

(A) All terms and conditions of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price which is no less than the greater of (1) the fair market value of the Surviving Claim as of the sale date, or (2) the Plan's principal investment attributable to the Surviving Claim plus interest through the purchase date at the Contract Rate (as defined in the Notice of Proposed Exemption); and

(C) In the event the Employer subsequently receives payments with respect to the Surviving Claim from any source in excess of the purchase price paid to Plan, such excess will be paid to the Plan.

EFFECTIVE DATE: This exemption is effective as of June 17, 1996.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on June 4, 1996 at 61 FR 28242.

FOR FURTHER INFORMATION CONTACT:

Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Hoechst Marion Roussel, Inc. Matching Contribution Plan (the Plan) Located in Kansas City, Missouri

[Prohibited Transaction Exemption 96-68; Exemption Application No. D-10242]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continuing guarantee by Hoechst Marion Roussel, Inc. (the Corporation) of a loan made to the Marion Merrell Dow Inc. Associate Stock Ownership Plan (the Plan), provided the following conditions are satisfied: a) the transaction is a continuation of a guarantee that was statutorily exempt at the time it was entered into; and b) the transaction requires an exemption because of an independent transaction involving the Plan's sponsor as a corporate entity.

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 June 21, 1996 at 61 FR 31956.

EFFECTIVE DATE: This exemption is effective from July 18, 1995 to August 2, 2005.

WRITTEN COMMENTS AND HEARING

REQUESTS: The only written comment

received by the Department was submitted by the applicant to correct an erroneous representation in the notice of proposed exemption. The applicant had represented that German companies do not maintain stock plans since, under German law, companies are not legally permitted to purchase their own stock. The applicant states in its comment letter that it has recently come to the applicant's attention that in certain cases some German corporations have introduced stock plans to compensate their German employees. The applicant also represents that this does not change the fact that Hoechst AG, the German corporation of which the Corporation is an indirect wholly owned subsidiary, does not wish to have any of its equity securities owned by an employee stock ownership plan for the benefit of United States employees.

The Department received no hearing requests with respect to the proposed exemption. The Department has considered the entire record, including the applicant's comment, and has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 22nd day of August, 1996.

Ivan Strasfeld,

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

[FR Doc. 96-21840 Filed 8-26-96; 8:45 am]

BILLING CODE 4510-29-P

[Application No. D-10224, et al.]

Proposed Exemptions; Zerhusen and Ghazi, M.D. Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

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

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

Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Zerhusen and Ghazi, M.D. Inc. Profit Sharing Plan (the Plan) Located in Cincinnati, Ohio

[Application No. D-10224]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the

Sale) by Dr. J. Robert Zerhusen's individual, self-directed account within the Plan (the Account) of a parcel of real property (the Property) to his spouse, Marilyn E. Zerhusen (Mrs. Zerhusen), a participant in the Plan and 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 a lump sum cash payment; (b) the purchase price is the fair market value of the Property as of the date of the Sale; (c) the Property has been appraised by a qualified, independent real estate appraiser; and (d) the Account will pay no commissions or other expenses relating to the Sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan and has four participants as of the date of the application. The Plan participants have individual, self-directed investment accounts within the Plan. Dr. J. Robert Zerhusen (Dr. Zerhusen) has a non-self-directed account in addition to a self-directed account within the Plan. The real property involved in the Sale is in Dr. Zerhusen's self-directed account and Dr. Zerhusen has investment discretion over this real property. As of December 31, 1995, the fair market value of the total assets of the Plan was \$911,015.68. As of that date, the Account had assets of \$106,546.00 and Dr. Zerhusen's non-self-directed account had assets of \$713,740.45. The \$49,100.00 appraised value of the Property represents forty-six (46) percent of the total Account balance as of December 31, 1995.

