

Form	Number of respondents	Average minutes per response	Burden hours
CA-7 .....	400	13	87
CA-16b .....	130,000	5	10,833
CA-17b .....	60,000	5	5,000
CA-20 .....	80,000	5	6,667
CA-1090 .....	325	5	27
CA-1303 .....	3,000	20	1,000
CA-1305 .....	10	20	3
CA-1306 .....	3	10	.5
CA-1314 .....	125	20	42
CA-1316 .....	15	10	2.5
CA-1331 .....	250	5	21
CA-1332 .....	500	30	250
CA-1336 .....	1,000	5	83
OWCP-5a .....	7,000	15	1,750
OWCP-5b .....	5,000	15	1,250
OWCP-5c .....	15,000	15	3,750

Total Responses: 302,628.

Estimated Total Burden Hours: 30,766.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$109.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 1999.

**Margaret J. Sherrill,**

Chief, Branch of Management Review and Internal Control, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 99-12089 Filed 5-12-99; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10504, et al.]

#### Proposed Exemptions; Aetna Inc.

**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, NW, Washington, DC 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, NW, Washington, DC 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.

#### Aetna Inc. (Aetna), Located In Hartford, Connecticut

Application No. D-10504

#### Proposed Exemption

The Department of Labor 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 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).<sup>1</sup>

#### I. Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and 406(b) of the Act and

<sup>1</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the following transactions, if the conditions set forth in Section II and Section III, below, are satisfied:

(a) The receipt, directly or indirectly, by a sales agent (Sales Agent or Sales Agents), as defined in Section IV(l) below, of a sales commission from Aetna in connection with the purchase, with plan assets of an insurance contract (the Insurance Contract or Insurance Contracts), as defined in Section IV(h) below;

(b) The receipt of a sales commission by Aetna, as principal underwriter for a mutual fund registered under the Investment Company Act of 1940, in connection with the purchase, with plan assets, of securities issued by such mutual fund (the Aetna Fund or Aetna Funds), as defined in Section IV(c) below;

(c) The effecting by Aetna, as a principal underwriter, of a transaction for the purchase, with plan assets, of securities issued by an Aetna Fund, and the effecting by a Sales Agent of a transaction for the purchase, with plan assets, of an Insurance Contract; and

(d) The purchase, with plan assets, of an Insurance Contract from Aetna.

## II. General Conditions

(a) The transactions are effected by Aetna in the ordinary course of Aetna's business as an insurance company, or as a principal underwriter to an Aetna Fund, or in the case of a Sales Agent, in the ordinary course of the Sales Agent's business as a Sales Agent.

(b) The transactions are on terms at least as favorable to the plan as an arm's length transaction with an unrelated party would be.

(c) The combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent: (1) for the provision of services to the plan, and (2) in connection with a purchase of an Insurance Contract or securities issued by an Aetna Fund, is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code. If such total is in excess of "reasonable compensation" the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and excise taxes imposed by section 4975(a) and (b) of the Code is the amount of compensation in excess of "reasonable compensation."

## III. Specific Conditions

(a) Aetna or the Sales Agent is not—

(1) A trustee of the plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan, or a trustee to an investment trust (the Investment Trust), as defined in Section IV(g) below, which will not purchase Insurance Contracts or securities issued by an Aetna Fund pursuant to this proposed exemption);

(2) A plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code);

(3) A fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the plan that are or could be invested in Insurance Contracts, securities issued by an Aetna Fund, or an Investment Trust; or

(4) An employer any of whose employees are covered by the plan.

(b)(1) Prior to the execution of a transaction involving the receipt of sales commissions by a Sales Agent in connection with the plan's purchase of an Insurance Contract, Aetna or the Sales Agent provides to an independent plan fiduciary (the Independent Plan Fiduciary), as defined in Section IV(f) below, disclosures of the following information concerning the Insurance Contract in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) An explanation of: (i) the nature of the affiliation or relationship between Aetna and the Sales Agent recommending the Insurance Contract; and, (ii) the nature of any limitations that such affiliation or relationship, or any agreement between the Sales Agent and Aetna places on the Sales Agent's ability to recommend Insurance Contracts;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by Aetna to the Sales Agent in connection with the purchase of the recommended Insurance Contract, together with a description of any factors that may affect the commission; and

(C) A full and detailed description of any charges, fees, discounts, penalties, or adjustments which may be paid by the plan under the recommended Insurance Contract in connection with the plan's purchase, holding, exchange, termination, or sale of the Insurance Contract, including a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan.

(2) Following receipt of the information required to be provided to

the Independent Plan Fiduciary, as described in Section III(b)(1) above, and before the execution of the transaction, the Independent Plan Fiduciary acknowledges in writing receipt of such information and approves the transaction on behalf of the plan. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be a Sales Agent involved in the transaction. The Independent Plan Fiduciary may not receive, directly or indirectly (e.g. through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Insurance Contracts, the written disclosure required under Section III(b)(1) need not be repeated, unless—

(A) More than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or

(B) The Insurance Contract being recommended for purchase or the commission with respect thereto is materially different from that for which the approval described under Section III(b)(2) was obtained.

(c)(1) With respect to purchases with plan assets of securities issued by an Aetna Fund, or the receipt of sales commissions by Aetna in connection with such purchases, Aetna provides to an Independent Plan Fiduciary prior to the execution of the transaction the following information concerning the Aetna Fund in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) A description of: (i) the investment objectives and policies of the Aetna Fund, (ii) the principal investment strategies that the Aetna Fund may use to obtain its investment objectives, (iii) the principal risk factors associated with investing in the Aetna Fund, (iv) historical investment return information for the Aetna Fund, (v) fees and expenses of the Aetna Fund, including annual operating expenses (e.g., management fees, distribution fees, service fees, and other expenses) and fees paid by shareholders (e.g., sales charges and redemption fees), (vi) the identity of the Aetna Fund adviser, and (vii) the procedures for purchases of securities issued by the Aetna Fund (including any applicable minimum investment requirements and sales charges);

(B) A description of: (i) the expenses of the recommended Aetna Fund, including investment management,

investment advisory, or similar services, any fees for secondary services (e.g., for services other than investment management, investment advisory, or similar services, including but not limited to custodial, administrative, or other services), and (ii) any charges, fees, discounts, penalties, or adjustments that may be paid by the plan in connection with the purchase, holding, exchange, termination, or sale of shares of the recommended Aetna Fund securities, together with a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan or the Aetna Fund;

(C) An explanation of (i) the nature of the affiliation or relationship between Aetna and the Aetna Fund, and (ii) the limitation, if any, that such affiliation, relationship, or any agreement between Aetna and the Aetna Fund places on Aetna's ability to recommend securities issued by other investment companies;

(D) The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as a percentage of the dollar amount of the plan's gross payments and the amount actually invested, together with a description of any factors that may affect the commission; and

(E) A description of the procedure or procedures for redeeming the Aetna Fund securities.

