

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration**

[Application No. D-09952, et al.]

Proposed Exemptions; RREEF America L.L.C. (RREEF)**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

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing 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.

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.

RREEF America L.L.C. (RREEF) Located in San Francisco, California

[Application No. D-09952]

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.)

Section I—Covered 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 to the:

(1) The provision of certain leasing services (the Leasing Services) by RREEF's leasing affiliates (the Leasing Affiliates, as defined in Section IV) to certain accounts established by RREEF (the Accounts, as defined in Section IV); and

(2) The payment of leasing commissions in connection with the provision of Leasing Services by the Leasing Affiliates to the Accounts; provided that the conditions set forth in Section II are met.

Section II—Conditions

(1) The arrangement under which the leasing services are performed with

respect to any Account is subject to the prior authorization of either (i) an independent plan fiduciary for each employee benefit plan or other plan for which RREEF serves as trustee or investment manager (a Client Plan) that invests in a Single Client Account, or (ii) independent plan fiduciaries with respect to Client Plans or other institutional investors holding at least 60 percent of the units of beneficial interest in a Multiple Client Account, following disclosure of information in the manner described in paragraph (2) below. In the case of a Client Plan whose assets are proposed to be invested in an Account subsequent to the provision of leasing services to the Account, the Client Plan's investment in the Account is subject to the prior written authorization of an authorizing plan fiduciary following disclosure of the information described in paragraph (2).

(2) Not less than 45 days prior to the first date it proposes to provide leasing services for any Account, RREEF, as investment manager, shall furnish the authorizing plan fiduciary with any reasonably available information which RREEF believes to be necessary to determine whether such approval should be given, as well as such information which is reasonably requested by the authorizing plan fiduciary. Such information will include: (a) a description of the leasing services to be performed by the Leasing Affiliate; (b) an explanation of the potential conflicts of interest involved in selecting the Leasing Affiliate; (c) an explanation of the selection process (including the role of the Independent Fiduciaries (as defined in Section IV)); (d) identification of properties for which leasing services will be required; (e) an estimate of the leasing fees to be paid to the Leasing Affiliate if it is selected to provide such services; and (f) a description of the terms upon which a Client Plan may withdraw from an Account.

(3) In the event an authorizing plan fiduciary of any Client Plan whose assets are invested in an Account submits a notice in writing to RREEF, as investment manager, at least 15 days prior to the provision of leasing services, objecting to the provision of the leasing services, and RREEF proposes to proceed with the provision of leasing services, the Client Plan on whose behalf the objection was tendered will be given the opportunity to terminate its investment in the Account, without penalty. With the exception of a Client Plan which has invested in a closed-end Account under which the rights of withdrawal from the Account

may be limited, as provided in the Client Plan's written agreement to invest in the Account, if a written objection to the leasing services is submitted to RREEF any time after 15 days prior to implementation of the leasing services (or after implementation), the Client Plan must be able to withdraw without penalty, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing and the non-withdrawing Client Plans. However, the Leasing Affiliate need not discontinue providing the leasing services, once implemented, by reason of a Client Plan electing to withdraw after 15 days prior to the scheduled implementation date of the leasing services. Any Client Plan which invests in a Single Client Account may terminate the Leasing Services arrangement and withdraw from the Account at any time (upon reasonable written notice).

(4)(a) RREEF shall furnish the Independent Fiduciary (as defined in section IV) acting on behalf of the Client Plans participating in the Account with an annual report (the RREEF Annual Report) containing the information described in this paragraph, not less frequently than once a year and not later than 45 days following the end of the period to which the report relates. The RREEF Annual Report shall disclose the total of all fees incurred by the Account during the preceding year under contracts with RREEF and its affiliates and shall include a description of all leasing activities with respect to each property under the responsibility of the Independent Fiduciary for which a Leasing Affiliate provides services, including marketing/advertising activities, leases under negotiation, lease offers rejected (and why), and such other information as shall be reasonably requested by the Independent Fiduciary. The RREEF Annual Report shall also delineate the leasing commissions that are anticipated to be paid to RREEF and its affiliates in the coming year for services provided by these entities in connection with the properties held by the Account. The RREEF Annual Report will contain a description of a method for the termination of the leasing arrangement (see Section II(5)) by the Independent Fiduciary and/or by investing Client Plans in each Account.

(b) The Independent Fiduciary shall furnish RREEF and the authorizing plan fiduciaries with an annual report (the I/F Annual Report), within 90 days following the end of the period to which the report relates, summarizing its activities for the year, indicating its opinion as to the continued validity of the leasing guidelines with respect to

any property for the next year, and recommending any amendments to, or termination of the leasing agreement with the Leasing Affiliate. The I/F Annual Report will contain a description of a method for the termination of the leasing arrangement with the Leasing Affiliate and for the confirmation and/or removal of the Independent Fiduciary by the Client Plans investing in the Accounts.

(c) RREEF implements procedures to ensure each authorizing plan fiduciary of a Client Plan investing either in a Multiple Client Account, or a Single Client Account, has an opportunity to vote on the reconfirmation of the Independent Fiduciary on an annual basis. These procedures require that the Independent Fiduciary: (i) provide each authorizing independent client plan fiduciary with a ballot¹ by certified mail (or another method of delivery pursuant to which confirmation of receipt is provided), with the ballot instructions that direct the authorizing independent client plan fiduciary to return the ballot to RREEF; (ii) ensure that the ballot clearly indicates that the authorizing plan fiduciary may vote for or against continuation of the Independent Fiduciary; (iii) ensure that the ballot must be accompanied by a statement that failure to return the ballot within 45 days following the independent plan fiduciaries' receipt of the ballots will be counted as a "for" vote (unless holders of a majority of the units of beneficial interests in the Accounts have voted against reconfirmation); and (iv) 30 days after the Independent Fiduciary mails the ballot to the authorizing plan fiduciary, RREEF must make at least one follow-up contact with the authorizing plan fiduciary that has not previously returned the ballot prior to treating the unreturned ballot as a "for" vote. If RREEF does not receive a response from the authorizing plan fiduciary within 15 days after initiating contact with the authorizing plan fiduciary, RREEF may treat the unreturned ballot as a vote for reconfirmation. The reconfirmation will become effective on the earlier of the date affirmative ballots are obtained from the holders of a majority of the units of beneficial interests in the Accounts, or 45 days following the authorizing plan fiduciaries' receipt of the ballots (unless holders of a majority of the units of beneficial interests in the Accounts have voted against reconfirmation.)

