's-length under similar circumstances between unrelated third parties.

Section III. Definitions

(a) ''affiliate'' means:

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

(2) Any officer, director, employee, relative, or partner in any such person; or

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee. For the purposes of clause (a)(1) above, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) ''Contribution Agreement'' means the written agreement governing the contribution of Shares to a Plan, by and between Red Wing and State Street Bank & Trust Company, to be executed prior to any Contribution to which such agreement relates.

(c) ''Commission Agreement'' means the written Sales Agent Contract between Red Wing and RWI, to be executed prior to the Contributions, that governs the relationship between the parties and obligates RWI to act as a sales agent for Red Wing with respect to sales of certain Red Wing products for a ten-year term.

(d) ''Make-Whole Payments'' means either Periodic Make-Whole Payments or Terminal Make-Whole Payments.

(e) ''Periodic Make-Whole Payments'' means periodic payments made to each Plan every five years as follows:

(1) Each periodic payment shall be made in an amount equal to the excess, if any, of:

(A) a presumed 7.5% annual return, compounded annually, on the value of the Shares calculated from the beginning of the Holding Period, less

(B) the sum of (i) the after-tax total return on such Shares (*i.e.,* appreciation of the Shares' fair market value (whether realized or unrealized) plus after-tax dividend income), plus (ii) any Periodic Make-Whole Payments previously made to each Plan over the Holding Period with respect to such Shares. For purposes of calculating this reduction, any realized gains on the Shares will be credited with a presumed 7.5% annual return, compounded annually, calculated from the date the cash was received by the Plan. The after-tax dividend amounts and any previously paid Periodic Make-Whole Payments will be credited at the Plan's actual rate of return on its investments, compounded annually, calculated from the date the cash was received by the Plan.

(2) A separate Periodic Make-Whole Payment will be calculated with respect to each Contribution to a Plan, every five years as of the anniversary date of such Contribution.

(3) Each Periodic Make-Whole Payment will be due and payable to each Plan 60 days after the five-year anniversary date of the Contribution to which it relates. During the 60-day period, any unpaid portion of a Periodic Make-Whole Payment will accrue interest, compounded annually, at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%), to be confirmed by the Independent Fiduciary, over the period from the five-year anniversary date of the Contribution to which it relates to the date of payment.

(4) The amount of any Make-whole Payment otherwise payable at any five-year term will be reduced (but not below zero) to the extent all or any portion of the Make-Whole Payment then payable would cause a Plan's ''funding target attainment percentage,'' as determined under section 430 of the Code and as calculated by its enrolled actuary and confirmed by the Independent Fiduciary immediately following such Contribution, to exceed: (A) 110%; or (B) if an amendment is adopted to terminate the Plan pursuant to the Plan's governing document, that Plan's termination liability as determined by its enrolled actuary and confirmed by the Independent Fiduciary.

(f) ''Terminal Make-Whole Payment'' means a one-time cash contribution made to the Plans in the event of a Catastrophic Loss of Value of the Shares arising from a termination of the Commission Agreement between Red Wing and RWI, due and payable to each Plan 90 days after the date of a written demand by the Independent Fiduciary (the demand date) as follows:

(1) The Terminal Make-Whole Payment, if triggered, will terminate Red Wing's obligation to make Periodic Make-Whole Payments calculated as of any date that is after the Catastrophic Loss of Value.

(2) The amount of the Terminal Make-Whole Payment will be calculated as the excess, if any, of:

(A) the fair market value of the Shares as of the date of Contribution of such Shares to each Plan increased by a 7.5% annual growth rate, compounded annually, over the Holding Period, less

(B) the sum of (i) the amount of the after-tax dividends on the Shares received during such Shares' Holding Period, and (ii) any Periodic Make-Whole Payments made to each Plan with respect to the Shares, further subtracted by

(C) any previous realized gains on such Shares during their Holding Period.

For purposes of calculating this reduction, any realized gains on the Shares will be credited with a presumed 7.5% annual return, compounded annually, calculated from the date the cash was received by the Plan. The after-tax dividend amounts and any previously paid Periodic Make-Whole Payments will be credited at the Plan's actual rate of return on its investments, compounded annually, calculated from the date the cash was received by the Plan.

(3) The Terminal Make-Whole Payment will be further reduced by any remaining fair market value of the Shares after the Catastrophic Loss of Value.

(4) In the event of Catastrophic Loss of Value, the Shares held by a Plan will be subject to a put option (the Terminal Put Option) exercisable by the Independent Fiduciary to sell the Shares back to Red Wing at the Shares' fair market value as of the demand date as determined by the Independent Fiduciary; provided that, if the fair market value of the Shares is equal to $0.00 as a result of the Catastrophic Loss of Value, the Shares shall be transferred to Red Wing upon payment of the Terminal Make-Whole Payment.

(5) The Terminal Make-Whole Payment, as well as the exercise price on the Terminal Put Option (if any) subsequently exercised by the Independent Fiduciary, can be paid in five equal annual installments. Any unpaid portion of the Terminal Make-Whole Payment or exercise price of the Terminal Put Option will accrue interest (compounded annually as of the

anniversary of the demand date or the exercise date of the Terminal Put Option, as applicable) at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%), to be confirmed by the Independent Fiduciary, over each 12-month period.

(6) The amount of any Terminal Make-Whole Payment will also be reduced (but not below zero) to the extent all or any portion of the Terminal Make-Whole Payment then payable would cause a Plan's ''funding target attainment percentage'' as determined under Code section 430, and as calculated by its enrolled actuary to exceed: (A) 110%; or (B) if an amendment is adopted to terminate the Plan pursuant to the Plan's governing document, that Plan's termination liability as determined by its enrolled actuary and confirmed by the Independent Fiduciary).

(g) ''Holding Period'' means, for purposes of calculating the Make-Whole Payments with respect to certain Shares, the period of time over which each Plan has held such Shares, beginning from the date such Shares were received by each Plan through the date of calculation of such Periodic Make-Whole Payment.

(h) ''Catastrophic Loss of Value'' means, for purposes of triggering the Terminal Make-Whole Payment, any diminution of the value of the Shares held by the Plans arising from a termination of the Commission Agreement.

(i) ''Liquidity Put Option'' means a put option granting each Plan the right to require Red Wing to purchase some or all of the Shares from the Plan at the Shares' fair market value as of the date of exercise, payable in cash no later than 60 days following the date of exercise. During this 60-day period, any unpaid portion of the purchase price for the Shares payable by Red Wing in connection with the exercise of the Liquidity Put Option will accrue interest, compounded annually, at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%), to be confirmed by the Independent Fiduciary, over the period from the date of exercise of the Liquidity Put Option to the date of payment of such unpaid portion of the purchase price. The Liquidity Put Option is exercisable as follows:

(1) For a period of 60 days following a Change of Control, the Liquidity Put Option will be exercisable by the Independent Fiduciary on behalf of the Plans; and

(2) Upon a Plan becoming entitled to receive a Periodic Make-Whole Payment, the Independent Fiduciary may exercise the Liquidity Put Option on behalf of the Plan with respect to as much as 20% of the original number of Shares to which the Periodic Make-Whole Payment relates, no later than 45 days following the five-year anniversary date of the Contribution, as follows:

(A) If the Plan elects to exercise its Liquidity Put Option with respect to any of the Shares to which the Periodic Make-Whole Payment relates in the first year in which the Liquidity Put Option is exercisable, the Plan will be able to exercise a Liquidity Put Option for as much as an additional 20% of the original number of Shares to which the Periodic Make-Whole Payment relates upon each of the four succeeding anniversaries of the Contribution to the Plan, but no later than 45 days following each such anniversary; and

(B) The exercise of a Liquidity Put Option for any of the Shares to which the Periodic Make-Whole Payment applies in the first year that the Liquidity Put Option is exercisable will eliminate the Plan's right to that Periodic Make-Whole Payment with respect to all Shares to which the Periodic Make-Whole Payment in that year relates, but any Shares for which the Liquidity Put Option is not exercised will continue to be eligible for future Periodic Make-Whole Payments.

(3) Upon the occurrence of the tenth anniversary (the Anniversary Date) of a Contribution to a Plan, the Independent Fiduciary on behalf of the Plan will be able to exercise the Liquidity Put Option with respect to as much as 20% of the number of Shares to which such Contribution relates, in each year following the Anniversary Date.

(4) Upon the effective date of a Plan's termination and at any time until the final distribution date of the Plan's assets, the Plan will have the right to exercise the Liquidity Put Option for any or all Shares remaining in the Plan, and Red Wing will have the right to exercise the Call Option.

(j) ''Call Option'' means Red Wing's right to cause a Plan to sell any or all remaining Shares held in the Plan to Red Wing, exercisable upon the effective date of a Plan's termination, in exchange for cash at the Shares' fair market value on the date of exercise. The Plan will transfer its Shares to Red Wing and Red Wing will pay cash for such Shares no later than 60 days after Red Wing exercises the Call Option. During this 60-day period, any unpaid portion of the purchase price for the Shares payable by Red Wing in connection with its exercise of the Call Option will accrue interest, compounded annually, at the average of Red Wing's regular corporate borrowing rate (but at a rate no less than LIBOR plus 1%), to be confirmed by the Independent Fiduciary.

(k) ''Change of Control'' means, for purposes of triggering the Liquidity Put Option, the sale or other transfer for value of all or substantially all of Red Wing's assets in a transaction or series of related transactions to a Third Party purchaser, or a transaction or series of transactions in which a Third Party acquires more than 50% of the voting power of Red Wing's outstanding shares. A ''Third Party'' for this purpose is an individual or entity other than: (1) (i) A current shareholder of Red Wing, or a spouse or issue of such shareholder, (ii) a trust created for the shareholder, his spouse, or his issue, or (iii) a shareholder of a shareholder; or (2) an entity controlled by an individual or entity described in (1), or an entity under common control with such an entity.