2. The Plan was sponsored by Zerhusen & Ghazi, M.D. Inc. (Z & G) which was an Ohio corporation maintained by physicians for the practice of medicine. Dr. Zerhusen is the trustee of the Plan. Currently, there is no active trade or business being conducted in the name of Z & G. The operations of the corporation have been transferred to a newly formed corporation named Westside Cardiology, Inc. Dr. Zerhusen maintains the position of president and director of Westside Cardiology, Inc.

3. The Property consists of 5.112 acres of unimproved land located on Rear Owl Creek Road in Cincinnati, Ohio. The specific zoning classification is residential. The Property was originally purchased by the Account on December 23, 1986 for \$40,000.00. The 20 acres of property adjacent to the Property is owned by Mrs. Zerhusen. Mrs. Zerhusen purchased the adjacent property from the same seller and on the same date that the Account purchased the

Property.¹ The adjacent Property was purchased by Mrs. Zerhusen for \$8,000 per acre or \$160,000.00.

4. The Property has been held in the Account since the purchase date and has not been used by or leased to any person since its acquisition by the Account. On February 9, 1996, the Property was appraised by Joseph L. Schaffer, a Certified Real Estate Appraiser located in Cincinnati, Ohio. Relying on the market data approach, Mr. Schaffer estimated that the fair market value of the Property was \$49,100.00. In his appraisal of the Property, Mr. Schaffer found that there will be no special benefit to be derived by Mrs. Zerhusen by virtue of purchasing the Property due to the fact that she owns the adjacent parcel.

5. Mrs. Zerhusen proposes to purchase the Property from the Account for a lump sum payment of cash representing the fair market value of the Property on the date of sale. There will be no other type of financing involved. The applicant represents that the Sale will result in a conversion of Plan assets from real property to a liquid investment. The Plan will be terminating due to dissolution of the Plan sponsor, Z & G, and liquid assets will be easier to transfer from the Plan.

6. In summary, the applicant represents that the requested exemption will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Sale is a one time transaction for a lump sum cash payment; (b) the Plan will receive the fair market value of the Property at the time of the transaction; (c) the fair market value of the Property has been determined by an independent, qualified real estate appraiser; (d) the Plan will pay no fees or commissions associated with the Sale; and (e) no other participant in the Plan will be affected by the transaction.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in the Account of Dr. Zerhusen and he is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT:
Wendy McColough of the Department,

¹ The Department expresses no opinion herein on whether the acquisition and holding of the Property by the Account in the Plan violated any of the provisions of Part 4 of Title I of the Act.

telephone (202) 219-8971. (This is not a toll-free number.)

Lehman Brothers, Inc. (Lehman)
Located in New York, New York

[Application No. D-10255]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the sales of collateralized guaranteed investment contracts (CGICs) by Lehman to employee benefit plans (the Plans), provided the following conditions are satisfied: (a) The decision to purchase a CGIC will be made by a fiduciary of a Plan who is independent of Lehman; (b) Lehman will provide the independent fiduciary with audited and unaudited statements of its financial condition at the time of the purchase of the CGIC and subsequently as issued; (c) Lehman will transfer to a tri-party custodial account, under the exclusive direction of a Plan's trustees, securities selected by the Plan with a market value equal to at least 102% of the CGIC's purchase price; (d) such securities will be marked to market on a daily basis, and Lehman will be required to maintain the market value of the securities at the agreed-upon level of at least 102% of the CGIC's purchase price; (e) a Plan will receive daily reports describing the securities on deposit and their market value, and monthly reports describing all activity with respect to the CGIC, including accrued interest; (f) a Plan will have full recourse against Lehman for all obligations and expenses owed to it by Lehman; (g) Lehman will be responsible for all legal fees and expenses associated with any failure to fulfill its obligations under a CGIC; (h) a Plan will have an unqualified right to the return of its principal and accrued interest no later than the conclusion of the stated term of the CGIC; (i) if a Plan requires a termination of a CGIC prior to maturity to pay benefit responsive payments, no market value adjustment will be imposed; and (j) Lehman will market CGICs only to Plans with assets having an aggregate market value of at least \$50 million.