¹ RREEF will direct the Independent Fiduciary as to the specific form of a ballot. The applicant represents that for a Single Client Account, this will not be a "ballot", but a "direction" form.

(d) The Independent Fiduciary receives confirmation, and certifies to RREEF that the notice and the ballots sent to the authorizing plan fiduciary pursuant to subparagraphs (b) and (c) regarding the continued retention of the Independent Fiduciary and RREEF have been received by the authorizing plan fiduciary. The method used to confirm notice to the authorizing plan fiduciaries must be sufficient to ensure that the authorizing Client Plan fiduciaries actually receive notice. In all cases, return receipt for certified mail, printed confirmation of facsimile transmissions and manifest or computer data entries of independent courier services will be considered acceptable methods of confirming receipt.

(5)(a) The leasing agreement for any property may also be terminated or modified at any time at the written direction of the Independent Fiduciary, and may be terminated by a vote in favor of such termination by the holders of a majority of the units of beneficial interests in the Account (or such greater percentage, not to exceed 60 percent, as shall be set out in the agreements establishing the Account). Further, any Client Plan which invests in a Single Client Account may terminate the Leasing Services arrangement and withdraw from the Account at any time (upon reasonable notice).

(b) In the event of a vote to terminate the leasing services arrangement pursuant to paragraph (4)(c) or (5)(a), RREEF shall cease submitting to the Independent Fiduciary any new proposals to engage in covered transactions and RREEF will not renew or extend any covered transactions. Moreover, within 180 days after the vote of the Account holders, RREEF shall cease engaging in any existing covered transactions.

(6)(a) Each leasing services agreement shall be in writing and shall be reviewed at least annually and approved by an Independent Fiduciary. However, prior to proposing a transaction to the Independent Fiduciary, RREEF will first determine that such transaction is in the best interest of the Account.

(b) The Independent Fiduciary shall negotiate each leasing services agreement. The Independent Fiduciary shall also consider the cost to the Account of such fiduciary's involvement in connection with its consideration of whether to approve a particular leasing services agreement.

(c) Each leasing agreement and the performance of the Leasing Affiliate under such agreement shall be reviewed at least annually by the Independent Fiduciary, who shall instruct RREEF of any action which should be taken by

RREEF on behalf of the Account with respect to the continuation, termination or other exercise of rights available to the Account under the terms of the leasing agreement. RREEF will carry out such instruction from the Independent Fiduciary to the extent it is legal and permitted by the terms of the leasing agreement.

(d) In the case of any emergency circumstances, RREEF or the Leasing Affiliates may provide leasing services to an Account for a period not exceeding 90 days without entering into a leasing services agreement, but no compensation may be paid by an Account for such services without prior approval of the Independent Fiduciary.

(7) If RREEF holds Account properties, and any RREEF affiliate or principal holds for its own account any properties in the same real estate market during a period when there is leasing competition between those properties, RREEF will hire, during such period, a third party leasing agent for Account properties.

(8)(a) RREEF shall furnish the Independent Fiduciary with any reasonably available information which RREEF reasonably believes to be necessary or which the Independent Fiduciary shall reasonably request to determine whether such approval of the transactions described above should be given, or to accomplish the Independent Fiduciary's periodic reviews of RREEF's performance under such agreements.

(b) With respect to RREEF, such information will include: a description of the leasing services for the Account and the Client Plans investing therein; the qualifications of RREEF to do the job; a statement, supported by appropriate factual representations, of the reasons for RREEF's belief that RREEF is qualified to provide the services; a copy of the proposed leasing services agreement and the terms on which RREEF would provide the services; the reasons why RREEF believes the retention of RREEF would be in the best interest of the Account; information demonstrating why the fees and other terms of the arrangement are reasonable and comparable to the fees customarily charged by similar firms for similar services in comparable locales; the identities of non-affiliated service providers and the terms under which these service providers might perform the services; and whether any RREEF affiliate is a property manager to any properties that are in competition for tenants with the property for which RREEF is under consideration.

(9) Any Independent Fiduciary may be removed at any time by a vote of holders of a majority of the units of

beneficial interests in an Account. In the event of the removal of an Independent Fiduciary, existing leasing agreements overseen by that Independent Fiduciary will not be affected; however, RREEF will designate a replacement Independent Fiduciary within sixty (60) days.

(10) Seventy-five percent (75%) or more of the units of beneficial interests in an Account must be held by Client Plans or other investors having total assets of at least \$100 million. In addition, 50 percent (50%) or more of the Client Plans investing in an Account must have assets of at least \$100 million. For purposes of the 50% test above, a group of Client Plans maintained by a single employer or controlled group of employers, any of which individually has assets of less than \$100 million, will be counted as a single Client Plan if the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than RREEF, who exercises such discretion with respect to Client Plan assets in excess of \$100 million.

(11) No Client Plan covering employees of RREEF will be invested in an Account.

(12) Not more than 20 percent of the assets of any Client Plan on whose behalf RREEF proposes to provide leasing services can be invested in RREEF Accounts.

(13) At the time any leasing agreement is entered into, the terms of the agreement must be at least as favorable to the Account as the terms of an arm's length transaction between unrelated parties. In addition, the compensation paid to the Leasing Affiliate for leasing services by any Account must not exceed the amount paid in an arm's length transaction between unrelated parties for comparable properties in similar locales. In any event, such compensation will not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act and regulation 29 CFR 2550.408b-2. (The Independent Fiduciary must certify that an economic advantage to the Accounts exists before consummation of any leasing agreement).

(14)(a) Within one-year of the grant of this exemption, and after the beginning of each subsequent five-year period, each Independent Fiduciary will prepare with the assistance of RREEF a survey of leasing fees for the properties that have similar geographic location and property types to those held by the Accounts for which the Independent

Fiduciary is responsible. The survey will include data regarding the fees that have been charged to the Accounts by several firms that are unaffiliated with RREEF for leasing services during the one year period prior to the beginning of the new five-year period. Also, the survey will include data as to the fees paid by RREEF for such services performed for the properties not held by the Accounts during the same period and other market data regarding the cost of leasing services by geographic location and property types.