(l) ''Independent Fiduciary'' means Gallagher Fiduciary Advisors, LLC (GFA) or another fiduciary of the Plans who: (1) Is independent of or unrelated to Red Wing and its affiliates, and has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the covered transactions in accordance with the fiduciary duties and responsibilities prescribed by ERISA (including, if necessary, the responsibility to seek the counsel of knowledgeable advisors to assist in its compliance with ERISA); and (2) if relevant, succeeds GFA in its capacity as Independent Fiduciary to the Plans in connection with the transactions described herein. The Independent Fiduciary will not be deemed to be independent of and unrelated to Red Wing and its affiliates if: (i) Such Independent Fiduciary directly or indirectly controls, is controlled by or is under common control, with Red Wing and its affiliates; (ii) such Independent Fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption other than for acting as Independent Fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (iii) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from Red Wing and its affiliates, exceeds two percent (2%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for is prior tax year.

(m) ''Independent Appraiser'' means an individual or entity meeting the definition of a ''Qualified Independent Appraiser'' under Department Regulation 25 CFR 2570.31(i) retained to determine, on behalf of the Plans, the fair market value of the Shares as of the date of the Contributions and while the Shares are held on behalf of the Plans, and may be the Independent Fiduciary, provided it satisfies the definition of Independent Appraiser herein.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice), published on July 27, 2015, at 80 FR 44728. All comments and requests for hearing were due by September 15, 2015. During the comment period, the Department received two written comments in response to the Notice, one from GFA in its capacity as Independent Fiduciary, and the other from Red Wing. Furthermore, during the comment period, the Department received several phone inquiries that generally concerned matters outside the scope of the exemption. A summary of GFA's comment and Red Wing's comment follows below, although the Department has omitted certain of those comments which the Department believes are non-substantive. Any capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Summary of Facts and Representations in the Notice (the Summary).

GFA's Comment

1. GFA's Duties With Respect to Valuation of the Shares

GFA seeks to clarify Paragraph 44 of the Summary, which provides that ''GFA has complete discretion to determine the valuation methodologies as well as the ultimate value of the Shares contributed to the Plans.'' GFA clarifies that, while it does retain the ultimate discretion to determine the value of the Shares contributed to the Plans, Lincoln or a successor Independent Appraiser engaged by GFA will determine the methodology or methodologies to be employed in the valuation and describe such methodology or methodologies in the valuation report. GFA, in turn, will ensure that the methodology or methodologies used by the Independent Appraiser is appropriate and adequately explained in the valuation report, and that the Independent Appraiser has justified its decision not to employ alternative valuation methods.

2. Lincoln's Appraisal of the Shares

Paragraph 55 of the Summary provides that any uncertainty with respect to the long-term outlook of RWI's tax treatment and potential volatility in international sales ''would be offset by the value protection provisions.'' According to GFA's comment, Lincoln notes that the aforementioned uncertainties may be ''partially offset'' by the value protection provision included in this exemption.

The Department takes note of the foregoing clarifications to the Summary.

Red Wing's Comment

1. Factual Updates to the Notice

Red Wing notes that Section III(b) of the proposed exemption, as well as Paragraphs 8, 11, 14, and 20 of the Summary, identify Vanguard as the Plans' trustee. Furthermore, Paragraph 8 of the Summary provides that Vanguard Institutional Advisory Services, which was engaged as the Plans' investment advisor, is one of the Plans' fiduciaries. Red Wing states that Vanguard has been replaced by State Street Bank & Trust Company (State Street) as the Plans' trustee, and Mercer Investment Management, Inc. has been engaged as the Plans' investment advisor in place of Vanguard Institutional Advisory Services.

The Department takes note of Red Wing's updates to Paragraphs 8, 11, 14, and 20 of the Summary and has modified Section III(b) of the exemption to reflect State Street's role as trustee.

2. Designation of the Shares as ''Employer Securities''

Paragraph 38 of the Summary provides that the Shares constitute ''employer securities,'' as defined in section 407(d)(1) of the Act, because RWI (although not an employer of employees covered by the Plans) can be considered an affiliate of Red Wing. The Summary notes that the stock ownership attribution rules set forth in section 1563(a) of the Code could cause the Sweasy family to own both RWI and Red Wing. In this regard, the largest percentages of Red Wing stock and RWI Shares, attributing Shares owned by Red Wing to Red Wing shareholders, are owned by five members of the Sweasy family or trusts established by or for the benefit of such individuals.

In its comment, Red Wing now states that the Shares may not constitute ''employer securities,'' as defined in section 407(d)(1) of the Act, because Red Wing and RWI are not currently affiliates. However, Red Wing represents that, due to the ownership of Red Wing and the Shares by members of the Sweasy family or trusts either controlled by, or benefiting, members of the Sweasy family, and application of certain ownership attribution rules that are based on circumstances subject to change (such as age), RWI may be an affiliate of Red Wing at the time of a Contribution. The Department takes note of the Applicant's clarification.

3. GFA's Duties as Qualified Independent Fiduciary

Paragraph 48 of the Summary provides that ''[t]he Applicant represents that GFA is. . . an ''investment manager'' within the meaning of section 3(38) of the Act and the Investment Advisers Act of 1940, and with respect to its duties, GFA will be a fiduciary as defined in section 3(21)(A) of the Act.'' Paragraph 48 provides further that, ''[t]he Applicant represents that GFA will take whatever actions it deems necessary to protect the rights of the Plans with respect to the Shares and will act prudently and for the exclusive benefit and in the sole interest of the Plans and their participants and beneficiaries.'' In its comment, Red Wing states that the representations in Paragraph 48 described above, that were attributed to the Applicant, were actually made by GFA. The Department takes note of Red Wing's clarification to Paragraph 48 of the Summary.

4. Exercise of the Liquidity Put Option

Red Wing seeks to modify Section III(i)(1) of the proposed exemption, which provides that, ''[for] a period of 60 days leading up to a Change of Control, the Liquidity Put Option will be exercisable by the Independent Fiduciary on behalf of the Plans.'' Red Wing states that, in actuality, the Liquidity Put Option will be exercisable for a period of 60 days *following* a Change of Control. The Department concurs with the requested change has modified Section III(i)(1) of this exemption accordingly.

5. Name of the Hourly Plan

Red Wing notes that the proper name for the Hourly Plan is the ''Red Wing Shoe Company Pension Plan for Hourly Wage Employees.'' The Department concurs and has modified the title of this final exemption accordingly.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption subject to the modifications described above. The complete application file (Application Nos. D–

11763, D–11764, and D–11765), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

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 July 27, 2015, at 80 FR 44728.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Frank Russell Company and Affiliates, (Russell or the Applicants), Located in Seattle, WA, [Prohibited Transaction Exemption 2015–17; Exemption Application No. D–11781]

Exemption

Section I. Transactions

The restrictions of sections 406(a)(1)(D) and 406(b) of the Act (or ERISA) and the taxes resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code,[3] shall not apply, effective June 1, 2014, to:

(a) The receipt of a fee by Russell, as Russell is defined below in Section IV(a), from an open-end investment company or open-end investment companies (Affiliated Fund(s)), as defined below in Section IV(e), in connection with the direct investment in shares of any such Affiliated Fund, by an employee benefit plan or by employee benefit plans (Client Plan(s)), as defined below in Section IV(b), where Russell serves as a fiduciary with respect to such Client Plan, and where Russell:

(1) Provides investment advisory services, or similar services to any such Affiliated Fund; and

(2) Provides to any such Affiliated Fund other services (Secondary Service(s)), as defined below in Section IV(i); and

(b) In connection with the indirect investment by a Client Plan in shares of an Affiliated Fund through investment in a pooled investment vehicle or pooled investment vehicles (Collective Fund(s))[4], as defined below in Section IV(j), where Russell serves as a fiduciary with respect to such Client Plan, the receipt of fees by Russell from:

(1) An Affiliated Fund for the provision of investment advisory services, or similar services by Russell to any such Affiliated Fund; and

(2) An Affiliated Fund for the provision of Secondary Services by Russell to any such Affiliated Fund; provided that the conditions, as set forth below in Section II and Section III, are satisfied, as of June 1, 2014 and thereafter.

Section II. Specific Conditions

(a)(1) Each Client Plan which is invested directly in shares of an Affiliated Fund *either:*

(i) Does not pay to Russell for the entire period of such investment any investment management fee, or any investment advisory fee, or any similar fee at the plan-level (the Plan-Level Management Fee), as defined below in Section IV(m), with respect to any of the assets of such Client Plan which are invested directly in shares of such Affiliated Fund; *or*

(ii) Pays to Russell a Plan-Level Management Fee, based on total assets of such Client Plan under management by Russell at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any investment advisory fee and any similar fee (the Affiliated Fund Level Advisory Fee), as defined below in Section IV(o), paid by such Affiliated Fund to Russell.

If, during any fee period, in the case of a Client Plan invested directly in shares of an Affiliated Fund, such Client Plan has prepaid its Plan Level Management Fee, and such Client Plan purchases shares of an Affiliated Fund directly, the requirement of this Section II(a)(1)(ii) shall be deemed met with respect to such prepaid Plan-Level Management Fee, if, by a method reasonably designed to accomplish the same, the amount of the prepaid Plan-Level Management Fee that constitutes the fee with respect to the assets of such Client Plan invested directly in shares of an Affiliated Fund:

(A) Is anticipated and subtracted from the prepaid Plan-Level Management Fee at the time of the payment of such fee; *or*

(B) Is returned to such Client Plan, no later than during the immediately following fee period; *or*

(C) Is offset against the Plan-Level Management Fee for the immediately following fee period or for the fee period immediately following thereafter.

For purposes of Section II(a)(1)(ii), a Plan-Level Management Fee shall be deemed to be prepaid for any fee period, if the amount of such Plan-Level Management Fee is calculated as of a date not later than the first day of such period.

