

recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of the Integrated Management Plan and the operation of this new national park area.

In 1996 Congress created the Boston Harbor Islands National Recreation Area to recognize the rich natural and cultural resources and history found on the 30 islands located in Boston Harbor. The legislation (P.L. 104-333) established a thirteen-member partnership to jointly manage the Islands. The 13-member Partnership represents city, state, federal and private agencies with responsibilities for the harbor islands.

Dated: June 30, 1998.

Bruce Jacobson,

Acting Project Manager, Boston Harbor Islands National Recreation Area.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98-35; Exemption Application Nos. D-10546]

Grant of Amendment to Prohibited Transaction Exemption (PTE) 97-35 Involving the Amalgamated Bank of New York (the Bank) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of Amendment to PTE 97-35.

SUMMARY: This document contains a final exemption which amends PTE 97-35 (62 FR 41088, July 31, 1997), an individual administrative exemption involving the provision of banking services by the Bank to 22 employee benefit plans (the Plans) listed in the exemption, all of which are affiliated with the Union of Needletrades, Industrial and Textile Employees (UNITE), which is the majority and controlling shareholder in the Bank. These transactions are described in a notice of pendency that was published in the **Federal Register** on March 30, 1998 at 63 FR 15228.

EFFECTIVE DATE: This exemption is effective as of July 1, 1995, except for: (1) Plan investments in the LEI Fund, for which the effective date is January 3, 1998; (2) Plan investments in the LongView 500 Index Fund, for which the effective date is December 8, 1997; and (3) transactions involving the

UNITE Staff Retirement Plan, for which the effective date is July 8, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Willett, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, D.C. 20210, telephone (202) 219-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 30, 1998, the Department of Labor (the Department) published a notice of proposed exemption (the Notice) in the **Federal Register** (63 FR 15228) to amend PTE 97-35. PTE 97-35 provides an exemption from certain prohibited transaction restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 as amended (the Act), and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 as amended (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code. The Notice was requested in an application filed on behalf of the Bank pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B(55 FR 32836, August 10, 1990) (the Procedures). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (5 USC App.1, 1996) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

WRITTEN COMMENTS: The Notice gave interested persons the opportunity to comment and to request a public hearing on the matters described therein. The Department received one written comment and no hearing requests from interested persons following the dissemination of the Notice and supplemental statement.

The written comment received by the Department was submitted on behalf of the Bank concerning the effective date of a portion of the requested exemption, as proposed in the Notice. In this regard, the Notice proposed that the effective date for the final exemption be described as follows:

Effective Date: This exemption will be effective as of July 1, 1995, except for: (1) Plan investments in the LEI Fund, for which the effective date will be January 3, 1998; (2) Plan investments in the LongView 500 Index Fund, for which the effective date will be the date on which the final amended exemption, if granted, is published in the **Federal Register**; and (3) transactions involving the UNITE Staff Retirement Plan, for which the effective date will be the date on which the

final amended exemption, if granted, is published in the **Federal Register**.

The Bank states that in its exemption application a request was made for the final exemption to be effective as of the date the application was filed with the Department (i.e., December 4, 1997) with respect to Plan investments in the LongView 500 Fund (the 500 Fund), because the Bank had expected that Plan investments in the 500 Fund would occur shortly after such filing. However, in the Notice, the proposed effective date with respect to Plan investments in the 500 Fund was inadvertently described as the date on which the final exemption, if granted, would be published in the **Federal Register**. In its comment, the Bank explains that the actual date of the first investment made by a Plan in the 500 Fund was December 8, 1997, when the ILGWU Death Benefit Plan (one of the Plans covered by PTE 97-35) made such an investment. Therefore, the Bank requests that the final exemption for Plan investments in the 500 Fund be effective as of December 8, 1997. In the final exemption, the Department has stated the effective date in accordance with the Bank's request, by inserting a reference to the appropriate date in both the definition of "Banking Services" in Section IV(c) and the effective date paragraph for this Grant notice.