(b) Based upon its survey and its professional resources and expertise, the Independent Fiduciary will determine a typical range of annual fees for leasing services for the Accounts. The average of the range, as determined from such survey, will serve as the basis of comparison for determining for the next five-year period whether continuation of the leasing services policy has provided cost savings or other benefits to the Accounts.

(c) RREEF will demonstrate to the Independent Fiduciary at the end of the applicable five-year period that leasing fees charged to each Account by RREEF or its affiliates plus the cost of the services of the Independent Fiduciary under the exemption that are allocated to the Accounts, are less than the fees that would have been charged using the benchmark rate established at the beginning of the five year period. In making its determinations, the Independent Fiduciary shall take into account to the extent it deems necessary property management fees paid by the Accounts to RREEF and its affiliates.²

(d) The Independent Fiduciary will review the data supplied by RREEF and, to the extent considered necessary by the Independent Fiduciary, data collected from the Independent Fiduciary's own surveys, and will document its findings and analysis of such cost savings in a report to be delivered to each of the Client Plans participating in the Accounts within 90 days after the end of the five year period and each subsequent five-year period and prior to the implementation of the annual confirmation procedure

² With respect to Multiple Client Accounts, property management services by RREEF are currently provided in accordance with PTE 82-51 (47 FR 14238/14241, April 2, 1982). PTE 82-51 permits collective investment funds (the Funds) managed by RREEF or any of its affiliates, in which Client Plans participate, to engage in certain transactions with parties in interest with respect to the Client Plans that are investors in the Funds, provided that certain conditions are met. Therefore, the requested exemption is necessary only for the provision of Leasing Services by RREEF's affiliates to the Multiple Client Accounts in connection with the properties held by the Accounts.

described in paragraph (6) of Section II with respect to such period. In the event the Independent Fiduciary finds that cost savings have not been achieved for the Accounts, it will not approve any additional services arrangements until RREEF and its affiliates have demonstrated to the satisfaction of the Independent Fiduciary that policies intended to assure cost savings to the Accounts have been implemented by RREEF and its affiliates. The survey, the Independent Fiduciary's report reviewing the survey, and the final report of the Independent Fiduciary analyzing whether cost savings had been achieved during the five year period to which the survey relates, will be maintained by RREEF in accordance with the recordkeeping requirements of Section III.

(15) The fees paid to RREEF and/or its affiliates for leasing services provided in connection with a property held for an Account shall not exceed: (a) 7 percent of the lease amount for new leases; (b) 2 percent of the lease amount for renewal leases; and (c) for leases in which outside brokers are involved, 2.75 percent of the lease amount.

(16) Before entering into any leasing arrangement pursuant to the terms of this exemption, if granted, copies of the proposed exemption and the final exemption will be delivered to each Client Plan for which RREEF or its affiliate propose to perform leasing services as described herein.

Section III—Recordkeeping

(1) RREEF and any Leasing Affiliate will maintain, for a period of six years, the relevant records necessary to enable the persons described in paragraph (2) of this Section III to determine whether the conditions of this exemption have been met. Included in these records will be the written records of the Independent Fiduciary which had been periodically furnished by the Independent Fiduciary to RREEF, and the records described in paragraph (14) of Section II. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond RREEF's, the Leasing Affiliate's, or the Independent Fiduciary's control, the records are lost or destroyed prior to the end of the six-year period.³

(2)(a) Except as provided in subsection (b) of this paragraph and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (1) of

this section shall be unconditionally available at their customary location for examination during normal business hours by:

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

(2) Any fiduciary of a Client Plan who has authority to acquire or dispose of the interests of the Client Plan in the Accounts or any duly authorized employee or representative of such fiduciary;

(3) Any contributing employer to any Client Plan that has an interest in the Accounts or any duly authorized employee or representative of such employer;

(4) Any participant or beneficiary of any Client Plan participating in the Accounts, or any duly authorized employee or representative of such participant or beneficiary; and

(5) The Independent Fiduciaries.
(b) None of the persons described above in subparagraphs (2)–(5) of this paragraph shall be authorized to examine the trade secrets of RREEF or any Leasing Affiliate or commercial or financial information which is privileged or confidential.

Section IV—Definitions

(1) The Accounts—The Accounts are any existing or future pooled accounts (i.e., Multiple Client Accounts) or single-customer accounts (i.e., Single Client Accounts), including joint ventures, general or limited partnerships or other real estate investment vehicles established by RREEF for the investment of employee benefit Client Plan assets in real-estate related investments to the extent that (i) such Accounts hold "plan assets" within the meaning of the regulations at 29 CFR section 2510.3–101 and (ii) management of their assets is subject to the discretionary authority of RREEF.

(2) RREEF—For purposes of this proposed exemption, the term RREEF means RREEF America L.L.C., and certain of their officers who may serve as trustees of group trusts managed by RREEF America L.L.C., or who may serve in similar fiduciary capacities with respect to other commingled investment vehicles managed by them, and/or any other affiliates of RREEF as defined in paragraph (4) of this section IV which act as investment fiduciaries with respect to any Account.

(3) Leasing Affiliate—RREEF Management Company or other affiliates of RREEF (as defined in paragraph (4) of this Section IV) retained to provide leasing services with respect to an Account.

(4) An affiliate of a person means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person.

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

(6) Independent Fiduciary—A person who:

(a) is not an affiliate of RREEF as defined in Section IV(4);

(b) is not an officer, director, employee of, or partner in, RREEF (or affiliates thereof as defined in Section IV(4));

(c) is not a corporation or partnership in which RREEF has an ownership interest or is a partner;

(d) does not have an ownership interest in RREEF or any of its affiliates;

(e) is not a fiduciary with respect to any Client Plan's investment in the Account;

(f) has represented in writing that it is qualified to perform the services contemplated by the proposed exemption, which qualifications shall include, among other things: (i) demonstrated experience, generally over a period of not less than five years, in the business of commercial real estate, brokerage, management, or appraisal generally and in reviewing or negotiating leasing agreements and commissions specifically; (ii) familiarity with the relevant real estate, specifically as it relates to comparable property types with respect to the specific properties for which the Leasing Affiliate proposes to perform leasing services (for example, in the case of office properties, the Independent Fiduciary's experience shall relate specifically to office properties in the same market); (iii) experience in complying with the fiduciary standards of the Act in connection with the representation of the Client Plans; and

(g) has acknowledged in writing acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgement as a fiduciary. For purposes of the foregoing, each Independent Fiduciary shall represent in writing that it has no relationship with RREEF or its affiliates, or with any Account, that would affect its best judgement as a fiduciary.