(2) Each Client Plan invested in a Collective Fund the assets of which are not invested in shares of an Affiliated Fund:

(i) Does not pay to Russell for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(i) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Russell, based on the assets of such Client Plan invested in such Collective Fund; *or*

(ii) Does not pay to Russell for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(ii) do not preclude the payment of a Plan-Level Management Fee by such Client Plan to Russell, based on total assets of such Client Plan under management by Russell at the plan-level; *or*

(iii) Such Client Plan pays to Russell a Plan-Level Management Fee, based on total assets of such Client Plan under management by Russell at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee (the ''Net'' Plan-Level Management Fee), where the amount subtracted represents such Client Plan's *pro rata share* of any Collective Fund-Level Management Fee paid by such Collective Fund to Russell.

The requirements of this Section II(a)(2)(iii) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Russell, based on the assets of such Client Plan invested in such Collective Fund.

(3) Each Client Plan invested in a Collective Fund, the assets of which are invested in shares of an Affiliated Fund:

(i) Does not pay to Russell for the entire period of such investment any Plan-Level Management Fee (including

[3] For purposes of this exemption reference to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[4] The Department, herein, is expressing no opinion in this exemption regarding the reliance of the Applicants on the relief provided by section 408(b)(8) of the Act with regard to the purchase and with regard to the sale by a Client Plan of an interest in a Collective Fund and the receipt by Russell, thereby, of any investment management fee, any investment advisory fee, and any similar fee (a Collective Fund-Level Management Fee), as defined below in Section IV(n)), where Russell serves as an investment manager or investment adviser with respect to such Collective Fund and also serves as a fiduciary with respect to such Client Plan, nor is the Department offering any view as to whether the Applicants satisfy the conditions, as set forth in section 408(b)(8) of the Act.

any ''Net'' Plan-Level Management Fee, as described, above, in Section II(a)(2)(ii)), and does not pay directly to Russell or indirectly to Russell through the Collective Fund for the entire period of such investment any Collective Fund-Level Management Fee with respect to the assets of such Client Plan which are invested in such Affiliated Fund; *or*

(ii) Pays indirectly to Russell a Collective Fund-Level Management Fee, in accordance with Section II(a)(2)(i) above, based on the total assets of such Client Plan invested in such Collective Fund, from which a credit has been subtracted from such Collective Fund-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Russell by such Affiliated Fund; and does not pay to Russell for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; *or*

(iii) Pays to Russell a Plan-Level Management Fee, in accordance with Section II(a)(2)(ii) above, based on the total assets of such Client Plan under management by Russell at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Russell by such Affiliated Fund; and does not pay directly to Russell or indirectly to Russell through the Collective Fund for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; *or*

(iv) Pays to Russell a ''Net'' Plan-Level Management Fee, in accordance with Section II(a)(2)(iii) above, from which a *further credit* has been subtracted from such ''Net'' Plan-Level Management Fee, where the amount of such *further credit* which is subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Russell by such Affiliated Fund.

Provided that the conditions of this proposed exemption are satisfied, the requirements of Section II(a)(1)(i)–(ii) and Section II(a)(3)(i)–(iv) do not preclude the payment of an Affiliated Fund-Level Advisory Fee by an Affiliated Fund to Russell under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the Investment Company Act). Further, the requirements of Section II(a)(1)(i)–(ii) and Section II(a)(3)(i)–(iv) do not preclude the payment of a fee by an Affiliated Fund to Russell for the provision by Russell of Secondary Services to such Affiliated Fund under the terms of a duly adopted agreement between Russell and such Affiliated Fund.

For the purpose of Section II(a)(1)(ii) and Section II(a)(3)(ii)–(iv), in calculating a Client Plan's *pro rata share* of an Affiliated Fund-Level Advisory Fee, Russell must use an amount representing the ''gross'' advisory fee paid to Russell by such Affiliated Fund. For purposes of this paragraph, the ''gross'' advisory fee is the amount paid to Russell by such Affiliated Fund, including the amount paid by such Affiliated Fund to sub-advisers.

(b) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly, and the purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold indirectly through a Collective Fund, is the net asset value per share (NAV), as defined below in Section IV(f), at the time of the transaction, and is the same purchase price that would have been paid and the same sales price that would have been received for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time.[5]

(c) Russell, including any officer and any director of Russell, does not purchase any shares of an Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Client Plan which invests directly in such Affiliated Fund, and Russell, including any officer and director of Russell, does not purchase any shares of any Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Collective Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund.

(d) No sales commissions, no redemption fees, and no other similar fees are paid in connection with any purchase and in connection with any sale by a Client Plan directly in shares of an Affiliated Fund, and no sales commissions, no redemption fees, and no other similar fees are paid by a Collective Fund in connection with any purchase, and in connection with any sale, of shares in an Affiliated Fund by a Client Plan indirectly through such Collective Fund. However, this Section II(d) does not prohibit the payment of a redemption fee, if:

(1) Such redemption fee is paid only to an Affiliated Fund; and

(2) The existence of such redemption fee is disclosed in the summary prospectus for such Affiliated Fund in effect both at the time of any purchase of shares in such Affiliated Fund and at the time of any sale of such shares.

(e) The combined total of all fees received by Russell is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act, for services provided:

(1) By Russell to each Client Plan;

(2) By Russell to each Collective Fund in which a Client Plan invests;

(3) By Russell to each Affiliated Fund in which a Client Plan invests directly in shares of such Affiliated Fund; and

(4) By Russell to each Affiliated Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund through a Collective Fund.

(f) Russell does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act in connection with the transactions covered by this proposed exemption;

(g) No Client Plan is an employee benefit plan sponsored or maintained by Russell.

(h)(1) In the case of a Client Plan investing directly in shares of an Affiliated Fund, a second fiduciary (the Second Fiduciary), as defined below in Section IV(h), acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan directly in shares of such Affiliated Fund, a full and detailed disclosure via first class mail or via personal delivery of (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below) information concerning such Affiliated Fund, including but not limited to the items listed below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Russell by each Affiliated Fund;

(B) Secondary Services to be paid to Russell by each such Affiliated Fund; and

(C) All other fees to be charged by Russell to such Client Plan and to each such Affiliated Fund and all other fees to be paid to Russell by each such Client Plan and by each such Affiliated Fund;

(iii) The reasons why Russell may consider investment directly in shares of such Affiliated Fund by such Client

[5] The selection of a particular class of shares of an Affiliated Fund as an investment for a Client Plan indirectly through a Collective Fund is a fiduciary decision that must be made in accordance with the provisions of section 404(a) of the Act.

Plan to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Russell with respect to which assets of such Client Plan may be invested directly in shares of such Affiliated Fund, and if so, the nature of such limitations; and

(v) Upon the request of the Second Fiduciary acting on behalf of such Client Plan, a copy of the Notice of Proposed Exemption (the Notice), a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption.

(2) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund *after* such Collective Fund has begun investing in shares of an Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below) of information concerning such Collective Fund and information concerning each such Affiliated Fund in which such Collective Fund is invested, including but not limited to the items listed, below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Russell by each Affiliated Fund;

(B) Secondary Services to be paid to Russell by each such Affiliated Fund; and

(C) All other fees to be charged by Russell to such Client Plan, to such Collective Fund, and to each such Affiliated Fund and all other fees to be paid to Russell by such Client Plan, by such Collective Fund, and by each such Affiliated Fund;

(iii) The reasons why Russell may consider investment by such Client Plan in shares of each such Affiliated Fund indirectly through such Collective Fund to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Russell with respect to which assets of such Client Plan may be invested indirectly in shares of each such Affiliated Fund through such Collective Fund, and if so, the nature of such limitations;

(v) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(vi) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(3) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund *before* such Collective Fund has begun investing in shares of any Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below) of information, concerning such Collective Fund, including but not limited to, the items listed below:

(i) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for all fees to be charged by Russell to such Client Plan and to such Collective Fund and all other fees to be paid to Russell by such Client Plan, and by such Collective Fund;

(ii) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(iii) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(i) On the basis of the information, described above in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan:

(1) Authorizes in writing the investment of the assets of such Client Plan, as applicable:

(i) Directly in shares of an Affiliated Fund;

(ii) Indirectly in shares of an Affiliated Fund through a Collective Fund where such Collective Fund has already invested in shares of an Affiliated Fund; and

(iii) In a Collective Fund which is not yet invested in shares of an Affiliated Fund but whose organizational document expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund; and

(2) Authorizes in writing, as applicable:

(i) The Affiliated Fund-Level Advisory Fee received by Russell for investment advisory services and similar services provided by Russell to such Affiliated Fund;

(ii) The fee received by Russell for Secondary Services provided by Russell to such Affiliated Fund;

(iii) The Collective Fund-Level Management Fee received by Russell for investment management, investment advisory, and similar services provided by Russell to such Collective Fund in which such Client Plan invests;

(iv) The Plan-Level Management Fee received by Russell for investment management and similar services provided by Russell to such Client Plan at the plan-level; and

(v) The selection by Russell of the applicable fee method, as described, above, in Section II(a)(1)–(3).

All authorizations made by a Second Fiduciary pursuant to this Section II(i) must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(j)(1) Any authorization, described above in Section II(i), and any authorization made pursuant to negative consent, as described below in Section II(k) and in Section II(l), made by a Second Fiduciary, acting on behalf of a Client Plan, shall be terminable at will by such Second Fiduciary, without penalty to such Client Plan (including any fee or charge related to such penalty), upon receipt by Russell via first class mail, via personal delivery, or via electronic email of a written notification of the intent of such Second Fiduciary to terminate any such authorization.