The disclosures required under Section III(c)(1) above shall be deemed to be completed only if, with respect to fees and expenses of an Aetna Fund, the type of each fee or expense (e.g., management fees, administrative fees, fund operating expenses, and other fees, including but not limited to fees payable for marketing and distribution services pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the 12b-1 Fees)) and the rate or amount charged for a specified period (e.g., annually) is provided in a written document separate from the prospectus of such Aetna Fund.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(c)(1) above, and before execution of the transaction, the Independent Plan Fiduciary approves the specific transaction on behalf of the plan. Unless facts and circumstances would indicate the contrary, such approval may be presumed if the Independent Plan Fiduciary directs the transaction to proceed after Aetna has delivered the written disclosures to the Independent Plan Fiduciary. The Independent Plan Fiduciary may be an employer of employees covered by the

plan but may not be Aetna. The Independent Plan Fiduciary may not receive, directly or indirectly (e.g., through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Aetna Fund securities, Aetna: (A) provides reasonable advance notice of any material change with respect to the Aetna Fund securities being purchased or the commission with respect thereto, and (B) repeats the written disclosure required under Section III(c)(1) (A), (C), (D) and (E) once every three years.

(d)(1) Aetna shall retain or cause to be retained for a period of six (6) years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to Sections III (b), and (c);

(B) Any additional information or documents provided to the Independent Plan Fiduciary with respect to the transaction; and

(C) Written acknowledgments, as described in Section III(b)(2) above.

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of Aetna, such records are lost or destroyed before the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, such records shall be unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by the plan.

#### IV. Definitions

For purposes of this exemption—

(a) *Aeltus* means the Aeltus Trust Company.

(b) *Aetna* means the Aetna Life Insurance Company, the Aetna Life Insurance and Annuity Company, and any of their affiliates, including but not limited to Aeltus;

(c) *Aetna Fund* means any investment company registered under the Investment Company Act of 1940 for which Aetna serves as investment adviser and as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(29)).

(d) *an affiliate* of a person means (1) any person directly or indirectly controlling, controlled by, or under common control with such person, (2) any officer, director, employee, or relative of any such person, or any partner in such person, and (3) any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner. For purposes of this definition, an "employee" includes (A) any registered representative of Aetna, where Aetna or an affiliate is principal underwriter, and (B) any insurance agent or broker or pension consultant acting under a written agreement as Aetna's agent in connection with the sale of an Insurance Contract, whether or not such registered representative or insurance agent or broker or pension consultant is a common law employee of Aetna.

(e) The term, *control*, means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(f) *Independent Plan Fiduciary* means a fiduciary with respect to a plan, which fiduciary has no relationship to, or interest in, Aetna that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) *Investment Trust* means (1) any collective investment fund or group trust qualifying for tax-exempt status under the provisions of the Internal Revenue Code of 1986 and regulations and rulings thereunder, of which Aeltus, as defined in Section IV(a) above, or its successor or affiliate serves as trustee, or (2) any single-customer trust account for which Aeltus serves as trustee, provided that Aeltus has no discretionary authority or responsibility with respect to the management or administration of, and does not provide any investment advice with respect to, any plan assets not invested in such single-customer trust account or another Investment Trust.

(h) *Insurance Contract* or *Insurance Contracts* means an insurance or annuity contract issued by Aetna.<sup>2</sup>

<sup>2</sup> The Department expresses no opinion as to whether any so called "synthetic guaranteed insurance contracts" offered by Aetna constitutes an Insurance Contract within the meaning of this proposed exemption. The Department further notes that Prohibited Transaction Class Exemption 84-24, upon which this individual proposal is modeled, provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of insurance contracts to plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this proposal for any act of self-dealing that

(i) A *nondiscretionary trustee* of a plan is a trustee whose powers and duties with respect to any assets of the plan are limited to: (1) the provision of nondiscretionary trust services, as defined in Section IV(j) below, to such plan, and (2) the duties imposed on the trustee by any provision or provisions of the Act or the Code.

(j) *Nondiscretionary trust services* means custodial services and services ancillary to custodial services, none of which services are discretionary.

(k) A *relative means a relative* as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in Code section 4975(e)(6)), or a brother, a sister, or a spouse of a brother or a sister;

(l) *Sales Agent* means any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with Aetna either through ownership or by contractual arrangement.

(m) *Principal underwriter* is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 8a-2(a)(29)).

**EFFECTIVE DATE:** If granted, this proposed exemption will be effective as of August 28, 1997, the date of the filing of the application for exemption.

### Summary of Facts and Representations

1. It is anticipated that the plans which participate in the transactions which are the subject of this proposed exemption are employee benefit plans subject to the Act, including defined benefit and defined contribution retirement plans (the Plan or Plans). Due to the nature of the requested exemption, the applicants, Aetna and its affiliates, maintain that they are unable to provide any of the following specific identifying information about the Plans that may engage in the proposed transactions: (A) the number of participants; (B) an estimate of the percentage of assets of each Plan affected by the requested exemption or transactions; or (C) the approximate aggregate fair market value of the total assets of each affected Plan. However, the applicants generally do not anticipate that Plans covered by the requested exemption will be participant-directed plans, pursuant to section 404(c) of the Act. In addition, the applicants have not requested an exemption, and no relief is provided, herein, for any plan covering employees of Aetna or its affiliates.