For purposes of this definition of Independent Fiduciary, no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by

³ RREEF represents that its contract with each Independent Fiduciary will require that the Independent Fiduciary's written records be maintained in accordance with this section.

such organization or individual (or partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder) from RREEF or any affiliates of RREEF (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of its or his annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or 10 percent or more partner or shareholder, may acquire any property from, sell any property to or borrow any funds from RREEF or any affiliates of RREEF, or any Account maintained by RREEF or any affiliates of RREEF, during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of 6 months after such organization or individual ceases to be an Independent Fiduciary or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Summary of Facts and Representations

1. RREEF America L.L.C and its affiliate, RREEF Management Company, provide investment and property management services to institutional investors, including employee benefit Client Plans and other tax-exempt entities, through various separate accounts (Single Client Accounts) and commingled accounts (Multiple Client Accounts; collectively, the Accounts). On January 27, 1998, RREEF America L.L.C. and its affiliates (collectively, RREEF) were acquired by RoProperty Services, B.V. (RoProperty), a major Dutch investment advisory firm. As a result, the RREEF entities were combined into a newly created Delaware limited liability company which continues to use the name RREEF America L.L.C. RREEF operates as an autonomous entity which continues to provide investment management services, and its affiliate, RREEF Management Company, continues to provide property management services.

RREEF requests an exemption to permit: (i) the provision of certain leasing services (the Leasing Services) by RREEF's leasing affiliates (the Leasing Affiliates) to the Accounts; and (ii) the payment of leasing commissions in connection with the provision of Leasing Services by the Leasing Affiliates to the Accounts, as described below. The Leasing Services that will be performed pursuant to this proposed exemption, if granted, would generally be provided by RREEF Management Company.

2. RREEF acts as an investment manager as defined in section 3(38) of the Act for each Client Plan that invests in a Single or a Multiple Client Account. RREEF has discretion for the day-to-day operation of each Account and, in many cases, has full discretion over an Account's acquisition and disposition decisions. However, in certain cases, final investment authority may remain with independent authorizing plan fiduciaries (Authorizing Client Plan Fiduciaries) for the Account. The applicant requests that the proposed exemption extend relief to both discretionary and non-discretionary Accounts.⁴

3. The Client Plans are various pension plans as defined in section 3(2) of the Act and other plans as defined in section 4975(e)(1) of the Code, for which RREEF serves as a trustee or investment manager. Several of the Client Plans participate in RREEF USA Fund-I (Fund I), a Multiple Client Account in which non-ERISA fiduciary clients may invest. The Client Plans may participate in other Accounts, as described herein. In all instances, an Authorizing Client Plan Fiduciary which is independent of RREEF and its affiliates, will make the decision regarding the investment of Client Plan assets in an Account which may receive leasing services performed by a Leasing Affiliate.

4. A Client Plan may enter into one or more Single Client Account relationships with RREEF pursuant to the individually negotiated investment agreements with RREEF. In each case primary investment discretion will be delegated to RREEF pursuant to an investment management agreement between RREEF and the Account.⁵

Alternatively, a Client Plan may invest in a commingled investment fund (i.e., a Multiple Client Account)

⁴ RREEF's non-discretionary Accounts are generally Accounts over which an independent (in-house) Client Plan Fiduciary retains final discretion with respect to the acquisition and disposition of real property assets. The Client Plan may also retain discretion in setting or approving leasing guidelines for properties held by the Accounts.

⁵ Except as set forth in paragraph 2 above.

managed by RREEF. Currently, Multiple Client Accounts consist primarily of tax-exempt group trusts organized pursuant to IRS Revenue Ruling 81-100, and limited partnerships. RREEF principals and officers serve as trustees for Multiple Client Accounts that are group trusts. Other Multiple Client Accounts may be organized in the future, including title-holding corporations, real estate investment trusts, or limited liability corporations. RREEF principals and officers may serve as directors and officers of these vehicles.

5. The Accounts established to date have been so-called "blind" investment relationships where investors initially are not told about any specific properties which the Account may acquire. In such instances, the Account receives cash from the Client Plan and then identifies and acquires real property investments that meet certain investment criteria that have been agreed to by such investors. In the future, RREEF states that so-called "specified-property" investment relationships may be established with the Client Plans and/or other investors to invest in pre-identified real property investments that are disclosed to the Client Plans prior to such Plans' cash investment in the Account.

6. RREEF represents that in recent years real estate investments have become increasingly attractive to pension plan investors. The quality of real estate-related services is of central importance in maximizing returns available to such investors. Large real estate investment managers typically manage properties themselves or through property management firms they have acquired. This strategy enables such managers to use a unified leasing strategy and other efficient management techniques, and is a superior alternative to retaining independent managers for property management and leasing services. RREEF maintains that in many instances the provision of leasing services for the properties held by the Accounts would be more effectively provided through in-house personnel or through firms which are affiliated with RREEF, or in which RREEF has an interest. Such firms possess special expertise in the type of properties held by the Accounts and knowledge of the Accounts. RREEF and the Leasing Affiliates represent that they are in the best position to aggressively lease properties held by an Account, and to maximize the value of the properties to the Account.

7. The services provided to the Accounts by the Leasing Affiliates⁶ will be day-to-day leasing responsibilities associated with operating income-producing properties owned by the Accounts. These responsibilities will include using best efforts to lease a property to desirable tenants and negotiating the terms and renewals of such leases. Any hiring of a Leasing Affiliate to provide leasing services for a property owned by an Account will be negotiated with, and subject to the approval of, the Independent Fiduciary appointed on behalf of an Account for the particular leasing market to which the property is subject (as discussed more fully below).