(2) A form (the Termination Form), expressly providing an election to terminate any authorization, described above in Section II(i), or to terminate any authorization made pursuant to negative consent, as described below in Section II(k) and in Section II(l), with instructions on the use of such Termination Form, must be provided to such Second Fiduciary at least annually, either in writing via first class mail or via personal delivery (or if such Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below). However, if a Termination

Form has been provided to such Second Fiduciary pursuant to Section II(k) or pursuant to Section II(l) below, then a Termination Form need not be provided pursuant to this Section II(j), until at least six (6) months, but no more than twelve (12) months, have elapsed, since the prior Termination Form was provided;

(3) The instructions for the Termination Form must include the following statements:

(i) Any authorization, described above in Section II(i), and any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l), is terminable at will by a Second Fiduciary, acting on behalf of a Client Plan, without penalty to such Client Plan, upon receipt by Russell via first class mail or via personal delivery or via electronic email of the Termination Form, or some other written notification of the intent of such Second Fiduciary to terminate such authorization;

(ii) Within 30 days from the date the Termination Form is sent to such Second Fiduciary by Russell, the failure by such Second Fiduciary to return such Termination Form or the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate any authorization, described in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary;

(4) In the event that a Second Fiduciary, acting on behalf of a Client Plan, at any time returns a Termination Form or returns some other written notification of intent to terminate any authorization, as described above in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l);

(i)(A) In the case of a Client Plan which invests directly in shares of an Affiliated Fund, the termination will be implemented by the withdrawal of all investments made by such Client Plan in the affected Affiliated Fund, and such withdrawal will be effected by Russell within one (1) business day of the date that Russell receives such Termination Form or receives from the Second Fiduciary, acting on behalf of such Client Plan, some other written notification of intent to terminate any such authorization;

(B) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests directly in shares of an Affiliated Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Affiliated Fund, such Client Plan will not be subject to pay a *pro rata share* of any Affiliated Fund-Level Advisory Fee and will not be subject to pay any fees for Secondary Services paid to Russell by such Affiliated Fund, or any other fees or charges;

(ii)(A) In the case of a Client Plan which invests in a Collective Fund, the termination will be implemented by the withdrawal of such Client Plan from all investments in such affected Collective, and such withdrawal will be implemented by Russell within such time as may be necessary for withdrawal in an orderly manner that is equitable to the affected withdrawing Client Plan and to all non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Russell more than five business (5) days after the day Russell receives from the Second Fiduciary, acting on behalf of such withdrawing Client Plan, a Termination Form or receives some other written notification of intent to terminate the investment of such Client Plan in such Collective Fund, unless such withdrawal is otherwise prohibited by a governmental entity with jurisdiction over the Collective Fund, or the Second Fiduciary fails to instruct Russell as to where to reinvest or send the withdrawal proceeds; and

(B) From the date Russell receives from a Second Fiduciary, acting on behalf of a Client Plan, that invests in a Collective Fund, a Termination Form or receives some other written notification of intent to terminate such Client Plan's investment in such Collective Fund, such Client Plan will not be subject to pay a *pro rata share* of any fees arising from the investment by such Client Plan in such Collective Fund, including any Collective Fund-Level Management Fee, nor will such Client Plan be subject to any other charges to the portfolio of such Collective Fund, including a *pro rata share* of any Affiliated Fund-Level Advisory Fee and any fee for Secondary Services arising from the investment by such Collective Fund in an Affiliated Fund.

(k)(1) Russell, at least thirty (30) days in advance of the implementation of each fee increase (Fee Increase(s)), as defined below in Section IV(l), must provide in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below), a notice of change in fees (the Notice of Change in Fees) (which may take the form of a proxy statement, letter, or similar communication which is separate from the summary prospectus of such Affiliated Fund) and which explains the nature and the amount of such Fee Increase to the Second Fiduciary of each affected Client Plan. Such Notice of Change in Fees shall be accompanied by a Termination Form and by instructions on the use of such Termination Form, as described above in Section II(j)(3);

(2) Subject to the crediting, interest-payback, and other requirements below, for each Client Plan affected by a Fee Increase, Russell may implement such Fee Increase without waiting for the expiration of the 30-day period, described above in Section II(k)(1), provided Russell does not begin implementation of such Fee Increase before the first day of the 30-day period, described above in Section II(k)(1), and provided further that the following conditions are satisfied:

(i) Russell delivers, in the manner described in Section II(k)(1), to the Second Fiduciary for each affected Client Plan, the Notice of Change of Fees, as described in Section II(k)(1), accompanied by the Termination Form and by instructions on the use of such Termination Form, as described above in Section II(j)(3);

(ii) Each affected Client Plan receives from Russell a credit in cash equal to each such Client Plan's *pro rata* share of such Fee Increase to be received by Russell for the period from the date of the implementation of such Fee Increase to the *earlier of:*

(A) The date when an affected Client Plan, pursuant to Section II(j), terminates any authorization, as described above in Section II(i), or, terminates any negative consent authorization, as described in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Russell delivers to the Second Fiduciary of each affected Client Plan the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and by the instructions on the use of such Termination Form, as described above in Section II(j)(3).

(iii) Russell pays to each affected Client Plan the cash credit, described above in Section II(k)(2)(ii), with interest thereon, no later than five (5) business days following the *earlier of:* (A) The date such affected Client Plan, pursuant to Section II(j), terminates any authorization, as described above in Section II(i), or terminates, any negative consent authorization, as described in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Russell delivers to the Second Fiduciary

of each affected Client Plan, the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and instructions on the use of such Termination Form, as described above in Section II(j)(3);

(iv) Interest on the credit in cash is calculated at the prevailing Federal funds rate plus two percent (2%) for the period from the day Russell first implements the Fee Increase to the date Russell pays such credit in cash, with interest thereon, to each affected Client Plan;

(v) An independent accounting firm (the Auditor) at least annually audits the payments made by Russell to each affected Client Plan, audits the amount of each cash credit, plus the interest thereon, paid to each affected Client Plan, and verifies that each affected Client Plan received the correct amount of cash credit and the correct amount of interest thereon;

(vi) Such Auditor issues an audit report of its findings no later than six (6) months after the period to which such audit report relates, and provides a copy of such audit report to the Second Fiduciary of each affected Client Plan; and

(3) Within 30 days from the date Russell sends to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees and the Termination Form, the failure by such Second Fiduciary to return such Termination Form and the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(i), or to terminate the negative consent authorization, as described in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary of such Fee Increase.

(l) Effective upon the date that the final exemption is granted, in the case of (a) a Client Plan which has received the disclosures detailed in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), II(h)(2)(v), and II(h)(2)(vi), and which has authorized the investment by such Client Plan in a Collective Fund in accordance with Section II(i)(1)(ii) above, and (b) a Client Plan which has received the disclosures detailed in Section II(h)(3)(i), II(h)(3)(ii), and II(h)(3)(iii), and which has authorized investment by such Client Plan in a Collective Fund, in accordance with Section II(i)(1)(iii) above, the authorization pursuant to negative consent in accordance with this Section II(l), applies to:

(1) The purchase, as an addition to the portfolio of such Collective Fund, of shares of an Affiliated Fund (a New Affiliated Fund) where such New Affiliated Fund has not been previously authorized pursuant to Section II(i)(1)(ii), or, as applicable, Section II(i)(1)(iii), and such Collective Fund may commence investing in such New Affiliated Fund without further written authorization from the Second Fiduciary of each Client Plan invested in such Collective Fund, provided that:

(i) The organizational documents of such Collective Fund expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund, and such documents were disclosed in writing via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q)) to the Second Fiduciary of each such Client Plan invested in such Collective Fund, in advance of any investment by such Client Plan in such Collective Fund;

(ii) At least thirty (30) days in advance of the purchase by a Client Plan of shares of such New Affiliated Fund indirectly through a Collective Fund, Russell provides, either in writing via first class or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q)) to the Second Fiduciary of each Client Plan having an interest in such Collective Fund, full and detailed disclosures about such New Affiliated Fund, including but not limited to:

(A) A notice of Russell's intent to add a New Affiliated Fund to the portfolio of such Collective Fund. Such notice may take the form of a proxy statement, letter, or similar communication that is separate from the summary prospectus of such New Affiliated Fund to the Second Fiduciary of each affected Client Plan;

(B) Such notice of Russell's intent to add a New Affiliated Fund to the portfolio of such Collective Fund shall be accompanied by the information described in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), and II(2)(v) with respect to each such New Affiliated Fund proposed to be added to the portfolio of such Collective Fund; and

(C) A Termination Form and instructions on the use of such Termination Form, as described in Section II(j)(3); and

(2) Within 30 days from the date Russell sends to the Second Fiduciary of each affected Client Plan, the information described above in Section II(l)(1)(ii), the failure by such Second Fiduciary to return the Termination Form or to provide some other written notification of the Client Plan's intent to terminate the authorization described in Section II(i)(1)(ii), or, as appropriate, to terminate the authorization, described in Section II(i)(1)(iii), or to terminate any authorization, pursuant to negative consent, as described in this Section II(l), will be deemed to be an approval by such Second Fiduciary of the addition of a New Affiliated Fund to the portfolio of such Collective Fund in which such Client Plan invests, and will result in the continuation of the authorization of Russell to engage in the transactions which are the subject of this proposed exemption with respect to such New Affiliated Fund.

(m) Russell is subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Second Fiduciary of such Client Plan requests Russell to provide.

(n) All dealings between a Client Plan and an Affiliated Fund, including all such dealings when such Client Plan is invested directly in shares of such Affiliated Fund and when such Client Plan is invested indirectly in such shares of such Affiliated Fund through a Collective Fund, are on a basis no less favorable to such Client Plan, than dealings between such Affiliated Fund and other shareholders of the same class of shares in such Affiliated Fund.

(o) In the event a Client Plan invests directly in shares of an Affiliated Fund, and, as applicable, in the event a Client Plan invests indirectly in shares of an Affiliated Fund through a Collective Fund, if such Affiliated Fund places brokerage transactions with Russell, Russell will provide to the Second Fiduciary of each such Client Plan, so invested, at least annually a statement specifying:

(1) The total, expressed in dollars of brokerage commissions that are paid to Russell by each such Affiliated Fund;

(2) The total, expressed in dollars, of brokerage commissions that are paid by each such Affiliated Fund to brokerage firms unrelated to Russell;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Russell by each such Affiliated Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each such Affiliated Fund to brokerage firms unrelated to Russell.