2. Aetna, is a publicly-traded Connecticut company with its principal

place of business in Hartford, Connecticut. Aetna indirectly owns all of the outstanding shares of Aetna Life Insurance and Annuity Company (ALIAC) and the Aetna Life Insurance Company (ALIC). ALIC and ALIAC are Connecticut stock life insurance companies licensed to transact life, accident, and health insurance business in all fifty states of the United States and the District of Columbia. ALIAC is also registered as an investment adviser and a broker-dealer with the Securities and Exchange Commission (SEC). As of December 31, 1996, the total consolidated assets of ALIC was approximately \$43.9 billion, and the total consolidated assets of ALIAC was approximately \$28.8 billion.

3. ALIC and ALIAC offer a variety of insurance and annuity products to Plans some of which may serve as funding vehicles for retirement plan benefits. It is represented that all such insurance contracts are reviewed and approved under the laws of one or more states. In addition to providing insurance products, ALIC and ALIAC offer other services to Plans, including actuarial, record-keeping, and other plan administration services.

4. It is represented that the Insurance Contracts which are the subject of this proposed exemption are sold by Sales Agents. Sales Agents include insurance agents, brokers, or pension consultants or any affiliate thereof that is affiliated with Aetna either through ownership or by contractual arrangement. In connection with sales of Insurance Contracts, Sales Agents may receive commissions or other compensation.

5. The Aetna Funds referred to in this proposed exemption include the Aetna Variable Funds, the Aetna Series Funds, and Portfolio Partners, Inc. It is represented that all such funds are open-end investment companies registered with the SEC under the Investment Company Act of 1940. Each such investment company offers a number of different investment portfolios with different investment objectives and guidelines. The Aetna Funds are offered to Plans directly and through variable annuity contracts issued in connection with ALIAC's separate accounts.

6. Aetna Investment Services, Inc. (AISI), Aetna Financial Services, Inc. (AFSI), Aeltus Capital, Inc. (Aeltus Capital), and Financial Network Investment Corporation (FNIC) are each registered broker-dealers with the SEC and are wholly-owned affiliates of ALIC and ALIAC. ALIC, ALIAC, AISI, AFSI, Aeltus Capital, and FNIC and their successors (the Aetna Companies) have

provided and will provide a variety of services to the Aetna Funds.

7. In this regard, as disclosed in the prospectus materials for each of the Aetna Funds, ALIAC is the investment adviser to all of the Aetna Funds. In addition, ALIAC provides other services (the Secondary Services) to Aetna Funds, including accounting, shareholder administration, sub-accounting, and other administrative services. Further ALIAC is the principal underwriter to the Aetna Variable Funds and Portfolio Partners, Inc., and AISI is the principal underwriter to the Aetna Series Funds. In this regard, it is represented that as principal underwriters, ALIAC and AISI distribute Aetna Fund shares on an agency basis.<sup>3</sup> It is further represented that ALIAC may engage affiliated or unaffiliated sub-advisers to the Aetna Funds from time to time.

Under the terms of services agreements between ALIAC and an Aetna Fund, ALIAC may receive management fees and fees for Secondary Services. In addition, ALIAC or AISI may receive sales commissions and distribution fees, including for some classes of shares issued by certain Aetna Funds 12b-1 Fees.<sup>4</sup> It is represented that the prospectus materials for each of the Aetna Funds disclose whether such fees are paid and the basis under which such fees are paid.

8. Aeltus is a wholly-owned subsidiary of Aeltus Investment Management, Inc., an affiliate of the Aetna Companies. Aeltus is a limited purpose trust company chartered in the state of Connecticut and subject to the regulation and control of the Connecticut Commissioner of Banking. Aeltus may from time to time serve as a nondiscretionary trustee to Plans.

As of August 1, 1997, Aeltus maintains one or more collective investment funds that qualify for tax-exempt status under the provisions of the Code which are offered to Plans.<sup>5</sup> In

<sup>3</sup> As it is represented that ALIAC and AISI distribute shares in Aetna Funds on an agency basis, and as generally an Aetna Fund would not be a party in interest to a Plan, the applicant maintains that a Plan's purchase of shares in an Aetna Fund, in and of itself, should not involve any prohibitions under section 406(a) of the Act.

<sup>4</sup> The Department notes that the relief provided by this exemption does not preclude the receipt of 12b-1 Fees by Aetna or its affiliates to the extent that the payment of such 12b-1 Fees cannot be functionally distinguished from the payment of a sales commission in connection with the purchase, with plan assets, of securities issued by an Aetna Fund.

<sup>5</sup> It is represented that no relief is requested or required for the investment by Plans in the Investment Trust. The applicants represent that in all cases, the decision to invest in the Investment

may arise in connection with the ongoing operation or administration of the insurance contract.

addition, Aeltus may maintain custody of, and provide investment management services for, a portion of the assets of a Plan in a single customer investment trust. As trustee to an Investment Trust (either a collective investment fund or a single-customer investment fund), Aeltus has discretionary authority to manage and invest the assets of the Plan invested in the Investment Trust.<sup>6</sup> However, it is represented that Aeltus does not provide and will not provide investment advice (as described by section 3(21)(A)(ii) of the Act and the regulations thereunder) or otherwise have any discretionary authority, responsibility, or control with respect to any plan assets not invested in an Investment Trust, or in connection with the decision by a Plan to invest plan assets in an Investment Trust, in an Insurance Contract, or in shares of an Aetna Fund.

9. With respect to any Plan that participates in an Investment Trust, Aeltus will be a service provider and a fiduciary, pursuant to section 3(14)(A) and (B) of the Act. The Aetna Companies, as service providers to Plans, may also be parties in interest with respect to such Plans, pursuant to section 3(14)(B) of the Act. In addition, in some cases, one or more of the Aetna Companies could be deemed to be a party in interest with respect to a Plan by virtue of an ownership relationship of such Aetna Companies to Aeltus, pursuant to section 3(14)(G), (H), and (I) of the Act. Further, under circumstances where a Sales Agent could be deemed to provide investment advice, as described in section 3(21)(A)(ii) of the Act, to a Plan in connection with the purchase by such Plan of an Insurance Contract or the purchase of shares of an Aetna Fund, the Sales Agent may be deemed to be a fiduciary to such Plan, pursuant to section 3(14)(A) of the Act.