8. RREEF, as the investment manager or trustee for the Account, will consider the type, size and location of an Account property, and whether the Leasing Affiliates are best suited to provide leasing services to that property. Upon determining that the provision of services by the Leasing Affiliate would be in the best interest of that Account, RREEF will propose to the Independent Fiduciary that the Leasing Affiliate be retained for the property. Because the Leasing Affiliates currently perform property management services for most of the properties managed by RREEF and its affiliates under PTE 82-51 (see footnote 2), RREEF expects that a Leasing Affiliate will be considered to provide leasing services to each of the properties. RREEF maintains that the Account will benefit from the Leasing Affiliate's comprehensive knowledge of the local market and from the expertise of the staff in that location.

9. RREEF may hold properties in a relevant real estate market⁷ both as the investment manager or trustee for an Account, and on behalf of RREEF or any entity in which RREEF owns a 10% or greater interest. In the event there is a potential for leasing competition among these properties, RREEF will retain an

independent, qualified leasing agent for the Account's properties.

The Independent Fiduciary will have the same responsibilities when the Account acquires a new property with a Leasing Affiliate acting as a pre-existing leasing agent as when RREEF proposes to provide leasing services with a Leasing Affiliate for an existing property. In both cases, the leasing agreement with a Leasing Affiliate for a property will be negotiated with, and approved by, the Independent Fiduciary for the Account. This negotiation of the leasing agreement may be concurrent with RREEF's acquisition of the property.

RREEF may also acquire a property with a Leasing Affiliate acting as a pre-existing leasing agent for an Account where RREEF is not yet authorized to perform leasing services for the property with a Leasing Affiliate. In such situations, under the terms of this proposed exemption, RREEF must obtain approval from the Client Plans⁸ before it can receive compensation for such services.

10. RREEF will appoint several Independent Fiduciaries, subject to confirmation by the holders of a majority of the units of beneficial interest in the Accounts (or by the Client Plan in the case of a Single Client Account), to act on behalf of the Accounts for the provision of leasing services by the Leasing Affiliates. Each Independent Fiduciary will be an individual, group of individuals or a business entity which has substantial experience with commercial real estate investments, including the expertise to make decisions required under the exemption. RREEF proposes to use the same Independent Fiduciary for all Accounts that have properties in the same real estate market. However, because individual Client Plans can veto RREEF's selection of an Independent Fiduciary, RREEF cannot guarantee that the same Independent Fiduciary will be used for all such Accounts.

An Independent Fiduciary will not have any ownership interest in RREEF nor will RREEF have any ownership interest in the Independent Fiduciary. An Independent Fiduciary may have a preexisting relationship as a service provider (including as a fiduciary) for one or more of the Client Plans. However, all business dealings between the Independent Fiduciary and RREEF, including services rendered to the Accounts as Independent Fiduciary under all other prohibited transaction

exemptions granted by the Department,⁹ may not in the aggregate result in the Independent Fiduciary receiving in any one of its fiscal years more than five percent (5%) of its gross income from RREEF. No person hired as an Independent Fiduciary for any real property held by the Account will provide any other service for such property while that person is serving as the Independent Fiduciary. In addition, an Independent Fiduciary will not be retained by the Account, RREEF, or any affiliate thereof, under a contract to perform leasing, property management, or real estate brokerage services with respect to such property for at least a six month period after having served as the Independent Fiduciary.

Generally, the compensation and expenses of each Independent Fiduciary will be proportionately paid by the Account(s) which it serves.

11. Any Independent Fiduciary may be removed with or without cause by a vote of the holders of a majority of the units of beneficial interests in an Account. A vote removing the Independent Fiduciary will not affect existing covered transactions, but RREEF will cease submitting to the Independent Fiduciary any proposals to engage in new transactions. RREEF will designate within sixty (60) days a replacement Independent Fiduciary, whose appointment will be subject to the same confirmation by the Client Plans as was the initial Independent Fiduciary.

12. The Independent Fiduciary will select the Leasing Affiliates to provide the leasing services described herein. The selection process will proceed as follows:

(a) RREEF will propose a Leasing Affiliate to provide services for a specific property if it believes it is in the best interest of the Account to do so. If RREEF does not propose a Leasing Affiliate to provide services to an Account property, it will select an unrelated service provider.

(b) The Independent Fiduciary will determine the qualifications of the Leasing Affiliate by thoroughly reviewing its background and experience, and those of its personnel. The Independent Fiduciary will consider, among other things, the following factors:

(1) The compensation and the terms of the service arrangement proposed by the Leasing Affiliate will be compared to those from similarly qualified firms for similar services in the similar locales. If no similar firms exist for

⁶Currently, RREEF anticipates that RREEF Management will be the Leasing Affiliate which performs the leasing services.

⁷The applicant represents that the term "relevant real estate market" is a term used by managers, leasing agents, appraisers, etc. to mean a general geographic area from which the property is most likely to draw its tenant base. Within this area a specific property will be competing with similar properties for tenants. The area varies based on property type, size, age and location, access to transportation, etc. Typically, an assessment of the relevant real estate market is included, as part of the overall economic analysis, in the materials prepared at the time the property is acquired. The applicant maintains that, under the condition of this proposed exemption, the Independent Fiduciary will make its own independent assessment of the relevant real estate market.

⁸Such approval will be obtained pursuant to Section II(1) and (2) of this proposed exemption.

⁹See, for example, PTE 82-51, which was mentioned earlier.

comparison, the Independent Fiduciary will determine whether the agreement is reasonable within the meaning of section 408(b)(2) of the Act. If the Leasing Affiliate is replacing another service provider, the Independent Fiduciary will make similar determinations, and will consider whether the change in service providers will increase costs to the Accounts.

(2) The Independent Fiduciary must determine if the Leasing Affiliate is the best qualified candidate to provide a particular service under the arrangement in question. If the qualifications are equal among potential service providers, the Independent Fiduciary may choose the Leasing Affiliate if its proposed fee arrangement is most advantageous to the Account. If the qualifications and the proposed fees are essentially equal, the Independent Fiduciary will select the Leasing Affiliate only where it makes a determination that the affiliated service provider is the best-qualified, considering the affiliate's experience and familiarity with the Account and the property. The Independent Fiduciary is not required to regard the Leasing Affiliate as its first choice for providing services for any particular property.