Summary of Facts and Representations

1. Lehman, a Delaware corporation, is a wholly-owned subsidiary of Lehman Brothers Holdings Inc. (Holdings), also a Delaware corporation. Lehman, one of the largest full-line investment services firms in the United States, is a broker/dealer registered with and regulated by the Securities and Exchange Commission. Lehman is a member of the New York Stock Exchange and other principal securities exchanges in the U.S., is a primary government securities dealer, and is also a member of the National Association of Securities Dealers, Inc. As of November 30, 1995, Lehman had \$82.6 billion in assets, \$2 billion in shareholders' equity, and \$3 billion in subordinated debt.

2. On August 31, 1995, Lehman Government Securities, Inc. (LGSi), another wholly-owned subsidiary of Holdings, merged into Lehman. LGSi had been an issuer of a variety of different types of guaranteed investment contracts (GICs) since 1986. Lehman has issued over \$19.5 billion of GICs (including the activities of LGSi) and maintains an active portfolio of between \$6.5 and \$8.5 billion.

3. Lehman requests an exemption for the sale of CGICs to Plans. The applicant represents that a CGIC is a secured, stable GIC. A CGIC offers all of the return characteristics and ease of use found in a traditional insurance company general account GIC, such as a fixed, floating or indexed rate of return, benefit responsiveness and book value accounting. However, unlike a general or separate account GIC, a CGIC offers additional protection by allowing a Plan sponsor to maintain legal title to the assets which Lehman deposits to secure the CGIC's principal for the term of the CGIC. In addition, the Plan's sponsor will stipulate the quality and type of assets (the Purchased Securities) selected to secure its CGIC contract, and such assets will be held by a third party custodian.²

4. The purchase of a CGIC by a Plan will be effected through the execution by an independent Plan fiduciary of a Master Repurchase Agreement With Respect to CGIC Investments (the Master Agreement), a confirmation (the Confirmation), and a custody agreement (the Custody Agreement). Lehman represents that it will market CGICs only to Plans with assets having an

aggregate market value of at least \$50 million. This restriction is intended to assure that the decision to purchase a CGIC will be made by an independent fiduciary of above average experience and sophistication in matters of this kind.

5. Lehman will provide an independent fiduciary of the Plan with its most recent audited statement of financial condition and its most recent unaudited statement of financial condition at the time Lehman issues a Confirmation to the Plan. In addition, Lehman will represent to the Plan that, since the date of the latest such financial statement, there has been no material adverse change in its financial condition that has not been disclosed to the Plan. Finally, during the term of the CGIC, Lehman will provide the Plan with future audited and unaudited statements of its financial condition as these are issued.

6. By the close of business on the initial day of a Plan's purchase of a CGIC, assets will be transferred to a custodial account in the name of the Plan's trustee, pursuant to the terms of the Custody Agreement. The assets will be in the form of Purchased Securities selected by the Plan, and the margin value of the securities (the Margin Value) will be equivalent to the market value of the Purchased Securities divided by an applicable margin percentage (the Margin Percentage). The Margin Percentage for Purchased Securities (other than for cash)³ will be no less than 102 percent, depending on the type of Purchased Securities. The Margin Value of the Purchased Securities based upon such Margin Percentage shall equal or exceed the purchase price of the CGIC (the Purchase Price).

7. Under the terms of the Custody Agreement, a tri-party custodial arrangement, an independent bank will act as the non-exclusive custodian (Custodian) with respect to the CGIC on all transactions thereunder.⁴ Lehman will pay all costs associated with the establishment and operation of the custodial account, and such account by its terms will not be subject to any security interest, lien or right of setoff by the Custodian, or any third party claiming through the Custodian.

³Cash may be substituted for Purchased Securities during the course of a business day or be delivered to the Plan's account to cure a margin deficit in accordance with the terms of the Custody Agreement. The Margin Percentage with respect to such cash shall be 100%.