Trust and, thereby, to engage Aeltus to provide investment management services to the Plan would be made by an independent plan fiduciary. Further, the applicants maintain that where the Investment Trust is a collective investment fund (a Collective Trust), any potential violations of section 406(a) or (b) of the Act in connection with a plan's investment in such Collective Trust would be exempt provided that certain conditions are satisfied, pursuant to section 408(b)(8) of the Act. In this regard, the applicants represent that any investments in the Collective Trust by Plans will comply with the conditions of section 408(b)(8) of the Act. The Department expresses no opinion, herein, as to whether any of the relevant provisions of part 4, subpart B, of Title I have been violated, regarding investment by Plans in the Investment Trust, nor as to whether the conditions of section 408(b)(8) have been or will be satisfied.

<sup>6</sup>The Department notes that, pursuant to Section III(a)(1) of this proposed exemption, relief would not be available for the purchase by Aeltus for such Investment Trust of Insurance Contracts, as defined in Section IV(h) below; or of securities issued by an Aetna Fund.

Where one of the Aetna Companies is a party in interest to a Plan, then purchases by such Plan of Insurance Contracts or purchases by such Plan of shares of Aetna Funds may be prohibited under section 406(a) of the Act. In addition in the event that a Sales Agent is deemed to be providing investment advice (as described in section 3(21)(A)(ii) of the Act and the regulations thereunder) to a Plan in connection with such Plan's purchases of Insurance Contracts or purchases of shares of Aetna Funds, the receipt of commissions by such Sales Agents may be prohibited under section 406(b) of the Act.

10. The applicants request relief from these transactions because of the uncertainty of the applicability of Class Exemption 84-24 (PTCE 84-24) to the transactions. In this regard, PTCE 84-24 provides relief from the prohibitions of sections 406(a)(1)(A) through (D) and 406(b) of the Act, and from the taxes imposed by section 4975 of the Code for certain classes of transactions involving purchases by plans of insurance or annuity contracts and purchases by plans of securities issued by registered investment companies, and the receipt of sales commissions in connection therewith by an insurance agent, broker, pension consultant, or investment company principal underwriter. However, no relief is available under PTCE 84-24, if the insurance agent, broker, pension consultant, or the investment company principal underwriter or its affiliate is a plan trustee, other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan. Even though, Aeltus has represented, that it does not and will not provide investment advice or exercise or have any discretionary authority over whether a Plan purchases Insurance Contracts or shares of an Aetna Fund, the exemption provided under PTCE 84-24 may not be available for such purchases where the assets of such Plan are under management with Aeltus, as trustee of an Investment Trust.

Aeltus has represented that as of the date the application for exemption was filed with the Department, that the transactions that are the subject of this proposed exemption had not occurred. However, it is anticipated that Plans participating in the Investment Trust may begin to purchase Insurance Contracts or to purchase shares of Aetna Funds at any time. Because the applicant believes that PTCE 84-24 may not cover a transaction between a plan and a party in interest whose affiliate provides trustee services, other than

nondiscretionary trustee services to the Plan, Aetna has requested an exemption from section 406(a) and (b) of the Act with respect to the proposed transactions and the corresponding provisions of section 4975(c)(1) of the Code retroactively to August 28, 1997, the date of the filing of the application for exemption.

11. In support of their request for individual exemption, Aetna represents that the transactions are on terms which are at least as favorable to the Plan as those negotiated at arm's length with an unrelated party, and such transactions are effected by Aetna or a Sales Agent in the ordinary course of the respective business of such parties. With respect to the receipt of sales commissions by Aetna or a Sales Agent for the provision of services to a Plan, and in connection with a purchase of an Insurance Contract or securities issued by an Aetna Fund, the combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent will not be in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code.

12. The applicants maintain that the requested exemption is administratively feasible. In this regard, compliance with the terms of the exemption is monitored by an Independent Plan Fiduciary, so that the level of oversight required by the Department is minimal. In this regard, an Independent Plan Fiduciary of each Plan that participates in the Investment Trust will receive notice regarding this proposed exemption. Further, the Aetna Companies will maintain records necessary to verify compliance with the conditions of this exemption.

13. The applicants maintain that the proposed exemption is in the interest of the Plans which participate in the subject transactions, because Plans will be able to take advantage of the full range of insurance and investment products offered by the Aetna Companies. For example, an Independent Plan Fiduciary of a defined benefit plan investing some or all of the assets of such Plan in an Investment Trust will also be able to purchase annuities or other insurance products for the Plan from Aetna.

14. The applicants maintain that the proposed exemption is designed to protect the rights and interests of the participants and beneficiaries of the Plans. In this regard, Aetna is required to make certain disclosures in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or in

investment matters. Specifically, before a Plan purchases an Insurance Contract, the Independent Plan Fiduciary must receive and acknowledge the written disclosures, described in Section III(b) above and must approve the transaction on behalf of the Plan. Similarly, before a Plan purchases shares of an Aetna Fund, the Independent Plan Fiduciary must receive the disclosures, described in Section III(c) above. Approval with respect to a Plan's purchase of shares of an Aetna Fund will be presumed, unless facts and circumstances indicate the contrary, if the Independent Plan Fiduciary directs the transaction to proceed after receiving the written disclosures from Aetna. Further, prior to a purchase of shares of an Aetna Fund, Aetna must disclose in a written document separate from the prospectus information with respect to specific types of fees or expenses paid from the assets of an Aetna Fund, including information about the rate or amount of each fee or expense charged for a specified period.

If a Plan purchases additional Insurance Contracts, Aetna does not have to repeat the written disclosure required under Section III(b)(1), unless more than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or unless the Insurance Contract being recommended for purchase or the commission thereto is materially different from that for which the approval was obtained. With respect to additional purchases of Aetna Fund securities, Aetna has represented that it will provide reasonable advance notice of any material change to the Aetna Fund securities being purchased or the commission thereto, and will repeat the written disclosure required under Section III(c)(1)(A), (C), (D), and (E) at least once every three (3) years.