Based on the entire application record, including the Bank's written comment regarding the Notice, the Department has determined to grant the amendment to PTE 97-35 with the modification to the effective date requested by the Bank.

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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and 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 require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of the participant and beneficiaries;

(4) This exemption will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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

(5) This exemption is subject to the express condition that the Summary of Facts and Representations set forth in the proposed exemption relating to PTE 97-35, as amended by this grant notice, accurately describe, where relevant, the material terms of the transactions consummated pursuant to that exemption.

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 cited above, the Department hereby amends PTE 97-35.

Section I—Transactions

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, effective July 1, 1995 [except as otherwise indicated herein], to—

(A) The provision of banking services (Banking Services, as defined in section IV(C)) by the Amalgamated Bank of New York (the Bank) to certain employee benefit plans (the Plans, as defined in section IV(E)), which are maintained on behalf of members of the former International Ladies Garment Workers Union (ILGWU), which merged on July 1, 1995 with the Amalgamated Clothing and Textile Workers Union to form the Union of Needletrades, Industrial and Textile Employees (UNITE);

(B) The purchase by the Plans of certificates of deposit (CDs) issued by the Bank; and

(C) The deposit of Plans' assets in money market or other deposit accounts

established by the Bank; provided that the applicable conditions of Section II and Section III are met.

Section II—Conditions

(A) The terms under which the Banking Services are provided by the Bank to the Plans, and those under which the Plans purchase CDs from the Bank or maintain deposit accounts with the Bank, are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties.

(B) The interests of each of the Plans with respect to the Bank's provision of Banking Services to the Plans, the purchase of CDs from the Bank by any of the Plans, and the deposit of Plan assets in deposit accounts established by the Bank, are represented by an Independent Fiduciary (as defined in section IV(D)).

(C) On a periodic basis, not less frequently than annually, an Authorizing Plan Fiduciary (as defined below in section IV(A)) with respect to each Plan authorizes the representation of the Plan's interests by the Independent Fiduciary and determines that the Banking Services and any CDs and depository accounts utilized by the Plan are necessary and appropriate for the establishment or operation of the Plan.

(D) With respect to the purchase by any of the Plans of certificates of deposit (CDs) issued by the Bank or the deposit of Plan assets in a money market account or other deposit account established at the Bank: (1) Such transaction complies with the conditions of section 408(b)(4) of the Act; (2) Any CD offered to the Plans by the Bank is also offered by the Bank in the ordinary course of its business with unrelated customers; and (3) Each CD purchased from the Bank by a Plan pays the maximum rate of interest for CDs of the same size and maturity being offered by the Bank to unrelated customers at the time of the transaction.

(E) The compensation received by the Bank for the provision of Banking Services to the Plan is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act.

(F) Following the merger of the ILGWU into UNITE, the Independent Fiduciary made an initial written determination that (1) the Bank's provision of Banking Services to the Plans, (2) the deposit of Plan assets in depository accounts maintained by the Bank, and (3) the purchase by the Plans of CDs from the Bank, are in the best interests and protective of the participants and beneficiaries of each of the Plans.

(G) On a periodic basis, not less frequently than quarterly, the Bank provides the Independent Fiduciary with a written report (the Periodic Report) which includes the following items with respect to the period since the previous Periodic Report: (1) a listing of Banking Services provided to, all outstanding CDs purchased by, and deposit accounts maintained for each Plan; (2) a listing of all fees paid by the Plans to the Bank for the Banking Services, (3) the performance of the Bank with respect to all investment management services, (4) a description of any changes in the Banking Services, (5) an explanation of any problems experienced by the Bank in providing the Banking Services, (6) a description of any material adverse events affecting the Bank, and (7) any additional information requested by the Independent Fiduciary in the discharge of its obligations under this exemption.