⁴Although it is anticipated that most Plans will choose the tri-party custodial arrangement, a Plan may, at its discretion, hold the assets related to a CGIC.

²If and when Lehman substitutes securities for the Purchased Securities that were selected by a Plan, the substituted securities will have a statistical credit rating from an independent rating agency that is, at a minimum, equal to the credit rating of the lowest rated Purchased Securities that had been selected by the Plan as acceptable collateral at the time of the purchase of the CGIC.

8. The Custodian will be responsible for daily mark-to-market valuations of the Purchased Securities to ensure that the Margin Value of the Purchased Securities will be maintained at the agreed-upon level throughout the life of the CGIC. The Custodian will provide daily reports to the Plan and to Lehman describing the Purchased Securities on deposit in the Custodial Account and the market value of such securities. If a decline in the market value of the Purchased Securities causes the Margin Value to fall below the Purchase Price, the Custodian will require Lehman to transfer sufficient securities (or cash) to the Plan's account to restore the value of the Purchased Securities to the appropriate Margin Value. Conversely, if an increase in the market value of the Purchased Securities causes the Margin Value to exceed the Purchase Price, Lehman may request the Custodian to transfer to it sufficient cash or securities such that the Margin Value in the Plan's account does not exceed the Purchase Price.

9. The general terms of a CGIC, including the terms and conditions under which Lehman will repurchase Purchased Securities from a Plan, will be set forth in the Master Agreement, while the specific and negotiable terms of a CGIC, such as the principal amount, the interest rate, the maturity date, and the Margin Percentage will be set forth in a Confirmation.

10. The type of Purchased Securities will be a component in determining the interest rate of a CGIC. For example, direct obligations of the U.S. Government, such as Treasury bills, notes, bonds and GNMA's, will provide a lower rate of return to Lehman than less liquid U.S. Government agency securities. Accordingly, a CGIC's interest rate with the former as Purchased Securities will be lower than with the latter as Purchased Securities. Alternatively, a higher interest rate may be obtained from a CGIC if a Plan selects Purchased Securities that offer lower credit quality and/or increased pricing volatility, such as AAA private label mortgage-backed securities, AA corporate bonds or asset-backed securities (e.g., automobile receivables), because such securities would generate a higher return to Lehman. In any case, however, a Plan will not be at risk for either credit or market value exposure of the Purchased Securities, and the interest on a CGIC will not vary with the investment performance of the Purchased Securities.

11. Accrued interest will be paid or compounded monthly, quarterly, semi-annually, annually or compounded until maturity, in accordance with the

needs of the Plan. A Plan will receive from Lehman monthly reports detailing all activity with respect to the Plan's CGIC, including accrued interest, as well as the previously discussed daily reports from the Custodian regarding the market value of the Purchased Securities.

12. In order to provide a Plan with the ability to withdraw all or part of its investment prior to the maturity date of a CGIC, the Master Agreement provides that the Plan, in its sole discretion may require Lehman to repurchase Purchased Securities held in the custodial account prior to the maturity date of the CGIC (a Transaction Reduction) under the following circumstances and conditions.

The Master Agreement will provide that, prior to requesting a Transaction Reduction, a Plan must satisfy its benefit responsive payments, to the extent possible, from its normal sources of liquidity which shall be set forth in the Master Agreement or the Confirmation. Such sources, which are Plan assets separate and apart from the CGIC, may include, but are not limited to, the following:

- (a) cash reserves;
- (b) funds received from new deposits;
- (c) liquidation of short-term securities;
- (d) proceeds from interest payments received;
- (e) proceeds from the maturity of contracts.