Where Aeltus is a trustee other than a nondiscretionary trustee to a Plan, solely because it serves as a trustee to an Investment Trust in which such Plan participates, the applicants maintain that the proposed transactions do not appear to involve the types of abuse that the Department intended to address by limiting the availability of PTCE 84-24 where a party in interest or its affiliate is a trustee to a plan. Specifically, notwithstanding the fact that Aeltus is trustee to an Investment Trust, Aeltus is not acting as a fiduciary with discretion over whether a Plan purchases Insurance Contracts or shares of Aetna Funds, nor is Aeltus in a position to improperly influence or control such decision made by the Independent Plan Fiduciaries.

15. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and 4975(c)(2) of the Code because:

(a) Plans can take advantage of the full range of insurance and investment products offered by the Aetna Companies;

(b) The transactions are effected by Aetna or by a Sales Agent in the ordinary course of business;

(c) The transactions are on terms at least as favorable to the Plan as an arm's length transaction with an unrelated party would be;

(d) The combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent for the provision of services to a Plan, and in connection with the proposed transactions is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code;

(e) Neither Aetna nor the Sales Agent is a trustee of the Plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the Plan or a trustee to an Investment Trust which will not purchase Insurance Contracts or securities issued by an Aetna Fund); a plan administrator; a fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the Plan that are or could be invested in Insurance Contracts, securities issued by an Aetna Fund, or an Investment Trust; or an employer any of whose employees are covered by the Plan;

(f) With respect to the proposed transactions, Aetna provides the Independent Plan Fiduciary with certain disclosures in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters; and provides disclosure in a written document separate from the prospectus of information regarding specific types of fees or expenses paid from the assets of an Aetna Fund and the rate or amount of each fee or expense charged for a specified period;

(g) Following receipt of the required disclosures and prior to entering the transaction, the Independent Plan Fiduciary approves the transaction on behalf of the Plan; and

(h) Aetna shall retain or cause to be retained certain records for a period of six (6) years from the date of any transaction covered by this exemption.

### Notice to Interested Persons

Because of the large number of potentially interested persons, the applicants maintain that it is not possible to provide a separate copy of the Notice of Proposed Exemption (the Notice) to each Plan eligible to engage in the transactions covered by the requested exemption. In this regard however, Aetna intends to provide in writing by first-class mail to the Independent Plan Fiduciary of each Plan that participates in an Investment Trust within fifteen (15) days of the date of publication of the Notice in the **Federal Register**, a copy of the Notice, as published in the **Federal Register**, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). The notification will inform such interested persons of their right to comment and/or request a hearing within thirty (30) days of receipt of a copy of the Notice.

Apart from the notification described in the paragraph above, the applicants represent that the only practical form of providing notice to interested persons is by means of publication of the Notice in the **Federal Register**.

### FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

### UNOVA, Inc. (UNOVA), Located in Beverly Hills, California

(Application Nos. D-10663 and D-10664)

### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (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, as of December 17, 1998, to: (1) the acquisition by the UNOVA, Inc. Pension Plan and the Landis Tool Pension Plan (collectively, the Plans) of certain improved real property (the Property) from an unrelated party for a sales price of \$15,250,000 (the Purchase); and (2) the leasing of a portion of the Property (the Lease) by the Plans to UNOVA, a party in interest with respect to the Plans, provided that the following conditions are satisfied:

(a) The Plans paid an amount for the Property which was no more than the

fair market value of the Property at the time of the transaction;

(b) The interest in the Property owned by each Plan represented no more than 15% of the value of either Plan's total assets at the time of the Purchase;

(c) The Property, and the amount of space in the Property leased to UNOVA under the Lease (the Leased Space), represents no more than 15% of the value of either Plan's total assets throughout the duration of the Lease;

(d) The terms and conditions of the Lease are at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party;

(e) The fair market rental value of the Leased Space has been, and every three years during the Lease will continue to be, determined by a qualified, independent appraiser;

(f) The amount of rent paid by UNOVA to the Plans for the Leased Space throughout the duration of the Lease will be no less than the greater of the initial rent paid by UNOVA or the current fair market rental value of the Leased Space as determined every three years by a qualified independent appraiser;

(g) The Plans' independent fiduciary has determined that the Purchase and Lease are appropriate for the Plans and in the best interests of the Plans' participants and beneficiaries; and

(h) The Plans' independent fiduciary will monitor the Lease, as well as the conditions of this proposed exemption (if granted), and will take whatever actions are necessary to safeguard the interests of the Plans throughout the duration of the Lease.

**EFFECTIVE DATE:** This proposed exemption, if granted, will be effective as of December 17, 1998.

### Summary of Facts and Representations

1. UNOVA is an industrial automation, automated data collection, and mobile computing company located in Beverly Hills, California. The Plans consist of the UNOVA, Inc. Pension Plan and the Landis Tool Pension Plan. The UNOVA, Inc. Pension Plan is a defined benefit plan which had 7,425 participants and approximately \$263,299,725 in total assets, as of September 30, 1998. The Landis Tool Pension Plan, which covers the employees of the Landis Tool and Gardner Machine divisions of UNOVA, is a defined benefit plan which had 1,328 participants and approximately \$61,067,477 in total assets, as of September 30, 1998.

2. The Property is located at 21900 Burbank Boulevard in Los Angeles, California. The Property consists of a

2.15 acre lot improved by a three-story multi-tenant office building having 89,203 square feet of rental space. The Plans purchased the Property from the Variable Annuity Life Insurance Company, a party unrelated to the Plans, for \$15,250,000 on December 17, 1998.

After the Purchase, a portion of the Property's \$15,250,000 total asset value (the Property's Value) was allocated to each of the Plans (the Allocation). The Allocation apportioned approximately 81% of the Property's Value, or approximately \$12,378,936, to the UNOVA, Inc. Pension Plan, and approximately 19% of the Property's Value, or approximately \$2,871,064, to the Landis Tool Pension Plan. The Allocation was made for the purpose of ensuring that the interest in the Property owned by each Plan represented the exact same percentage of each Plan's overall assets at the time of the Allocation. As a result, at the time the Allocation was made, the Property comprised approximately 4.7% of the Landis Tool Pension Plan's assets and approximately 4.7% of the UNOVA, Inc. Pension Plan's assets.