(H) On a periodic basis, not less frequently than annually, the Independent Fiduciary reviews the Banking Services provided to each Plan by the Bank, the compensation received by the Bank for such services, any purchases by the Plan of CDs from the Bank, and any deposits of assets in deposit accounts maintained by the Bank, and makes the following written determinations:

(1) The continuation of the Bank's provision of Banking Services to the Plan for compensation is in the best interests and protective of the participants and beneficiaries of the Plan;

(2) The Bank is a solvent financial institution and has the capability to perform the services;

(3) The fees charged by the Bank are reasonable and appropriate;

(4) The services, the depository accounts, and the CDs are offered to the Plan on the same terms under which the Bank offers the services to unrelated Bank customers in the ordinary course of business; and

(5) Where the Banking Services include an investment management service, that the rate of return is not less favorable to the Plan than the rates on comparable investments involving unrelated parties.

(I) Copies of the Bank's periodic reports to the Independent Fiduciary are furnished to the Authorizing Plan Fiduciaries on a periodic basis, not less frequently than annually and not later than 90 days after the period to which they apply.

(J) The Independent Fiduciary is authorized to continue, amend, or terminate, without any penalty to any Plan (other than the payment of

penalties required under federal or state banking regulations upon premature redemption of a CD), any arrangement involving: (1) the provision of Banking Services by the Bank to any of the Plans, (2) the deposit of Plan assets in a deposit account maintained by the Bank, or (3) any purchases by a Plan of CDs from the Bank;

(K) The Authorizing Plan Fiduciary may terminate, without penalty to the Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), the Plan's participation in any arrangement involving: (1) the representation of the Plan's interests by the Independent Fiduciary, (2) the provision of Banking Services by the Bank to the Plan, (3) the deposit of Plan assets in a deposit account maintained by the Bank, or (4) the purchase by the Plan of CDs from the Bank.

Section III—Recordkeeping

(A) For a period of six years, the Bank and the Independent Fiduciary will maintain or cause to be maintained all written reports and other memoranda evidencing analyses and determinations made in satisfaction of conditions of this exemption, except that: (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Independent Fiduciary and the Bank, the records are lost or destroyed before the end of the six-year period; and (b) no party in interest other than the Bank and the Independent Fiduciary 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 paragraph (B) below;

(B)(1) Except as provided in section (2) of this paragraph (B) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (A) of this Section III shall be unconditionally available at their customary location during normal business hours for inspection by: (a) any duly authorized employee or representative of the U.S. Department of Labor or the Internal Revenue Service, (b) any employer participating in the Plans or any duly authorized employee or representative of such employer, and (c) any participant or beneficiary of the Plans or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subsections (b) and (c) of section (1)

above shall be authorized to examine trade secrets of the Independent Fiduciary or the Bank, or any of their affiliates, or any commercial, financial, or other information that is privileged or confidential.

Section IV—Definitions

(A) "Authorizing Plan Fiduciary" means, with respect to each Plan, the board of trustees of the Plan or other appropriate plan fiduciary with discretionary authority to make decisions with respect to the investment of Plan assets;

(B) "Bank" means the Amalgamated Bank of New York;

(C) "Banking Services" means (1) custodial, safekeeping, checking account, trustee services, and (2) investment management services involving (a) fixed income securities (either directly or through a collective investment fund maintained by the Bank), (b) the LongView Fund maintained by the Bank, (c) effective December 8, 1997, the LongView 500 Index Fund, and (d) effective January 3, 1998, the LEI Fund maintained by the Bank.

(D) "Independent Fiduciary" means a person, within the meaning of section 3(9) of the Act, who (1) is not an affiliate of the Union of Needletrades, Industrial & Textile Employees (UNITE) and any successor organization thereto by merger, consolidation or otherwise, (2) is not an officer, director, employee or partner of UNITE, (3) is not an entity in which UNITE has an ownership interest, (4) has no relationship with the Bank other than as Independent Fiduciary under this exemption, and (5) has acknowledged in writing that it is acting as a fiduciary under the Act. No person may serve as an Independent Fiduciary for the Plans for any fiscal year in which the gross income (other than fixed, non-discretionary retirement income) received by such person (or any partnership or corporation of which such person is an officer, director, or ten percent or more partner or shareholder) from UNITE and the Plans for that fiscal year exceed five (5) percent of such person's annual gross income from all sources for the prior fiscal year. An affiliate of a person is any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual. Initially, the Independent Fiduciary is U.S. Trust Company of California, N.A.