However, to the extent that these normal sources of a Plan's liquidity have been exhausted and additional funds are required by the Plan to satisfy its benefit responsive payments, the Plan may request a Transaction Reduction under the CGIC, as well as withdrawals from other investment providers, using a methodology agreed upon in the Master Agreement or the Confirmation. Such a benefit responsive Transaction Reduction would be effected without penalty upon two days' written notice to Lehman (or such other period that is otherwise agreed to by a Plan and Lehman). At any time, however, Lehman may demand reasonable proof, including written documentation to verify or establish the need for such a benefit responsive Transaction Reduction.

A Plan may effect a whole or partial Transaction Reduction at any time and for any purpose, other than a benefit responsive payment, upon ten days' written notice to Lehman (or such other period that is agreed to by a Plan and Lehman). On the date of such notice, Lehman, as calculation agent, would determine the market value adjustment (Termination Cost), if any, applicable to

such a Transaction Reduction. Such Termination Cost would be determined in accordance with one of two methodologies mutually agreed upon in the Confirmation and described in the Master Agreement. One such methodology would employ an objective mathematical computation that would result in a Termination Cost if the prevailing interest rate on the date of notice for a comparable GIC with terms similar to the unexpired term of the CGIC were greater than that of the CGIC. Under an alternative methodology, the Termination Cost would be based upon quotations obtained by Lehman from not less than three leading independent dealers of the amount, if any, that Lehman would be required to pay such a dealer to enter into an agreement with Lehman that would have the effect of preserving for Lehman the economic equivalent of its rights under the CGIC. The lowest of such dealer quotations (i.e., the quotation most favorable to the Plan) would be the Termination Cost of the CGIC. Such quotes would result in a Termination Cost to a Plan only if the quote most favorable to the Plan represented an amount that Lehman would be required to pay to the independent dealer for such a replacement transaction. In either case, the Termination Cost would not be based on the investment performance of the Purchased Securities or investments purchased by Lehman with the CGIC principal. Lehman represents that it will not have the discretion to increase the market value adjustment to a CGIC regardless of which methodology is utilized.

13. If Lehman fails to repurchase the Purchased Securities upon the maturity date of the CGIC or fails to maintain the Margin Value in accordance with the Custody Agreement, a Plan will have the right under the Master Agreement (i) to sell any or all of the Purchased Securities and to apply the proceeds to the aggregate unpaid purchase price and any other amounts owing by Lehman or (ii) to take possession of the Purchased Securities and credit the market value of the Purchased Securities (as determined by a generally recognized source or by the most recent closing bid quotation from such a source) against the aggregate unpaid CGIC purchase price and any other amounts owing by Lehman. After an event of default, any income on the Purchased Securities will be retained by the Plan and applied to the aggregate unpaid CGIC purchase price. In addition, in the case of such a default by Lehman, Lehman will be obligated to pay the amount of any

obligations to, and the expenses of, a Plan that are not otherwise covered by the Purchased Securities, including all reasonable legal or other expenses incurred by the Plan in connection with, or as a consequence of, such default, together with interest thereon at a rate equal to the CGIC interest rate.

14. A CGIC will terminate (Final Repurchase Date) upon the earlier of (i) the maturity date of the CGIC, (ii) the date on which a Transaction Reduction causes a return to a Plan of the CGIC's remaining principal and interest, or (iii) the date on which Lehman terminates a CGIC as a result of its determination that a modification to the Plan's operative documents or the Plan's administration (a Plan Amendment) would materially reduce Lehman's expected benefits or increase its exposure or obligations under the CGIC.⁵ On the Final Repurchase Date, Lehman will pay the applicable repurchase price of the CGIC (and any accrued but unpaid interest) to the Plan, and the Purchased Securities remaining in the custodial account will be returned to Lehman.

15. The applicant represents that the terms and conditions of the CGIC are essentially the same as the conditions imposed by the Department in Prohibited Transaction Exemption 81-8 (PTE 81-8, 46 FR 7511, January 23, 1981, as amended at 50 FR 14043, April 9, 1985), other than the condition that the term of a repurchase agreement be limited to one year or less:

(a) PTE 81-8 does not provide relief for fiduciaries of a plan. The exemption proposed herein does not provide relief when Lehman is a fiduciary to a Plan with respect to the investment of Plan assets in a CGIC.