(p)(1) Russell provides to the Second Fiduciary of each Client Plan invested directly in shares of an Affiliated Fund with the disclosures, as set forth below,

and at the times set forth below in Section II(p)(1)(i), II(p)(1)(ii), II(p)(1)(iii), II(p)(1)(iv), and II(p)(1)(v), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q) as set forth below);

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund which contains a description of all fees paid by such Affiliated Fund to Russell;

(iii) With regard to any Fee Increase received by Russell pursuant to Section II(k)(2), a copy of the audit report referred to in Section II(k)(2)(v) within sixty (60) days of the completion of such audit report;

(iv) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise; and

(v) Annually, with a Termination form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), then a Termination Form need not be provided again pursuant to this Section II(p)(1)(v) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided.

(2) Russell provides to the Second Fiduciary of each Client Plan invested in a Collective Fund, with the disclosures, as set forth below, and at the times set forth below in Section II(p)(2)(i), II(p)(2)(ii), II(p)(2)(iii), II(p)(2)(iv), II(p)(2)(v), II(p)(2)(vi), II(p)(2)(vii), and II(p)(2)(viii), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q);

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund through each such Collective Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund through each such Collective Fund which contains a description of all fees paid by such Affiliated Fund to Russell;

(iii) Annually, with a statement of the Collective Fund-Level Management Fee for investment management, investment advisory or similar services paid to Russell by each such Collective Fund, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund;

(iv) A copy of the annual financial statement of each such Collective Fund in which such Client Plan invests, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund, within sixty (60) days of the completion of such financial statement;

(v) With regard to any Fee Increase received by Russell pursuant to Section II(k)(2), a copy of the audit report referred to in Section II(k)(2)(v) within sixty (60) days of the completion of such audit report;

(vi) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan as such inquiries arise;

(vii) For each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, a statement of the approximate percentage (which may be in the form of a range) on an annual basis of the assets of such Collective Fund that was invested in Affiliated Funds during the applicable year; and

(viii) Annually, with a Termination Form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), then a Termination Form need not be provided again pursuant to this Section II(p)(2)(viii) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided.

(q) Any disclosure required herein to be made by Russell to a Second Fiduciary may be delivered by electronic email containing direct hyperlinks to the location of each such document required to be disclosed, which are maintained on a Web site by Russell, provided:

(1) Russell obtains from such Second Fiduciary prior consent in writing to the receipt by such Second Fiduciary of such disclosure via electronic email;

(2) Such Second Fiduciary has provided to Russell a valid email address; and

(3) The delivery of such electronic email to such Second Fiduciary is provided by Russell in a manner consistent with the relevant provisions of the Department's regulations at 29 CFR 2520.104b–1(c) (substituting the word ''Russell'' for the word ''administrator'' as set forth therein, and substituting the phrase ''Second Fiduciary'' for the phrase ''the participant, beneficiary or other individual'' as set forth therein).

(r) The authorizations described in paragraphs II(k) or II(l) may be made affirmatively, in writing, by a Second Fiduciary, in a manner that is otherwise consistent with the requirements of those paragraphs.

(s) All of the conditions of Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977), as amended and/or restated, are met. Notwithstanding this, if PTE 77–4 is amended and/or restated, the requirements of paragraph (e) therein will be deemed to be met with respect to authorizations described in section II(l) above, but only to the extent the requirements of section II(l) are met. Similarly, if PTE 77–4 is amended and/or restated, the requirements of paragraph (f) therein will be deemed to be met with respect to authorizations described in section II(k) above, if the requirements of section II(k) are met.

(t) *Standards of Impartial Conduct.* If Russell is a fiduciary within the meaning of section 3(21)(A)(i) or (ii) of the Act, or section 4975(e)(3)(A) or (B) of the Code, with respect to the assets of a Client Plan involved in the transaction, Russell must comply with the following conditions with respect to the transaction: (1) Russell acts in the Best Interest of the Client Plan; (2) all compensation received by Russell in connection with the transaction is reasonable in relation to the total services the fiduciary provides to the Client Plan; and (3) Russell's statements about recommended investments, fees, material conflicts of interest,[6] and any other matters relevant to a Client Plan's investment decisions are not misleading.

For purposes of this section, Russell acts in the ''Best Interest'' of the Client Plan when Frank Russell acts with the care, skill, prudence, and diligence under the circumstances then prevailing

[6] A ''material conflict of interest'' exists when a fiduciary has a financial interest that could affect the exercise of its best judgment as a fiduciary in rendering advice to a Client Plan. For this purpose, Russell's failure to disclose a material conflict of interest relevant to the services it is providing to a Client Plan Plan, or other actions it is taking in relation to a Client Plan's investment decisions, is deemed to be a misleading statement.

that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or IRA, without regard to the financial or other interests of the fiduciary, any affiliate or other party.

Section III. General Conditions

(a) Russell maintains for a period of six (6) years the records necessary to enable the persons, described below in Section III(b), to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of circumstances beyond the control of Russell, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than Russell shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination, as required below by Section III(b).

(b)(1) Except as provided in Section III(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service, or the Securities & Exchange Commission;

(ii) Any fiduciary of a Client Plan invested directly in shares of an Affiliated Fund, any fiduciary of a Client Plan who has the authority to acquire or to dispose of the interest in a Collective Fund in which a Client Plan invests, any fiduciary of a Client Plan invested indirectly in an Affiliated Fund through a Collective Fund where such fiduciary has the authority to acquire or to dispose of the interest in such Collective Fund, and any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Client Plan invested directly in shares of an Affiliated Fund or invested in a Collective Fund, and any participant or beneficiary of a Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and any representative of such participant or beneficiary; and

(2) None of the persons described in Section III(b)(1)(ii) and (iii) shall be authorized to examine trade secrets of Russell, or commercial or financial information which is privileged or confidential.

Section IV. Definitions

For purposes of this exemption:

(a) The term ''Russell'' means Frank Russell Company and any affiliate thereof, as defined below in Section IV(c).

(b) The term ''Client Plan(s)'' means a 401(k) plan(s), an individual retirement account(s), other tax-qualified plan(s), and other plan(s) as defined in the Act and Code, but does not include any employee benefit plan sponsored or maintained by Russell.

(c) An ''affiliate'' of a person includes:

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

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

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

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

(e) The term ''Affiliated Fund(s)'' means any diversified open-end investment company or companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended, established and maintained by Russell now or in the future for which Russell serves as an investment adviser.

(f) The term ''net asset value per share'' and the term ''NAV'' mean the amount for purposes of pricing all purchases and sales of shares of an Affiliated Fund, calculated by dividing the value of all securities, determined by a method as set forth in the summary prospectus for such Affiliated Fund and in the statement of additional information, and other assets belonging to such Affiliated Fund or portfolio of such Affiliated Fund, less the liabilities charged to each such portfolio or each such Affiliated Fund, by the number of outstanding shares.

(g) The term ''relative'' means a relative as that term is defined in section 3(15) of the Act (or a member of the family as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Second Fiduciary'' means the fiduciary of a Client Plan who is independent of and unrelated to Russell. For purposes of this proposed exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Russell if:

(1) Such Second Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Russell;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner, or employee of Russell (or is a relative of such person); or

(3) Such Second Fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of Russell (or relative of such person) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The decision of a Client Plan to invest in and to remain invested in shares of an Affiliated Fund directly, the decision of a Client Plan to invest in shares of an Affiliated Fund indirectly through a Collective Fund, and the decision of a Client Plan to invest in a Collective Fund that may in the future invest in shares of an Affiliated Fund;

(ii) Any authorization in accordance with Section II(i), and any authorization, pursuant to negative consent, as described in Section II(k) or in Section II(l); and

(iii) The choice of such Client Plan's investment adviser, then Section IV(h)(2) above shall not apply.

(i) The term ''Secondary Service(s)'' means a service or services other than an investment management service, investment advisory service, and any similar service which is provided by Russell to an Affiliated Fund, including but not limited to custodial, accounting, administrative services, and brokerage services. Russell may also serve as a dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Service, as defined in this Section IV(i).

(j) The term ''Collective Fund(s)'' means a separate account of an insurance company, as defined in section 2510.3–101(h)(1)(iii) of the Department's plan assets regulations,[7] maintained by Russell, and a bank-maintained common or collective investment trust maintained by Russell.

(k) The term ''business day'' means any day that

(1) Russell is open for conducting all or substantially all of its business; and

[7] 51 FR 41262 (November 13, 1986).

(2) The New York Stock Exchange (or any successor exchange) is open for trading.

(l) The term ''Fee Increase(s)'' includes any increase by Russell in a rate of a fee previously authorized in writing by the Second Fiduciary of each affected Client Plan pursuant to Section II(i)(2)(i)–(iv) above, and in addition includes, but is not limited to:

(1) Any increase in any fee that results from the addition of a service for which a fee is charged;

(2) Any increase in any fee that results from a decrease in the number of services and any increase in any fee that results from a decrease in the kind of service(s) performed by Russell for such fee over an existing rate of fee for each such service previously authorized by the Second Fiduciary, in accordance with Section II(i)(2)(i)–(iv) above; and

(3) Any increase in any fee that results from Russell changing from one of the fee methods, as described above in Section II(a)(1)–(3), to using another of the fee methods, as described above in Section II(a)(1)–(3).

(m) The term ''Plan-Level Management Fee'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Client Plan to Russell for any investment management services, investment advisory services, and similar services provided by Russell to such Client Plan at the plan-level. The term ''Plan-Level Management Fee'' does not include a separate fee paid by a Client Plan to Russell for asset allocation service(s) (Asset Allocation Service(s)), as defined below in Section IV(p), provided by Russell to such Client Plan at the plan-level.