3. After the Purchase, the Plans leased a portion of the Property to UNOVA, effective as of December 17, 1998 (i.e. the Lease). The leased portion of the Property comprises the entire third floor of the Property or 32,314 square feet (i.e. the Leased Space). Thus, the Leased Space represents approximately 36.2% of the Property's total square feet of rental space.

According to the terms of the Lease, the base rent paid by UNOVA is \$17.32 per square foot annually. Under the Lease, UNOVA is required to reimburse the Plans for all of the expenses the Plans incur through UNOVA's leasing of the Property. The expenses to be paid to the Plans by UNOVA, as lessee, are \$7.88 per square foot annually, subject to future adjustments each year based on the Plans' actual annual expenses.<sup>7</sup> As a result, the total amount of rental income that the Plans are entitled to receive from UNOVA in the first year of the Lease is \$814,312.80, or \$25.20 per square foot annually. The applicant states that this amount represents the fair market value for the Leased Space, in accordance with rents currently being charged for similar properties in the

local real estate market (see discussion in Paragraphs 7 and 8 below).

4. The Lease is for an initial term of ten years. The Lease requires the Plans to reimburse UNOVA \$20.00 per square foot for UNOVA's expenses relating to UNOVA's installation as a tenant (the Reimbursement).<sup>8</sup> In this regard, the applicant represents that leases for properties similar to the Leased Space typically contain reimbursement provisions similar to the Reimbursement. The duration of the Lease may be extended upon written notice by UNOVA to the Plans at least three months prior to the expiration of the Lease's initial term or the Lease's three renewal terms (the Renewals). In each instance, the Renewal will be for an additional five years and will be subject to the approval of an independent qualified fiduciary (see Paragraphs 8, 9, and 10 below). As part of such approval, the independent fiduciary must determine that the Lease payments will equal the current fair market rental value of the Leased Space and that all of the other conditions of the Lease will remain in the best interest and protective of the Plans.

5. The applicant states that an independent qualified real estate appraiser will determine the fair market rental value of the Leased Space every three years. If the independent appraiser determines that the fair market value of the Leased Space is greater than the \$25.20 per square foot per year as specified in the Lease, UNOVA will be required to pay a new rental rate equal to the fair market rental value of the Leased Space. However, under no circumstances will a new rental rate be reduced below the initial rental rate. Thus, in accordance with this procedure, all rents paid by UNOVA will be no less than the greater of \$814,312.80 per year, as provided for in the Lease, or the fair market rental value of the Leased Space as determined every three years by the independent qualified appraiser.

Additionally, the amount of rent the Plans receive from UNOVA will periodically be adjusted (the Adjustments) to reflect increases in the

<sup>8</sup>The Department expresses no opinion in this proposed exemption as to whether the expenses incurred by the Plans relating to the tenant improvements made to the Leased Space on behalf of UNOVA would violate any provision of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan's participants and beneficiaries when making investment decisions on behalf of a plan. In addition, section 404(a) of the Act requires that plan fiduciaries act for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan.

<sup>7</sup>In the event that UNOVA incurs an actual annual expense in excess of \$7.88 per square foot, UNOVA will reimburse the Plans the full amount of the excess expense. After a year in which UNOVA incurs an excess expense, the following year's annual expense amount will be adjusted upward to reflect the actual amount paid in the previous year. This formula will be continued in subsequent years.



Consumer Price Index (CPI). The first Adjustment will occur after the Lease has been in effect for five years. At that time, the actual rental rate for the Leased Space will be increased by a percentage equal to 90% of the percentage increase in the CPI during that period. Thereafter, additional Adjustments, which will be calculated in the same manner as the first Adjustment, will occur at five year intervals upon any Renewal.

6. The Property has been appraised (the Appraisal) by Eric Stucky, MAI (the Appraiser), a certified appraiser for CB Richard Ellis, Inc. Appraisal Services, an independent real estate appraisal company located in Los Angeles, California. The Appraiser considered both the sales comparison approach and the income capitalization approach to value the Property. However, the Appraiser's conclusions were based on the income capitalization approach. The Appraiser concluded that the Property had a fair market value of \$15,600,000, as of August 13, 1998.

The Appraiser additionally analyzed the fair market rental rate of the Leased Space and the Reimbursement provision of the Lease. The Appraiser's analysis involved reviewing recent leases in the Property, analyzing rental rates of recently leased properties similar to the Leased Space, and interviewing market participants. After this analysis, the Appraiser concluded that the Leased Space's initial rental rate of \$25.20 per square foot annually represented the current fair market value of the Leased Space. The Appraiser additionally concluded that the Reimbursement was within the range of allowances for tenant reimbursement found in leases involving properties similar to the Leased Space.

7. The Appraisal was reviewed by Andrew Minstein and Phil Gottfried (the Reviewers), each a certified real estate appraiser for AGM and Associates (AGM), an independent appraisal company. The Reviewers represent that they have no financial interest in the Property. Upon their review of the Appraisal, the Reviewers concluded that the Appraiser's valuation of the Property was reasonable. In addition, the Reviewers represent that the rental rate to be paid by UNOVA for the Leased Space during the first year of the Lease is at the high end of the range of rents currently being paid for similar properties in the local real estate market.

8. UNOVA represents that Harvey A. Bookstein of Roth Bookstein & Zaslow, LLP (Roth Bookstein & Zaslow) located in Los Angeles, California, was appointed on August 21, 1998, to serve

as the Plans' independent fiduciary with respect to the Purchase and Lease. Mr. Bookstein has been a Certified Public Accountant for over 25 years. Mr. Bookstein states that he is experienced and knowledgeable in matters concerning real estate and qualified retirement plans.

Mr. Bookstein states further that he is unrelated to both the Plans and UNOVA. In this regard, Mr. Bookstein represents that throughout the duration of the Lease and any of the Renewals thereof, Roth Bookstein and Zaslow will receive less than one percent of its annual gross income from any of the parties involved in the proposed transaction. Mr. Bookstein has acknowledged his duties, liabilities and responsibilities as a fiduciary for the Plans for purposes of the subject transactions.