(c) The Independent Fiduciary's decisions will be based solely upon the interests of the Account. The Independent Fiduciary will independently compile, or retain others to compile, information relevant to its determination. This information will include the qualifications of and the terms for engaging the Leasing Affiliate, whether RREEF Management is also providing property management services to the property, and the fees charged by RREEF Management for these various services.

The Independent Fiduciary can also consider certain additional information provided by RREEF. Such information will include: (1) a description of the Account's policy for leasing services and the Client Plans investing therein; (2) a description of the leasing services to be provided; (3) the qualifications of the Leasing Affiliate to perform the required services; (4) a statement, supported by appropriate factual representations, as to why RREEF believes the Leasing Affiliate is qualified to provide the services; (5) a copy of the proposed arrangement for services, and the Leasing Affiliate's terms for the provision of such services; (6) RREEF's reasons as to why retaining the Leasing Affiliate is in the interest of the Account; (7) information as to why the fees and other terms of the arrangement are reasonable as compared

to the fees charged by similar firms for similar services in comparable locales; (8) the identity of the current non-affiliated leasing agent, if any, and the terms under which it renders services; (9) the identities of other non-affiliated service providers and the terms under which they would render such services; and (10) whether the Leasing Affiliate or any affiliate thereof is a property manager with respect to any properties that are in competition for tenants with the property for which the Leasing Affiliate is under consideration.

(d) If the Independent Fiduciary selects the Leasing Affiliate to provide leasing services to an Account property, it will negotiate the terms of the leasing agreement directly with the Leasing Affiliate.

(e) If the Independent Fiduciary does not select the Leasing Affiliate, the Independent Fiduciary will so advise RREEF. RREEF will then select an unrelated leasing agent and negotiate the terms of the arrangement with the unrelated leasing agent.

13. If the Leasing Affiliate is replacing another leasing agent, or if a leasing agreement with a Leasing Affiliate is significantly modified, advance approval of the Independent Fiduciary will be required. Advance approval of the Independent Fiduciary will also be required when the Account acquires a property subject to a leasing agreement with the Leasing Affiliate. Any decision by the Leasing Affiliate that may affect its compensation will be reviewed and approved by the Independent Fiduciary.

14. RREEF will have the authority to retain a Leasing Affiliate in certain emergency situations where advance approval by the Independent Fiduciary would be impractical (e.g., an existing leasing agent suddenly goes out of business). Under these circumstances, RREEF will retain the Leasing Affiliate for a period not to exceed 90 days. However, the Independent Fiduciary will have to approve any fees paid to the Leasing Affiliate prior to their actual payment.

15. The Independent Fiduciary will also review, at least annually (or more frequently if it deems appropriate), the performance of the Leasing Affiliates under each leasing agreement with the Accounts. In conducting these periodic reviews, the Independent Fiduciary will consider: (i) The information contained in RREEF's annual reports, as furnished by RREEF; (ii) information furnished in connection with RREEF's selection of the Leasing Affiliates; (iii) summaries of all leases executed by the Leasing Affiliates; and (iv) any other information the Independent Fiduciary believes necessary.

In addition, the Independent Fiduciary will: (i) prepare an annual report of its activities for the prior year; (ii) render its opinion as to the continued validity of the leasing guidelines for the subsequent year; and (iii) recommend any amendments to, or termination of, the leasing agreement.

If the Independent Fiduciary determines that the services of any Leasing Affiliate are no longer necessary, or that such Leasing Affiliate has failed to comply with its obligations under the leasing agreement, it will instruct RREEF to terminate or modify the leasing agreement, or to exercise other rights available under the leasing agreement.¹⁰ RREEF will carry out such instruction from the Independent Fiduciary to the extent it is legal and permitted by the terms of the leasing agreement.

16. The Independent Fiduciary will maintain written records with respect to the determinations it makes regarding Leasing Affiliates. The written records will reflect, among other things, the information considered, including the identity of non-affiliated leasing agents, the source of the information, the steps taken by the Independent Fiduciary in reaching its decision, and the reasons for its decision. The Independent Fiduciary will also document any actions it takes in connection with its periodic review of the Leasing Affiliates' performance, as well as its approval or disapproval of the fees paid to the Leasing Affiliates for services rendered pursuant to any emergency procedures. These written records will be delivered periodically to RREEF or the Leasing Affiliates and kept in accordance with the Department's recordkeeping requirements under this exemption, if granted.

17. RREEF is one of the largest real estate managers in the United States. RREEF maintains portfolios for its clients which represent different types of real estate, including office, retail, residential and industrial properties. RREEF states that it cannot use a single Independent Fiduciary for the transactions described herein due to the large number of Account properties it manages in many diverse real estate markets. While some of RREEF's

¹⁰ In this regard, RREEF acknowledges that the Department's regulations issued under section 408(b)(2) (29 CFR 2550.408b-2) provide, in relevant part, that no contract or arrangement for the provision of services is reasonable within the meaning of section 408(b)(2) and regulation 2550.408b-2(a)(2) if it does not permit termination by the Client Plan without penalty to the Client Plan on reasonably short notice under the circumstances to prevent the Client Plan from becoming locked into an arrangement that has become disadvantageous.

Accounts may contain all these properties, other Accounts may have investment guidelines that limit them to specific categories or subcategories (e.g. office properties may include large urban "core" properties, other high-rise properties, suburban "build-to-suit" space, etc.).

RREEF represents that there are very few real estate firms qualified to act as Independent Fiduciaries which can review leasing arrangements on a national basis. RREEF states that even those firms may not be the most qualified in specific markets or for specific properties. RREEF further states that the few real estate firms that are qualified may also manage competing properties in relevant markets. Thus, these firms will have a conflict of interest in reviewing such leasing arrangements. Given the large number of properties which RREEF manages, some candidates may be disqualified because the fees they would receive from RREEF for serving as an Independent Fiduciary would exceed 5% of their annual revenues. In addition, RREEF states that it cannot use a single Independent Fiduciary for the transactions described herein because, under RREEF's agreement with the Client Plans, a single Client Plan that invests in an Account can prevent the use of an Independent Fiduciary that has been selected by the Client Plans for other Accounts.

RREEF represents that each Independent Fiduciary selected for the leasing transactions will be an experienced and recognized real estate consulting/brokerage firm familiar with the specific markets in which each Account property is located.