(n) The term ''Collective Fund-Level Management Fee'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Collective Fund to Russell for any investment management services, investment advisory services, and any similar services provided by Russell to such Collective Fund at the collective fund level.

(o) The term ''Affiliated Fund-Level Advisory Fee'' includes any investment advisory fee and any similar fee paid by an Affiliated Fund to Russell under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act.

(p) The term ''Asset Allocation Service(s)'' means a service or services to a Client Plan relating to the selection of appropriate asset classes or target-date ''glidepath'' and the allocation or reallocation (including rebalancing) of the assets of a Client Plan among the selected asset classes. Such services do not include the management of the underlying assets of a Client Plan, the selection of specific funds or manager, and the management of the selected Affiliated Funds or Collective Funds.

Effective Date: If granted, this exemption will be effective as of June 1, 2014.

Written Comments

In the Notice of Proposed Exemption (the Notice), published in the **Federal Register** on July 27, 2015 at 80 FR 44738, the Department invited all interested persons to submit written comments and requests for a hearing within forty-five (45) days of the date of the publication. All comments and requests for a hearing were due by September 10, 2015.

During the comment period, the Department received one comment and no requests for a public hearing. The comment, which was submitted by the Applicants in an email message dated August 5, 2015, requests clarifications to page 44750 of the Notice in the ''Notice to Interested Persons'' section. The Applicants cite the first sentence of this section, which states: ''Those persons who may be interested in the publication in the **Federal Register** of the Notice include each Client Plan invested directly in shares of an Affiliated Fund, each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and each plan for which Russell provides discretionary management services at the time the proposed exemption is published in the **Federal Register**.''

The Applicants believe that an inclusion of ''all plans to which Russell provides discretionary management services'' may be overly-broad in this context. The Applicants explain that they have numerous discretionary advisory clients, some of which are subject to ERISA, and state that they only intend to rely upon the exemption with respect to a subset of these clients, specifically those clients which have engaged Russell to provide ''Asset Allocation Services'' for a fee, as described in the Notice. With respect to their other discretionary clients, the Applicants explain that they either (1) do not need exemptive relief, or (2) will continue to rely upon other exemptions, such as PTE 77–4. In the event that Applicants determine to rely upon this exemption for their other discretionary clients, or with respect to new clients, the Applicants will provide a copy of the Notice and the final exemption, to such clients, and will amend the applicable client contract to anticipate the requirements of this exemption.

The Department notes this clarification to the Notice, and concurs that the notification requirements will be deemed to be satisfied if performed in the manner described herein by the Applicants.

Accordingly, after full consideration and review of the entire record, including the comment letter filed by the Applicants, the Department has determined to grant the exemption, as set forth above. The Applicants' comment email has been included as part of the public record of the exemption application. The complete application file (D–11781) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210.

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 July 27, 2015 at 80 FR 44738.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

The Les Schwab Tire Centers of Washington, Inc. (Les Schwab Washington), the Les Schwab Tire Centers of Idaho, Inc. (Les Schwab Idaho), and the Les Schwab Tire Centers of Portland, Inc. (Les Schwab Portland), (collectively, with their Affiliates, Les Schwab or the Applicant), Located in Bothell, Washington; Lacey, Washington; Renton, Washington; Twin Falls, Idaho; and Sandy, Oregon, [Prohibited Transaction Exemption 2015–18; Exemption Application Nos. D–11788, D–11789, D–11790, D–11791, and D–11792]

Exemption

Section I. Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986, as amended (the Code), by reason of sections 4975(c)(1)(A), 4975(c)(1)(D) and 4975(c)(1)(E) of the Code, shall not apply to the sales (the Sales) by the Les Schwab Profit Sharing Retirement Plan (the Plan) of the following parcels of real property (each, a ''Parcel'' and together, ''the Parcels'') to the Applicant:

(a) The Parcel located at 19401 Bothell Everett Highway in Bothell, Washington;

(b) The Parcel located at 150 Marvin Road, SE Lacey, Washington;

(c) The Parcel located at 354 Union Ave. NE., Renton, Washington;

(d) The Parcel located at 21 Blue Lakes Boulevard North Twin Falls, Idaho; and

(e) The Parcel located at 37895 Highway 26, Sandy, Oregon; where the Applicant is a party in interest with respect to the Plan, provided that the conditions set forth in Section II of this exemption are met.

Section II. General Conditions

(a) The price paid by Les Schwab to the Plan for each Parcel no less than the fair market value of each Parcel (exclusive of the buildings or other improvements paid for by Les Schwab, to which Les Schwab retains title), as determined by qualified independent appraisers (the Appraisers), working for CBRE, Inc., in separate appraisal reports (the Appraisals) that are updated on the date of the Sale.

(b) Each Sale is a one-time transaction for cash.

(c) The Plan does not pay any costs, including brokerage commissions, fees, appraisal costs, or any other expenses associated with each Sale.

(d) The Appraisers determine the fair market value of their assigned Parcel, on the date of the Sale, using commercially accepted methods of valuation for unrelated third-party transactions, taking into account the following considerations:

(1) The fact that a lease between Les Schwab and the Plan is a ground lease and not a standard commercial lease;

(2) The assemblage value of the Parcel, where applicable;

(3) Any special or unique value the Parcel holds for Les Schwab; and

(4) Any instructions from the qualified independent fiduciary (the Independent Fiduciary) regarding the terms of the Sale, including the extent to which the Appraiser should consider the effect that Les Schwab's option to purchase a Parcel would have on the fair market value of the Parcel.

(e) The Independent Fiduciary represents the interests of the Plan with respect to each Sale, and in doing so:

(1) Determines that it is prudent to go forward with each Sale;

(2) Approves the terms and conditions of each Sale;

(3) Reviews and approves the methodology used by the Appraiser and ensures that such methodology is properly applied in determining the Parcel's fair market value on the date of each Sale;

(4) Reviews and approves the determination of the Purchase Price; and

(5) Monitors each Sale throughout its duration on behalf of the Plan for compliance with the general terms of the transaction and with the conditions of this exemption, if granted, and takes any appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries.

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

Effective Date: This exemption is effective as of the publication of the grant notice in the Federal Register.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice) that was published in the **Federal Register** on July 27, 2015, at 80 FR 44702. All comments and requests for hearing were due on or before September 10, 2015.

During the comment period, the Department received 38 telephone inquiries from Plan participants, concerning matters that were outside the scope of the exemption, but no written comments or requests for a public hearing from such participants.

The Department also received a written comment from the Applicant. The Applicant notes that the application numbers cited in the proposed exemption refer to the prior exemption request, which was subsequently withdrawn. The Exemption Application Numbers now read as follows: ''Application Nos. D–11788, D–11789, D–11790, and D–11791.'' In the comment letter, the Applicant made comments which the Department has determined to be non-substantive.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application Nos. D–17888, D–11789, D–11790, D–11791, and D–11792), including the Applicant's comment, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** on July 27, 2015, at 80 FR 44702.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown or Mr. Joseph Brennan of the Department at (202) 693–8352 or (202) 693–8456, respectively. (These are not toll-free numbers.)

New England Carpenters Training Fund (the Plan or the Applicant), Located in Millbury, Massachusetts, [Prohibited Transaction 2015–19; Exemption Application No. L–11795]

Exemption

The restrictions of section 406(a)(1)(A) and (D) of the Act shall not apply to the purchase (the Purchase), by the Plan, of a parcel of improved real property (the Property) from the Connecticut Carpenters Local 24 (Local 24), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) The Purchase price paid by the Plan for the Property is the lesser of $1,280,000 or the fair market value of such Property, as determined by an independent, qualified appraiser (the Appraiser), as of the date of the Purchase;

(2) The Purchase is a one-time transaction for cash;

(3) The terms and conditions of the Purchase are no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's-length with unrelated third parties;

(4) Prior to entering into the Purchase, an independent, qualified fiduciary (the I/F) determines that the Purchase is in the interest of, and protective of the Plan and of its participants and beneficiaries;

(5) The I/F: (a) Has negotiated, reviewed, and approved the terms of the Purchase prior to the consummation of such transaction; (b) has reviewed and approved the methodology used by the Appraiser; (c) ensures that such methodology is properly applied in determining the fair market value of the Property at the time the transaction occurs, and determines whether it is prudent to go forward with the proposed transaction; and (d) represents the interests of the Plan at the time the proposed transaction is consummated;

(6) Immediately following the Purchase, the fair market value of the Property does not exceed 3 percent (3%) of the fair market value of the total assets of the Plan; and

(7) The Plan does not incur any fees, costs, commissions, or other charges as a result of engaging in the Purchase, other than the necessary and reasonable fees payable to the I/F and to the Appraiser, respectively.

Written Comments

In the notice of proposed exemption (the Notice), the Department invited all interested persons to submit written comments within thirty-seven (37) days of the date of the publication of the Notice in the **Federal Register** on July 27, 2015. All comments were due by September 2, 2015. During the comment period, the Department received no comments from interested persons.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Exemption Application No. L–11795) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** on July 27, 2015 at 80 FR 44709.

FOR FURTHER INFORMATION CONTACT: Blessed Chuksorji-Keefe of the Department at (202) 693–8567. (This is not a toll-free number).

Virginia Bankers Association Defined Contribution Plan for First Capital Bank (the Plan), Located in Glen Allen, VA, [Prohibited Transaction Exemption 2015–20; Application No. D–11818]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,[8] shall not apply to: (1) The acquisition of certain warrants (the Warrants) to purchase a half-share of common stock (the Stock) of First Capital Bancorp, Inc. (First Capital) by the participant-directed accounts (the Accounts) of certain participants in the Plan (the Participants) in connection with a rights offering (the Rights Offering) of shares of Stock by First Capital, a party in interest with respect to the Plan; and (2) the holding of the Warrants received by the Accounts, provided that the conditions set forth in Section II below were satisfied for the duration of the acquisition and holding.