9. In order to ensure that the Purchase and Lease were in the best interest of the Plans, Mr. Bookstein:

(a) Reviewed the terms of the Purchase and Lease to determine whether the transactions would be at least as favorable to the Plans as those terms and conditions which would exist in similar transactions between unrelated parties;

(b) Confirmed that the Purchase and Lease conformed to the diversification and investment objectives of the Plans;

(c) Reviewed the terms of the Lease, including the provisions relating to the initial rental rate, the Reimbursement, the Renewals, and the Adjustments, to confirm that the terms and conditions of the Lease would be in the best interests of the Plans and their participants and beneficiaries;

(d) Compared the terms and conditions of the Lease, including the provisions relating to the initial rental rate, the Reimbursement, the Renewals, and the Adjustments, to the terms and conditions of arm's-length leases involving similar properties, to ensure that the overall investment return that the Plans will receive from the Lease will be comparable to the overall investment return for similar leases involving unrelated parties;

(e) Confirmed that the Lease reflected the current fair market rental rate for the Leased Space at the time of the transaction, as determined by an independent qualified appraiser; and

(f) Confirmed that the Purchase and Lease would be in the best interests of the Plans' participants and beneficiaries.

10. Mr. Bookstein represents that he completed an analysis of the Purchase and Lease (the Analysis) prior to the date in which the Plans and UNOVA entered into the transactions.

Mr. Bookstein states that after conducting the Analysis, he determined that such transactions were in the best interests of the Plans' participants and beneficiaries. In addition, Mr. Bookstein determined that the terms and conditions of the Lease would be at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party.

Mr. Bookstein additionally analyzed the overall investment portfolio of the Plans (the Investment Analysis) prior to the transactions. Upon completion of the Investment Analysis, Mr. Bookstein determined that the Purchase and Lease would be consistent with the Plans' investment objectives and policies.

Mr. Bookstein also prepared a net present value (NPV) analysis (the NPV Analysis) of the Lease.<sup>9</sup> Mr. Bookstein represents that his analysis involved comparing the NPV of the Lease to the NPV of leases that pre-dated the Plan's purchase of the Property. Mr. Bookstein represents that this comparison included using a discount rate of 10 percent (which operates as the rate of return objective) and deducting from the income stream all expenses related to such leases and their proportionate share of the Property's expenses to the extent that these expenses exceeded those of their base year. Mr. Bookstein represents that the results of the NPV Analysis is consistent with his conclusion that the terms and conditions of the Lease are in the best interests of the Plan.<sup>10</sup>

Mr. Bookstein represents that he will monitor the Lease throughout its duration, as well as the conditions of this proposed exemption (if granted), and will take whatever action is necessary to protect the Plans' rights under the Lease and safeguard the interests of the Plans. Additionally, Mr. Bookstein represents that he will ensure that the Plans' rental income from the Lease, or upon any Renewal, reflects the Leased Space's fair market rental value at the time. Mr. Bookstein further represents that the Plans will not enter into any Renewals without his approval.

11. The Applicant represents that in the event of a termination of Mr.

<sup>9</sup>The NPV is the difference between the present value of all expected investment benefits (or positive cash flows), and the present value of capital outlays (or negative cash flows), over the entire period of the investment.

<sup>10</sup>In this regard, the Mr. Bookstein's conclusions with respect to the NPV Analysis depends on the fact that the current rental rate being charged to UNOVA represents the fair market value of the Leased Space, and that there will be appropriate readjustments to the rent to reflect any increases in the fair market rental value of the Leased Space at least once every three years by an independent appraiser.



Bookstein's appointment as independent fiduciary to the Plans with respect to the Lease, any successor to Mr. Bookstein will have responsibilities, independence and experience similar to those described in Paragraphs 8, 9, and 10 above. In this regard, the Applicant states that if it becomes necessary to appoint a successor independent fiduciary (the Successor) to replace Mr. Bookstein, a letter will be sent to the Department at least thirty (30) days prior to the appointment. The letter will specify that the Successor has responsibilities, experience and independence similar to those of Mr. Bookstein. If the Department does not object to the Successor, the new appointment will become effective on the 30th day after the Department receives such letter.

12. In summary, UNOVA represents that the subject transactions satisfy the statutory criteria contained in section 408(a) of the Act for the following reasons:

(a) The Plans paid an amount for the Property which was no more than the fair market value of the Property at the time of the Purchase;

(b) The interest in the Property owned by each Plan represented no more than 15% of the value of either Plan's total assets at the time of the Purchase;

(c) The Property and the Leased Space represented no more than 15% of the value of either Plan's total assets at the time of the transactions and will remain less than that percentage throughout the duration of the Lease;

(d) The terms and conditions of the Lease are, and will remain, at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party;

(e) The fair market rental value of the Leased Space has been, and every three years during the Lease will continue to be, determined by a qualified, independent appraiser;

(f) The amount of rent paid by UNOVA to the Plans for the Leased Space throughout the duration of the Lease will be no less than the greater of the initial rent paid by UNOVA or the fair market rental value of the Leased Space as determined every three years by a qualified independent appraiser;

(g) Mr. Bookstein, as the Plans' independent fiduciary, has determined that the transactions are appropriate for the Plans and in the best interests of the Plans' participants and beneficiaries; and

(h) Mr. Bookstein, as the Plans' independent fiduciary, will monitor the Lease, as well as the conditions of this proposed exemption (if granted), and will take whatever actions are necessary

to safeguard the interests of the Plans under the Lease.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Motta of the Department, telephone (202) 219-8883 (this is not a toll free number).

**Daniel N. Cunningham IRA (the Cunningham IRA); Sidney B. Cox IRA (the Cox IRA) (collectively, the IRAs), Located in Fresno, California**

[Exemption Application Numbers: D-10723 and D-10724]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of 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). If the exemption is granted, 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 purchase (the Purchase) by each IRA<sup>11</sup> of certain shares of Clovis Community Bank common stock (the Stock) from Mr. Daniel N. Cunningham and Mr. Sidney B. Cox (the Account Holders), disqualified persons with respect to the IRAs, provided that the following conditions are met:

(a) The Purchase of the Stock by each IRA is a one-time transaction for cash;

(b) Each IRA purchases the Stock for a price not exceeding the fair market value of the Stock at the time of each Purchase;

(c) The terms and conditions of each Purchase are at least as favorable as those available in an arm's length transaction with an unrelated third party;

(d) Each IRA does not pay any commissions or other expenses in connection with each Purchase;

(e) The IRA assets invested in the Stock do not exceed 25% of the total assets of each IRA at the time of the transaction; and

(f) Each IRA, at all times, will hold less than one percent (1%) of the outstanding shares of the Stock.