18. RREEF represents further that the leasing commissions charged pursuant to the proposed exemption, if granted, will not exceed market rates. The Leasing Affiliates will agree to certain limitations regarding the aggregate leasing commissions and property management fees they will receive for services rendered to the same property. For purposes of this proposed exemption, the fees paid to RREEF and/or its affiliates for leasing services provided in connection with a property held for an Account shall not exceed: (a) 7 percent of the lease amount for new leases; (b) 2 percent of the lease amount for renewal leases; and (c) for leases in which outside brokers are involved, 2.75 percent of the lease amount.

19. The fees paid to the Leasing Affiliate for providing leasing services will be governed by a written leasing agreement that will be binding on the Leasing Affiliates and the respective Account. The compensation and other

terms under the leasing agreement will be comparable to the compensation and terms between unrelated parties for similar services in connection with comparative properties in the same or similar locales.

20. In the event RREEF offers leasing services to any existing Account, RREEF will issue separate policy statements to the investors in the Account. The policy statements will disclose that RREEF or the Leasing Affiliates are under consideration to provide leasing services to the Account properties. The policy regarding these services will be subject to prior approval of the authorizing independent fiduciaries of the Client Plans (the Authorizing Fiduciaries) holding at least 60 percent of the units of beneficial interest in the Multiple Client Account.

With respect to Fund I, RREEF represents that it has already reviewed and negotiated with an Independent Fiduciary for each Client Plan the possibility of the Account retaining the Leasing Affiliates. RREEF states that it has received approval from all such Independent Fiduciaries to proceed with the proposed transactions. Accordingly, the Client Plans that participate in Fund I should be fully aware of (a) the potential conflicts of interest involved in the selection of the Leasing Affiliates as service providers; (b) the identification of the properties which may require leasing services; (c) the services to be rendered and the fees to be charged; and (d) the selection process. In addition, RREEF will provide the Client Plans that participate in Fund I with notice of the proposed exemption and the final exemption, and will require approval of the appointment of one or more Independent Fiduciaries.

21. RREEF, as the investment manager or trustee, will furnish each Authorizing Fiduciary, not less than 45 days prior to the implementation of the leasing policy, with any reasonably available information necessary for the Authorizing Fiduciary to determine whether to give its approval. Such information will include: (a) an explanation of the potential conflicts of interest involved in selecting RREEF and the Leasing Affiliates to provide leasing services; (b) properties that may require such services at the time of disclosure; (c) a description of the services and the fees to be charged; (d) an explanation of the selection process (including the selection of the Independent Fiduciary); and (e) a description of the terms, if any, upon which a Client Plan may withdraw from the Account.

In the event an authorizing plan fiduciary of any Client Plan whose assets are invested in an Account submits a notice in writing to RREEF, as investment manager, at least 15 days prior to the provision of leasing services, objecting to the provision of the leasing services, and RREEF proposes to proceed with the provision of leasing services, the Client Plan on whose behalf the objection was tendered will be given the opportunity to terminate its investment in the Account, without penalty. With the exception of a Client Plan which has invested in a closed-end Account under which the rights of withdrawal from the Account may be limited, as provided in the Client Plan's written agreement to invest in the Account, if a written objection to the leasing services is submitted to RREEF any time after 15 days prior to implementation of the leasing services (or after implementation), the Client Plan must be able to withdraw without penalty, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing and the non-withdrawing Client Plans. However, the Leasing Affiliate need not discontinue providing the leasing services, once implemented, by reason of a Client Plan electing to withdraw after 15 days prior to the scheduled implementation date of the leasing services. Any Client Plan which invests in a Single Client Account may terminate the Leasing Services arrangement and withdraw from the Account at any time (upon reasonable written notice).

As in the case of a new Account, the Client Plan's assets may be invested in an Account which already retains the Leasing Affiliate. If that Client Plan has not yet authorized the leasing arrangement in the manner described above, the Authorizing Client Plan Fiduciary will execute a prior written authorization approving the investment in the Account and the service arrangements. Also, RREEF will provide such Authorizing Client Plan Fiduciary with the same disclosures as those it provided to Authorizing Fiduciaries of the Client Plans currently invested in the Account.

Each leasing agreement may be terminated by a vote in favor of such termination by the holders of a majority of units of beneficial interests in the Account. Within 180 days after the vote terminating the leasing agreement, RREEF will replace the Leasing Affiliate with an unaffiliated leasing agent.

22. To ensure that the Client Plans investing in the Accounts have resources and necessary investment sophistication to evaluate the

contemplated service arrangements, RREEF proposes the following standard to be applied to the Multiple Client Accounts. Seventy-five percent (75%) or more of the units of beneficial interests in the Account must be held by Client Plans or other investors having total assets of at least \$100 million. In addition, 50 percent (50%) or more of the Client Plans investing in the Account must have assets of at least \$100 million. For purposes of the 50% test, a group of Client Plans maintained by a single employer or controlled group of employers, any of which individually has assets of less than \$100 million, will be counted as a single Client Plan, if the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than RREEF, who exercises such discretion with respect to plan assets in excess of \$100 million. RREEF represents that this requirement will only have an impact on Multiple Client Accounts. Single Client Accounts will be established on behalf of Client Plans that have more than \$100 million in assets.

As an added condition to the exemption, RREEF proposes that no more than 20 percent of a particular Client Plan's assets will be invested in all RREEF Accounts on whose behalf the Leasing Affiliates will provide leasing services.