Section II. Conditions for Relief

(a) The acquisition of the Warrants by the Accounts of the Participants occurred in connection with the exercise of subscription rights to purchase Stock and Warrants (the Subscription Rights) pursuant to the Rights Offering, which was made available by First Capital to all shareholders of Stock, including the Plan;

(b) The acquisition of the Warrants by the Accounts of the Participants resulted from their participation in the Rights Offering, an independent corporate act of First Capital;

(c) Each shareholder of Stock, including each of the Accounts of the Participants, was entitled to receive the same proportionate number of Warrants, and this proportionate number of Warrants was based on the number of shares of Stock held by each such shareholder on the record date of the Rights Offering;

(d) The Warrants were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual participants in the Plan, a portion of whose Accounts in the Plan held the Stock;

(e) The decisions with regard to the acquisition, holding, and disposition of the Warrants by an Account have been made, and will continue to be made, by the individual Participant whose Account received the Subscription Right in respect of which such Warrants were acquired;

(f) The trustee of the Plan's fund maintained to hold Stock, the First Capital Stock Fund, will not allow Participants to exercise the Warrants unless the fair market value of the Stock exceeds the exercise price of the Warrants on the date of exercise; and

(g) No brokerage fees, commissions, or other fees or expenses were paid or will be paid by the Plan in connection with the acquisition, holding and/or exercise of the Subscription Right or the Warrants.

Effective Date: This exemption is effective for the period beginning on April 30, 2012, until the date the Warrants are exercised or expire.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on July 27, 2015, at 80 FR 44712. All comments and requests for hearing were due by September 10, 2015. During the comment period, the Department received one telephone inquiry that generally concerned matters outside the scope of the exemption. Furthermore, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11818), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

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 27, 2015, at 80 FR 44712.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Idaho Veneer Company/Ceda-Pine Veneer, Inc. Employees' Retirement Plan, Located in Post Falls, ID, [Prohibited Transaction Exemption 2015–21; Application No. D–11823]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the in-kind contribution (the Contribution) by Idaho Veneer Company (Idaho Veneer or the Applicant) of unimproved real property (the Property) to the Idaho Veneer Company/Ceda-Pine Veneer, Inc. Employees' Retirement Plan (the Plan), provided that the conditions in Section II have been met.

Section II. Conditions for Relief

(a) The Property is contributed to the Plan at the greater of either: (1) $1,249,000; or (2) the fair market value of the Property, as determined by a qualified independent appraiser, in an appraisal (the Appraisal) that is updated on the date of the Contribution;

(b) A qualified independent fiduciary (the Independent Fiduciary), acting on behalf of the Plan, represents the interests of the Plan and its participants and beneficiaries with respect to the Contribution, and in doing so: (1)

[8] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Determines that the Contribution is in the interests of the Plan and of its participants and beneficiaries and is protective of the rights of participants and beneficiaries of the Plan; (2) reviews the Appraisal to approve of the methodology used by the appraiser and to verify that the appraiser's methodology was properly applied; and (3) ensures compliance with the terms of the Contribution and the conditions for the exemption;

(c) All rights exercisable in connection with any existing third-party lease for billboard space (the Lease) on the Property are transferred to the Plan along with the Property;

(d) The Plan does not incur any expenses with respect to the Contribution;

(e) As of the date of the Contribution, there are no adverse claims, liens or debts to be levied against the Property, and Idaho Veneer is not aware of any pending adverse claims, liens or debts to be levied against the Property;

(f) On the date of the Contribution, and to the extent that the value of the Property as of the date of the Contribution is less than the cumulative cash contributions Idaho Veneer would have been required to make to the Plan in the absence of the Contribution, Idaho Veneer will make a cash contribution to the Plan equal to the difference between the value of the Property at the date of the Contribution and the outstanding required cash contributions;

(g) The Property represents no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan; and

(h) The terms and conditions of the Contribution are no less favorable to the Plan than those the Plan could negotiate in an arms-length transaction with an unrelated third party.

Effective Date: This exemption is effective as of September 15, 2015.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on July 27, 2015, at 80 FR 44715. All comments and requests for hearing were due by September 10, 2015. During the comment period, the Department received several phone inquiries that generally concerned matters outside the scope of the exemption. Furthermore, the Department received no written comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption, with one minor modification. The Department has modified the effective date in the proposed exemption to provide that the final exemption is effective as of September 15, 2015.

The complete application file (Application No. D–11823), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

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 27, 2015, at 80 FR 44715.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

United States Steel and Carnegie Pension Fund, (UCF or the Applicant), Located in New York, New York, [Prohibited Transaction Exemption 2015–22; [Exemption Application No. D–11835]

Exemption

Section I. Covered Transactions

If the exemption is granted, 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,[9] shall not apply, effective from January 1, 2015, through December 31, 2016, to a transaction between a party in interest with respect to Former U.S. Steel Related Plan(s), as defined in Section II(e), and an investment fund, as defined in Section II(k), in which such plans have an interest (the Fund), provided that UCF has discretionary authority or control with respect to the plan assets involved in the transaction, and the following conditions are satisfied:

(a) UCF is an investment adviser registered under the Investment Advisers Act of 1940 (the 1940 Act) that has, as of the last day of its most recent fiscal year, total client assets, including in-house plan assets (the In-House Plan Assets), as defined in Section II(g), under its management and control in excess of $100,000,000 and equity, as defined in Section II(j), in excess of $1,000,000 (as measured yearly on UCF's most recent balance sheet prepared in accordance with generally accepted accounting principles); and provided UCF has acknowledged in a written management agreement that it is a fiduciary with respect to each Former U.S. Steel Related Plan that has retained it;

(b) At the time of the transaction, as defined in Section II(m), the party in interest, as defined in Section II(h), or its affiliate, as defined in Section II(a), does not have the authority to—

(1) Appoint or terminate UCF as a manager of any of the plan assets of the Former U.S. Steel Related Plans, or

(2) Negotiate the terms of the management agreement with UCF (including renewals or modifications thereof) on behalf of the Former U.S. Steel Related Plans.

(c) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006–16 (PTE 2006–16),[10] relating to securities lending arrangements (as amended or superseded);

(2) Prohibited Transaction Exemption 83–1 (PTE 83–1),[11] relating to acquisitions by plans of interests in mortgage pools (as amended or superseded), or

(3) Prohibited Transaction Exemption 88–59 (PTE 88–59),[12] relating to certain mortgage financing arrangements (as amended or superseded);

(d) The terms of the transaction are negotiated on behalf of the Fund by, or under the authority and general direction of, UCF, and either UCF, or (so long as UCF retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by UCF, makes the decision on behalf of the Fund to enter into the transaction;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of UCF, the terms of the transaction are at least as favorable to the Fund as the terms generally available in arm's-length transactions between unrelated parties;

(f) Neither UCF nor any affiliate thereof, as defined in Section II(b), nor any owner, direct or indirect, of a 5 percent (5%) or more interest in UCF is a person who, within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) Any felony involving abuse or misuses of such person's employee

[9] For purposes of this exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[10] 71 FR 63786, October 31, 2006.

[11] 48 FR 895, January 7, 1983.

[12] 53 FR 24811, June 30, 1988.

benefit plan position or employment, or position or employment with a labor organization;

(2) Any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) Income tax evasion;

(4) Any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) Any other crimes described in section 411 of the Act.

For purposes of this Section I(f), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal;

(g) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(h) The party in interest dealing with the Fund:

(1) Is a party in interest with respect to the Former U.S. Steel Related Plans (including a fiduciary) solely by reason of providing services to the Former U.S. Steel Related Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act;

(2) Does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets; and

(3) Is neither UCF nor a person related to UCF, as defined, in Section II(i).

(i) UCF adopts written policies and procedures that are designed to assure compliance with the conditions of this exemption;

(j) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act, and who so represents in writing, conducts an exemption audit, as defined in Section II(f) of this exemption, on an annual basis. Following completion of each such exemption audit, the independent auditor must issue a written report to the Former U.S. Steel Related Plans that engaged in such transactions, presenting its specific findings with respect to the audited sample regarding the level of compliance with the policies and procedures adopted by UCF, pursuant to Section I(i) of this exemption, and with the objective requirements of this exemption. The written report also shall contain the auditor's overall opinion regarding whether UCF's program as a whole complies with the policies and procedures adopted by UCF and the objective requirements of this exemption. The independent auditor must complete each such exemption audit and must issue such written report to the administrators, or other appropriate fiduciary of the Former U.S. Steel Related Plans, within six (6) months following the end of the year to which each such exemption audit and report relates; and

(k)(1) UCF or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the persons described in Section I(k)(2) to determine whether the conditions of this exemption have been met, except that (A) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UCF and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (B) no party in interest or disqualified person other than UCF shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by Section I(k)(2), of this exemption;

(2) Except as provided in Section I(k)(3), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(k)(1), of this exemption are unconditionally available for examination at their customary location during normal business hours by:

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

(B) Any fiduciary of any of the Former U.S. Steel Related Plans investing in the Fund or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any of the Former U.S. Steel Related Plans investing in the Fund or any duly authorized employee representative of such employer;

(D) Any participant or beneficiary of any of the Former U.S. Steel Related Plans investing in the Fund, or any duly authorized representative of such participant or beneficiary; and

(E) Any employee organization whose members are covered by such Former U.S. Steel Related Plans;

(3) None of the persons described in Section I(k)(2)(B) through (E), of this exemption shall be authorized to examine trade secrets of UCF or its affiliates or commercial or financial information which is privileged or confidential.

Section II. Definitions

(a) For purposes of Section I(b) of this exemption, an ''affiliate'' of a person means—

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

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, five percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets.