(E) "Plans" means any of the following employee benefit plans, and their successors by reason of merger, spin-off or otherwise:

International Ladies Garment Workers Union Nation Retirement Fund;
International Ladies Garment Workers Union Death Benefit Fund;
Health Fund of New York Coat, Suit, Dress, Rainwear & Allied Workers Union, ILGWU;
Health & Vacation Fund, Amalgamated Ladies Garment Cutters Union, Local 10;
ILGWU Eastern States Health & Welfare Fund;
ILGWU Office, Clerical & Misc. Employee Retirement Fund;
ILGWU Retirement Fund, Local 102;
Union Health Center Staff Retirement Fund;
Unity House 134 HREBIU Plan Fund;
Puerto Rican Health & Welfare Fund;
Health & Welfare Fund of Local 99, ILGWU;
Local 99 Exquisite Form Industries, Inc. Severance Fund;
Local 99 K-Mart Severance Fund;
Local 99 Kenwin Severance Fund;
Local 99 Lechters Severance Fund;
Local 99 Eleanor Shops Severance Fund;
Local 99 Monette Severance Fund;
Local 99 Moray, Inc. Severance Fund;
Local 99 Petri Stores, Inc. Severance Fund;
Local 99 Netco, Inc. Severance Fund;
Local 99 Misty Valley, Inc. Severance Fund;
Local 99 Norstan Apparel Shops, Inc. Severance Fund; and
UNITE Staff Retirement Plan, ILGWU Unit.

(F) "UNITE" means the Union of Needletrades, Industrial & Textile Employees and any successor organization thereto by merger, consolidation or otherwise.

EFFECTIVE DATE: This exemption is effective as of July 1, 1995, except for: (1) Plan investments in the LEI Fund, for which the effective date is January 3, 1998; (2) Plan investments in the LongView 500 Index Fund, for which the effective date is December 8, 1997; and (3) transactions involving the UNITE Staff Retirement Plan, for which the effective date is July 8, 1998.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the application change, the

exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption (i.e., the Notice) and the prior grant notice for PTE 97-35, which are cited above.

Signed at Washington, D.C., this 1st day of July, 1998.

Ivan L. Strasfeld,

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

[FR Doc. 98-18011 Filed 7-7-98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Withdrawal of Notice of Proposed Amendments to Prohibited Transaction Exemption (PTE 93-69) Involving the Navistar International Transportation Corporation (Navistar); Located in Chicago, IL and the Supplemental Program Committee of the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (Supplemental Program Committee) Located in Euclid, OH

[Exemption Application Nos. D-10470 and D-10576]

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: On June 19, 1998 the Department of Labor (Department) published a notice of proposed amendments (the Notice) to PTE 93-69 (63 FR 33732). The Notice concerned proposed amendments to PTE 93-69 to permit the Supplemental Benefit Program Trust (Trust) to sell Navistar International Corporation (NIC) common stock to either NIC or Navistar after the expiration of the lockup period (July 1, 1998) and to allow William Craig, a member of the Supplemental Program Committee, to serve on the NIC board of directors.

In a comment letter dated June 18, 1998, Navistar's representative informed the Department that the Trust sold all of the shares which would have been the subject of the amendments. Since the Trust no longer holds the stock it no longer has the right to appoint any

members of the board of directors of NIC.¹

Due to the above noted changes regarding the facts and representations contained in the applications, the Department has determined to withdraw this notice of proposed amendments from the **Federal Register**. Accordingly, this notice of pendency is hereby withdrawn.

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

Ivan L. Strasfeld,

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

[FR Doc. 98-18009 Filed 7-7-98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10438, et al.]

Proposed Exemptions; Toyota Motor Credit Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

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

¹ PTE 93-69 provided, in part, an exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 for the acquisition and holding by the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan of shares of Class B common stock and Series A preference stock of NIC.

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.

Toyota Motor Credit Corporation and Certain of its Affiliates, Located in Torrance, California

[Application No. D-10438]

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