(b) PTE 81-8 requires that the seller transfer to a Plan securities (or banker's acceptances, commercial paper or certificates of deposit) with a market value of at least 100% of the purchase price paid by the Plan. The exemption proposed herein requires that Lehman transfer to a custodial account, under the exclusive direction of a Plan's trustees, Purchased Securities with a market value of at least 102% of the CGIC's purchase price.

(c) PTE 81-8 requires that a Plan must receive certain audited and unaudited statements of the seller's financial condition, as well as a representation regarding changed financial condition. The exemption proposed herein requires Lehman to provide the same information and representation to a Plan

at the time Lehman issues a confirmation to the Plan. In addition, Lehman is under a continuing obligation to provide audited and unaudited statements of its financial condition as issued.

(d) PTE 81-8 requires a written repurchase agreement the terms of which would satisfy an "arm's-length" standard. The use of master agreements covering a series of transactions is expressly approved. Under the exemption proposed herein, the Master Agreement, the Confirmation, and the Custody Agreement will be in written form. The terms of the CGIC, as reflected in Confirmation, are subject to negotiation, based on the needs of a Plan as determined by its independent fiduciary in arm's-length negotiations with Lehman.

(e) PTE 81-8 requires that the interest paid to a Plan must be no less than it would receive in a comparable transaction with an unrelated party. Under the exemption proposed herein, the Plan will receive interest at a rate agreed upon by the Plan and Lehman based upon the economic characteristics of the transaction.

(f) PTE 81-8 requires that the collateral be marked to market on a daily basis to maintain a 100% market value level. The exemption proposed herein similarly requires that the Purchased Securities be marked to market on a daily basis to maintain at least a 102% Margin Value.

(g) PTE 81-8 requires that the seller must transfer an amount equal to the purchase price of the securities plus interest to a Plan upon the expiration of a repurchase agreement. Under the exemption proposed herein, a Plan will have an unqualified right to the return of its principal and accrued interest no later than the conclusion of the stated term of the CGIC.

(h) PTE 81-8 requires that a Plan must have certain rights in event of a seller's default. The exemption proposed herein provides that a Plan has full recourse against Lehman and the Purchased Securities for all obligations and expenses owed to it by Lehman. In addition, Lehman would be responsible for all legal fees and expenses associated with any such failure to fulfill its obligations under a CGIC.

16. In summary, the applicant represents that the proposed transaction will satisfy the criteria contained in section 408(a) of the Act for the following reasons: (a) the decision to purchase a CGIC will be made by a fiduciary of a Plan who is independent of Lehman; (b) Lehman will provide the independent Plan fiduciary with audited and unaudited statements of its

financial condition at the time Lehman issues a Confirmation to the Plan, and Lehman will be under a continuing obligation to provide audited and unaudited statements of financial condition as issued; (c) upon the purchase of a CGIC by a Plan, Lehman will transfer to a tri-party custodial account, under the exclusive direction of a plan's trustees, securities selected by the Plan with a market value equal to at least 102% of the CGIC's purchase price; (d) the Purchased Securities will be marked to market on a daily basis, and Lehman will be required to maintain the market value of the Purchased Securities at the agreed-upon level of at least 102% of the CGIC's purchase price; (e) a Plan will receive daily reports describing the securities on deposit in the custodial account and their market value, as well as monthly reports describing all activity with respect to the CGIC, including accrued interest; (f) interest will be paid on a CGIC at intervals determined by the Plan; (g) a Plan will have full recourse against Lehman and the purchased Securities for all obligations and expenses owed to it by Lehman; (h) Lehman will be responsible for all legal fees and expenses associated with any failure to fulfill its obligations under a CGIC; (i) a Plan will have an unqualified right to the return of its principal and accrued interest no later than the conclusion of the stated term of the CGIC; (j) if a Plan requires a termination of a CGIC prior to maturity to pay benefit responsive payments, no market value adjustment will be imposed on such an early termination; and (k) the CGICs will be marketed only to Plans with assets having an aggregate market value of at least \$50 million.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Rexam Retirement Savings Plan (the Plan) Located in Charlotte, North Carolina