A named fiduciary (within the meaning of section 402(a)(2) of the Act) or a plan, with respect to the plan assets and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of Section I(b), if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(f), of this exemption, an ''affiliate'' of a person means—

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

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person) or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

(c) For purposes of Section II(e) and (g), of this exemption, an ''affiliate'' of UCF includes a member of either:

(1) A controlled group of corporations, as defined in section 414(b) of the Code, of which United States Steel Corporation (U.S. Steel) is a member, or

(2) A group of trades or business under common control, as defined in section 414(c) of the Code of which U.S. Steel is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) or the rules thereunder.

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

(e) ''Former U.S. Steel Related Plan(s)'' mean:

(1) The Marathon Petroleum Retirement Plan and the Speedway Retirement Plan (the Marathon Plans);

(2) The Pension Plan of RMI Titanium Company, the Pension Plan of Eligible Employees of RMI Titanium Company, the Pension Plan for Eligible Salaried Employees of RMI Titanium Company, and the TRADCO Pension Plan;

(3) Any plan the assets of which include or have included assets that were managed by UCF as an in-house asset manager, pursuant to Prohibited Transaction Class Exemption 96–23 (PTE 96–23) [13] but as to which PTE 96–23 is no longer available because such assets are not held under a plan maintained by an affiliate of UCF (as defined in Section II(c) of this exemption); and

(4) Any plan (an Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of UCF (as defined in Section II(c), of this exemption; provided that:

(A) The assets of the Add-On Plan are invested in a commingled fund (the Comingled Fund), as defined in Section II(n) of this exemption, with the assets of a plan or plans, described in Section II(e)(1)–(3) of this exemption and

(B) The assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such fund, as measured on the day immediately following the initial commingling of their assets (the 25% Test). For purposes of the 25% Test, as set forth in Section II(e)(4);

(i) In the event that less than all of the assets of an Add-On Plan are invested in a Commingled Fund on the date of the initial transfer of such Add-On Plan's assets to such fund, and if such Add-On Plan subsequently transfers to such Commingled Fund some or all of the assets that remain in such plan, then for purposes of compliance with the 25% Test, the sum of the value of the initial and each additional transfer of assets of such Add-On Plan shall not exceed 25 percent (25%) of the value of the aggregate assets in such Commingled Fund, as measured on the day immediately following the addition of each subsequent transfer of such Add-On Plan's assets to such Commingled Fund;

(ii) Where the assets of more than one Add-On Plan are invested in a Commingled Fund with the assets of plans described in Section II(e)(1)–(3) of this exemption, the 25% Test will be satisfied, if the aggregate amount of the assets of such Add-On Plans invested in such Commingled Fund do not represent more than 25 percent (25%) of the value of all of the assets of such Commingled Fund, as measured on the day immediately following each addition of Add-On Plan assets to such Commingled Fund;

(iii) If the 25% Test is satisfied at the time of the initial and any subsequent transfer of an Add-On Plan's assets to a Commingled Fund, as provided in Section II(e), this requirement shall continue to be satisfied notwithstanding that the assets of such Add-On Plan in the Commingled Fund exceed 25 percent (25%) of the value of the aggregate assets of such fund solely as a result of:

(AA) A distribution to a participant in a Former U.S. Steel Related Plan;

(BB) Periodic employer or employee contributions made in accordance with the terms of the governing plan documents;

(CC) The exercise of discretion by a Former U.S. Steel Related Plan participant to re-allocate an existing account balance in a Commingled Fund managed by UCF or to withdraw assets from a Commingled Fund; or

(DD) An increase in the value of the assets of the Add-On Plan held in such Commingled Fund due to investment earnings or appreciation;

(iv) If, as a result of a decision by an employer or a sponsor of a plan, described in Section II(e)(1)–(3) of this exemption, to withdraw some or all of the assets of such plan from a Commingled Fund, the 25% Test is no longer satisfied with respect to any Add-On Plan in such Commingled Fund, then the exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund; and

(v) Where the assets of a Commingled Fund include assets of plans other than Former U.S. Steel Related Plans, as defined in Section II(e) of this exemption, the 25% Test will be determined without regard to the assets of such other plans in such Commingled Fund.

(f) An ''Exemption Audit'' of any of the Former U.S. Steel Related Plans must consist of the following:

(1) A review by an independent auditor of the written policies and procedures adopted by UCF, pursuant to Section I(i), for consistency with each of the objective requirements of this exemption (as described in Section II(f)(5)).

(2) A test of a representative sample of the subject transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis:

(A) To make specific findings regarding whether UCF is in compliance with

(i) The written policies and procedures adopted by UCF pursuant to Section I(i) of the exemption and

(ii) The objective requirements of the exemption; and

(B) To render an overall opinion regarding the level of compliance of UCF's program with this Section II(f)(2)(A)(i) and (ii) of the exemption;

(3) A determination as to whether UCF has satisfied the requirements of Section I(a), of this exemption;

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings; and

(5) For purposes of Section II(f) of this exemption, the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by UCF to assure compliance with each of these requirements:

(A) The requirements of Section I(a) of this exemption regarding registration under the 1940 Act, total assets under management, and equity;

(B) The requirements of Section I(d) of this exemption regarding the discretionary authority or control of UCF with respect to the assets of the Former U.S. Steel Related Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Former U.S. Steel Related Plans to enter into the transaction;

(C) That any procedure for approval of the transaction meets the requirements of Section I(d);

[13] 61 FR 15975, April 10, 1996.

(D) The transaction is not entered into with any person who is excluded from relief under Section I(h)(1) of this exemption or Section I(h)(2), to the extent that such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(E) The transaction is not described in any of the class exemptions listed in Section I(c) of this exemption.

(g) ''In-house Plan Assets'' mean the assets of any plan maintained by an affiliate of UCF, as defined in Section II(c) of this exemption, and with respect to which UCF has discretionary authority of control.

(h) The term ''party in interest'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(i) UCF is ''related'' to a party in interest for purposes of Section I(h)(3) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in U.S. Steel, or if UCF (or a person controlling, or controlled by UCF) owns a 5 percent (5%) or more interest in the party in interest.

For purposes of this definition:

(1) The term ''interest'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation;

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(j) For purposes of Section I(a) of this exemption, the term ''equity'' means the equity shown on the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(k) ''Investment Fund'' includes single customer and pooled separate accounts maintained by an insurance company, individual trust and common collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of UCF) is subject to the discretionary authority of UCF.

(l) The term ''relative'' means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(m) The ''time of the transaction'' is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the effective date of this Final Exemption or a renewal that requires the consent of UCF occurs on or after such effective date and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as authorizing a transaction entered into by an Investment Fund which becomes a transaction described in section 406(a) of the Act or section 4975(c)(1)(A) through (D) of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of this exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(h) of this exemption will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(n) ''Commingled Fund'' means a trust fund managed by UCF containing assets of some or all of the plans described in Section II(e)(1)–(3) of this exemption, plans other than Former U.S. Steel Related Plans, and if applicable, any Add-On Plan, as to which the 25% Test provided in Section II(e)(4) of this exemption has been satisfied; provided that:

(1) Where UCF manages a single sub-fund or investment portfolio within such trust, the sub-Fund or portfolio will be treated as a single Commingled Fund; and

(2) Where UCF manages more than one sub-fund or investment portfolio within such trust, the aggregate value of the assets of such sub-funds or portfolios managed by UCF within such trust will be treated as though such aggregate assets were invested in a single Commingled Fund.

Effective Date: This exemption will be effective for the period beginning on January 1, 2015, and ending on the day which is two (2) years from the effective date.

Written Comments

In the Notice of Proposed Exemption (the Notice), published in the **Federal Register** on July 27, 2015 at 80 FR 44720, the Department invited all interested persons to submit written comments and requests for a hearing within forty-five (45) days of the date of the publication. All comments and requests for a hearing were due by September 10, 2015. During the comment period, the Department received no comments and no requests for a hearing from interested persons.

For the purpose of consistency, the Department has amended Section I with respect to the effective dates of the exemption. The Department has changed the end date of the effective period from December 31, 2017, as stated in the exemption, to December 31, 2016. This change accurately reflects the intended 24 month effective period, as set out in the exemption.

Accordingly, after full consideration and review of the entire record, the Department has determined to grant the exemption, as set forth above. The complete application file (D–11835) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

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 July 27, 2015 at 80 FR 44720.

FOR FURTHER INFORMATION CONTACT: Joseph Brennan of the Department telephone (202) 693–8456. (This is not a toll-free number.)

Roberts Supply, Inc. Profit Sharing Plan and Trust (the Plan) Located in Winter Park, FL [Prohibited Transaction Exemption 2015–23; Exemption Application No. D–11836]

Exemption

The restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Employee Retirement Income Security Act of 1974, as amended (the Act),[14] shall not apply to the cash sale (the Sale) by the Plan of

[14] For purposes of this exemption, references to Section 406 of the Act should be read to refer as well to the corresponding provisions of Section 4975 of the Internal Revenue Code of 1986, as amended.

a parcel of improved real property located at 7457 Aloma Avenue, Winter Park, Florida (the Property) to Roberts Brothers Development, LLC (Roberts Development), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) The Plan receives an amount of cash in exchange for the Property, equal to the greater of $900,000, or the current fair market value of the Property as determined by a qualified independent appraiser in a written appraisal that is updated on the date the Sale is consummated;

(c) The Plan incurs no real estate fees, commissions, or other expenses in connection with the Sale, aside from the appraisals; and

(d) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arms-length transaction with an unrelated third party.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on July 27, 2015, at 80 FR 44726. All comments and requests for a hearing were due by September 10, 2015. During the comment period, the Department received no comments and no requests for a hearing from interested persons.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11836), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a 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 27, 2015 in the **Federal Register** at 80 FR 44726.

FOR FURTHER INFORMATION CONTACT: Ms. Erica R. Knox of the Department, telephone (202) 693–8644. (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) 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 the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of September, 2015.

Lyssa E. Hall,

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

[FR Doc. 2015–25254 Filed 10–5–15; 8:45 am]

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