Effective Date: If this proposed exemption is granted, the exemption will be effective as of April X, 1999.

**Summary of Facts and Representations**

1. The applicants describe the Account Holders, their holdings of the Stock, and the IRAs as follows:

(a) Daniel N. Cunningham currently serves on the Board of Directors of

<sup>11</sup> Because each IRA has only one participant, there is no jurisdiction under 29 CFR § 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Clovis Community Bank (Clovis). As of December 31, 1998, he held 96,494 shares (48,851 directly and 47,643 indirectly) in his individual capacity. The Cunningham IRA is an individual retirement account, trusted by Wheat First Union, established under Code section 408(e). As of September 30, 1998, the IRA held assets valued at \$1,483,007.

(b) Sidney B. Cox currently serves on the Board of Directors at Clovis. As of December 22, 1998, he held 12,522 shares in his individual capacity. The Cox IRA is an individual retirement account, trusted by Smith Barney, established under Code section 408(e). As of September 30, 1998, the IRA held assets valued at \$195,819.37.

2. The Stock consists of shares issued by Clovis. Clovis is a California state-licensed bank with deposit accounts insured by the Federal Deposit Insurance Corporation (the FDIC). Clovis is subject to the regulation, supervision and periodic examination by the California Department of Financial Institutions and the FDIC. Clovis is not a member of the Federal Reserve system, but is nevertheless subject to certain regulations relating thereto.

3. The Stock is common stock with no par value and the only class authorized in the Clovis articles of incorporation. Currently, there are 1,069,067 shares outstanding. The Stock is not listed on any exchange, nor is it listed with NASDAQ. Trading of the Stock is limited in volume with transactions coordinated between buyers and sellers utilizing brokers. Bid and asked prices for the Stock are quoted weekly in "The Fresno Bee" and the National Daily Quotation Service's "pink sheets."<sup>12</sup>

4. The applicants request an exemption for the Purchase of the Stock by each individual IRA from its respective participant. Each Account Holder serves on the Board of Directors of Clovis<sup>13</sup> and has, in the past, been granted options to purchase shares of the Stock. Each Account Holder has exercised such options and proposes selling these newly acquired shares to his respective IRA. Sidney Cox proposes selling to the Cox IRA the lesser of (1) 2,530 shares or (2) an amount not exceeding 25% of the total assets of the

<sup>12</sup> As of April 2, 1999, the Bid price was \$21½ and the Ask price was \$23.

<sup>13</sup> The applicants state that Mr. Cunningham and Mr. Cox's appointments to the Board of Directors of Clovis and their continuing service thereon is not in any way related to the acquisition and holding of the Stock by their IRAs. In addition, the applicants represent that the purchase of the Stock by the IRAs will not enable Mr. Cunningham or Mr. Cox to achieve any personal financial objectives unrelated to the interests of the IRAs.

Cox IRA. Daniel Cunningham proposes selling 9,000 shares to the Cunningham IRA.

5. The applicants represent that each IRA will pay no commissions or other expenses in connection with the Purchase. The Purchase will involve a one-time transaction for cash. Each IRA will pay a share price based on the average of the highest current independent bid and lowest current independent offer as of the close of the business day preceding the proposed Purchase, on the basis of a reasonable inquiry from at least three broker-dealers or pricing services independent of Clovis. The applicants further represent that the Stock will not exceed 25% of the value of the assets of each IRA at the time of the proposed transaction. Finally, the applicants state that each IRA at all times will hold less than one percent (1%) of the outstanding number of Clovis shares.

6. The applicants represent that the proposed transactions are feasible in that each transaction will involve a one-time transaction for cash. Furthermore, the applicants state the proposed transactions will be in the best interests of each IRA in that the Purchases will enable each IRA to invest in a promising security at fair market value without incurring any commissions. Finally, the applicants represent that the transactions will be protective of the rights of each participant because, at the time of the transaction, the investment will not exceed 25% of the assets of each IRA.

7. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The Purchase of the Stock by each IRA will be a one-time transaction for cash; (b) Each IRA will purchase the Stock for a price not exceeding the fair market value of the Stock at the time of Purchase; (c) The terms and conditions of each Purchase will be at least as favorable as those available in an arm's length transaction with an unrelated third party; (d) Each IRA will not pay any commissions or other expenses in connection with each Purchase; (e) The IRA assets invested in the Stock will not exceed 25% of the total assets of each IRA at the time of the transaction; and (f) Each IRA, at all times, will hold less than one percent (1%) of the outstanding shares of the Stock.

**NOTICE TO INTERESTED PERSONS:** Because the applicants are the only participants in the IRAs, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and

requests for a hearing are due thirty (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 7th day of May, 1999.

**Ivan Strasfeld,**

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

[FR Doc. 99-12101 Filed 5-12-99; 8:45 am]

BILLING CODE 4510-22-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Advisory Committee on Preservation; Meeting

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on Preservation.

**DATES:** June 8, 1999, from 9 a.m. to 4 p.m.

**ADDRESSES:** The National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740-6001, lecture rooms B and C.

**FOR FURTHER INFORMATION CONTACT:** Alan Calmes, 301-713-7403.

The agenda for the meeting will be Preserving the Zapruder Film: A Technical Discussion.

1. Current physical condition of the original as baseline
2. Storage and preservation of the original
3. Reproduction options

This meeting will be open to the public. However, seating may be limited.

Dated: May 7, 1999.

**Mary Ann Hadyka,**

*Committee Management Officer.*

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## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Cooperative Agreement for Administration of Site Visit Activities

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notification of availability.

**SUMMARY:** The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to assist its Theater and