[Application No. D-10294]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of

⁵Lehman represents that in the unlikely event of a Plan Amendment, the Master Agreement provides that such a termination would be subject to a market value adjustment, if any.

the Code shall not apply to the loan of \$1,620,246.56 (the Loan) to the Plan from Rexam, Inc. (the Employer) with respect to the Guaranteed Investment Contract No. 62317 (the GIC) issued by Confederation Life Insurance Company (Confederation) and the Plan's potential repayment of the Loan upon the receipt by the Plan of payments under the GIC; provided the following conditions are satisfied:

(A) All terms and conditions of the transactions are no less favorable to the Plan than those that the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest payments or other expenses are paid by the Plan in connection with the Loan and its repayment;

(C) The Loan will be repaid only from proceeds paid to the Plan by Confederation, its successors, or by any other third-party;

(D) Repayment of the Loan will be waived to the extent that the Loan exceeds the proceeds from the GIC;

(E) If total proceeds received by the Plan with respect to the GIC exceed the amount of the Loan, the excess will be credited to the respective accounts of the participants in proportion to the relative investment of each account in the GIC on June 25, 1996; and

(F) A qualified, independent fiduciary represented the Plan at the execution of the Loan and will continue to represent the interests of the Plan throughout the duration and repayment of the Loan.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective as of June 25, 1996.

Summary of Facts and Representations

1. The Employer, a Delaware corporation with its principal office located in Charlotte, North Carolina, is a wholly-owned subsidiary of Rexam plc, a publicly traded holding company based in London, England. The Employer is primarily in the business of manufacturing and marketing specialty packaging and coated products. The specialty packaging includes (A) healthcare packaging such as pharmaceutical blister foil packaging and sterilizable packaging for medical instruments and surgical gloves, (B) cosmetic packaging that includes perfume atomizers and lipstick tubes and cases, and (C) plastic bottles and containers and child-resistant screw tops. The coated products by the Employer include graphic printed cartons and containers and metallized films and papers that are used for labels and food and cigarette package liners.

2. The Plan is a defined contribution plan that maintains individual accounts

for its participants and is intended to satisfy the qualification requirements of sections 401(a) and 401(k) of the Code. The total assets of the Plan had a fair market value of \$74,767,875.86, as of March 31, 1996. There are currently approximately 5,800 participants in the Plan.

The applicant represents that the Plan is administered by an investment committee (the Committee) which is appointed by the Employer. The Committee consists of the Employer's Chief Executive Officer, Chief Financial Officer, Corporate Treasurer, and Vice President—Human Resources. The applicant represents that the Committee selects for the Plan the different types of investment funds or vehicles that are maintained by the Plan trustee and offered to participants for self-directing investments of assets in their respective individual accounts in the Plan. The Committee also reviews the performance of the Plan trustee which has discretion for selecting the various specific securities of the different investment funds or vehicles offered to the Plan. The Charlotte, North Carolina office of Towers Perrin is represented by the applicant to have been the previous recordkeeper for the Plan.

After reviewing various investment funds available for tax-qualified plans, the applicant represents that it amended the Plan, effective July 1, 1996, in order to enhance the investment options available to Plan participants. The new investment options or funds consist of six mutual funds managed by the Vanguard Group of Investment Companies. After the execution of the Loan on June 25, 1996, a transfer of assets of the Plan, other than the GIC issued by Confederation, was made from Wachovia Bank of North Carolina, N.A., located in Winston-Salem, North Carolina (Wachovia) to the new trustee of the Plan, Vanguard Fiduciary Trust Company, located in Valley Forge, Pennsylvania (Vanguard), an affiliate of The Vanguard Group of Investment Companies. At the time of the transfer, Vanguard also assumed from Towers Perrin the function of recordkeeper for the new assets of the Plan.