23. In summary, RREEF represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) Following full disclosure by RREEF, independent Client Plan Fiduciaries will authorize the Client Plans to participate in an Account that will utilize the services of RREEF or a Leasing Affiliate;

(b) RREEF, as the investment manager for the Accounts, will first determine on a property-by-property basis that it is in the best interests of the Accounts for RREEF or a Leasing Affiliate to provide the leasing services before it recommends to the Independent Fiduciary that RREEF or the Leasing Affiliate provide such services;

(c) the Independent Fiduciary must consider the recommendation and specific alternatives for obtaining leasing services for a particular property before RREEF or a Leasing Affiliate is selected to perform leasing services for the property;

(d) the Independent Fiduciary will evaluate the reasonableness of the fees charged by RREEF and its Leasing Affiliates for leasing services and will

negotiate the terms of each leasing agreement;

(e) the Independent Fiduciary will review the performance of RREEF or any Leasing Affiliate under the leasing arrangements and instruct RREEF, as the investment manager, to terminate or modify the contract or exercise other rights available under the contract, whenever such actions are appropriate;

(f) the compensation paid to RREEF and the Leasing Affiliates will be no greater than that charged by similar firms for comparable services in connection with comparable properties in similar locales, and such compensation will not exceed what RREEF or the Leasing Affiliate would charge an unrelated party;

(g) the Client Plans investing in the Accounts will be subject to a minimum Plan size requirement to assure that such Client Plans have the resources and investment sophistication necessary to evaluate the risks, benefits and costs associated with the service arrangements; and

(h) limitations will also be placed on the percentage of a particular Client Plan's assets that may be invested in all of the Accounts maintained by RREEF, on whose behalf the Leasing Affiliates will provide leasing services.

Notice to Interested Persons

RREEF will notify each Client Plan, which maintains a Single Client Account with RREEF, of the proposed exemption by first class mail, facsimile, or overnight delivery via commercial courier, within 15 days of publication of the proposed exemption in the **Federal Register**. With respect to the Multiple Client Accounts, RREEF represents that Client Plans that currently invest in such Accounts will not receive copies of the proposed exemption because such Accounts will not be affected by this exemption, if granted. However, for the Client Plans that invest in any future Multiple Client Accounts, RREEF will provide copies of this notice of proposed exemption as well as the final exemption, if granted, prior to such investment.

For Further Information Contact:
Ekaterina A. Uzlyan of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

John B. Vick, D.D.S., P.A. Pension Plan (the Plan) Located in Minneapolis, Minnesota

[Exemption Application No. D-10578]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

and 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). 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 cash sale (the Sale) of two promissory notes (the Notes) by the Plan to Dr. John B. Vick, a party in interest and disqualified person with respect to the Plan, provided the following conditions are met:

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

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

(c) The Plan receives an amount equal to the fair market value of the Notes as determined by a qualified, independent appraiser as of the date of Sale; and

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Facts and Representations

1. The Plan, a profit sharing plan, was terminated on June 30, 1996. The Plan was sponsored by Dr. John B. Vick, a dentist practicing in Minneapolis, Minnesota. At the time of termination, the Plan had four participants and held assets in excess of \$1.4 million.

2. Among the remaining assets in the Plan are two Notes originally purchased in an arm's length transaction from an unrelated party. The first promissory note carries a principal amount of \$58,500 at an interest rate of 13.75%. The term is 48 months. Interest only payments of \$2010.94 are due each quarter with a balloon payment of the principal due on April 15, 2000. The second note, which is subordinated to the debt of the first, carries a principal amount of \$15,660 with an interest rate of 20%. Interest only payments of \$783 are due each quarter with a balloon payment of the principal due on April 15, 2000. The collateral for both notes is a parcel of improved real property located in Glendale, Arizona and owned by the unrelated party.

3. The applicant requests an exemption for the proposed Sale of the Notes to Dr. John Vick. At present, every participant in the Plan, excluding Dr. Vick, has received his or her distribution. Dr. Vick has transferred the majority of the assets in his account to his IRA and is awaiting the opportunity to transfer the remainder. Because the trustee of the IRA refuses to accept transfer of the Notes, Dr. Vick is

currently unable to complete the termination of the Plan and obtain, in his personal capacity, the remaining portion of his assets from his account in the Plan.

4. Robert N. Prentiss (Mr. Prentiss), president of the Independent Service Company located, in Minneapolis, Minnesota, appraised the Notes on November 19, 1997, and supplemented the appraisal on April 28, 1998. Mr. Prentiss is an investment banker with over 20 years of experience in valuing financial instruments, and represents that he has no present or prospective interest in the Notes, no personal interest or bias with respect to the parties involved, and is otherwise independent. After analyzing the Notes, specifically focusing on the risk, liquidity, collateral, and legal rights pertaining thereto, Mr. Prentiss determined the value of the Notes to be equal to their face amounts.

Mr. Prentiss cited a number of reasons in support of his conclusion. Specifically, he emphasized the following points: (1) the Notes are highly speculative; (2) the Notes are illiquid as they cannot be sold or paid off before their maturity dates; (3) the Notes are of the interest only variety with the entire principal at risk during the term; and (4) it would be difficult to obtain title in the event of default because the collateral for the Notes is a parcel of real estate which is subject to junior liens of \$250,000. In light of the foregoing, Mr. Prentiss believes that the Notes should be sold at par, or \$58,500 for the first note and \$15,660 for the second note.

5. The applicant represents that the proposed transaction would be administratively feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the Plan in that it would enable the Plan to dispose of the Notes thus facilitating the termination and saving on future administrative costs. Finally, the applicant asserts that the transaction only involves the account of Dr. Vick and will be protective because the Plan will receive the fair market value of the Notes as determined by a qualified, independent appraiser on the date of Sale and will incur no commissions, costs, or other expenses as a result of the Sale.

6. In summary, the applicant represents that the subject transaction satisfies the statutory criteria for an exemption because: (a) The Sale is a one-time transaction for cash; (b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length

transaction with an unrelated party; (c) The Plan receives an amount equal to the fair market value of the Notes as determined by a qualified, independent appraiser as of the date of Sale; and (d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

Notice to Interested Persons

Because Dr. Vick is the only remaining participant in the Plan, it has been determined that there is no need to distribute the notice of the Proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due (30) days after publication of the Notice in the **Federal Register**.

For Further Information Contact: Mr. James Scott Frazier, telephone (202) 219-8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

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

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

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

whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 24th day of August, 1998.

Ivan Strasfeld,

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

[FR Doc. 98-23282 Filed 8-28-98; 8:45 am]

BILLING CODE 4510-29-P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on September 12, 1998. The meeting will begin at 9:00 am and continue until conclusion of the Board's agenda.

LOCATION: Holiday Inn Civic Centre, 300 E. Ohio Street, Chicago, IL 80811.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [e.g., 5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [e.g., 45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of June 13, 1998.
3. Chairman's and Individual Members' Reports.