Wachovia continues as trustee for the Plan with respect to the GIC issued by Confederation until the final settlement of the GIC and the repayment of the Loan and will represent and enforce the interests of the Plan and its participants.

3. The GIC was acquired by the Plan effective September 27, 1990, from Confederation pursuant to the Plan tendering \$1 million to Confederation

on October 25, 1990.⁶ Under the terms of the GIC the maturity date is September 28, 1995, and the interest yield is guaranteed at 9.25 percent compounded annually with both interest and principal to be paid on September 29, 1995. The applicant represents that no additional deposits or withdrawals of the principal have been made.

On August 12, 1994, the Ingham County Circuit Court in Lansing, Michigan placed Confederation in conservatorship and rehabilitation, causing Confederation to suspend all payments on its contracts, including the GIC. The Employer represents that it does not know whether, when, or under what circumstances Confederation will be able to pay the principal and interest that is due under the GIC.

4. In order to eliminate the expenses and risks associated with the continued investment of participant's respective accounts in the GIC, and to permit participant's accounts so invested to direct equivalent amounts invested in the GIC into the investment options offered by Vanguard, the Employer made the Loan on June 25, 1996, as a one-time, unsecured, and interest free loan. No expenses or commissions were incurred, or are to be incurred, by the Plan from the transactions.

The Loan was computed to equal the \$1 million principal amount of the GIC and the 9.25 contract rate compounded annually through the maturity date of September 28, 1995, plus an additional yield of 5.5 percent compounded for the period after September 28, 1995, through June 25, 1996.⁷

The terms of the Loan also provide that repayment to the Employer is to be made by the Plan solely from the proceeds received from the GIC.

As provided by the Loan, if the proceeds received by Wachovia, as trustee for the Plan, from the GIC are less than the amount of the Loan, Wachovia will ensure the remaining outstanding balance owed by the Plan on the Loan will be waived by the Employer. In addition, Wachovia will enforce the terms of the Loan which provide, *inter alia*, that if the proceeds from the GIC exceed the amount of the Loan, the excess will be shared by the respective accounts of the participants

⁶ The Department notes that decisions to acquire and hold the GIC are governed by the fiduciary responsibility provisions of Part 4 Title I of the Act. In this regard the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

⁷ The 5.5 percent rate of return was selected because of the short period of time involved and because the rate was comparable to the short-term investment fund yield offered by the Plan to the participants through Wachovia.

in proportion to the amounts the respective accounts were invested in the GIC on June 25, 1996. The applicant further represents that the transactions are administratively feasible because of the documentation of the Loan and its repayment terms can be monitored. Also, the applicant represents that the transactions are in the best interests of the Plan and its participants and beneficiaries because they enable the Plan to avoid having a portion of the participants accounts invested in an illiquid asset that has significant investment risk. Further, the transactions are represented by the applicant to serve the interests of the participants and beneficiaries by permitting the participants to direct the entire value of their respective accounts into the investment options offered by Vanguard.

5. In summary, the applicant represents that the transactions will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the transactions will preserve the ability of the Plan to timely fund and preserve benefits for the participants and their beneficiaries; (b) the Plan will not incur any expenses or commissions with respect to the transactions; (c) repayment of the Loan will be made only from the proceeds realized from the GIC; (d) if the proceeds realized from the GIC as paid by Confederation, its successors, or any other third party are not sufficient to repay the Loan the Employer will waive the unpaid balance of the Loan; and (e) if the proceeds from the GIC exceed the Loan, the excess will be paid to the accounts of the participants in proportion to their respective accounts investment in the GIC.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a

prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of August, 1996.

Ivan Strasfeld,

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

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BILLING CODE 4510-29-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified

period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before October 11, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their