

the miner's Social Security Number. If the claim is approved, the miner is entitled to medical benefits directly related to the treatment of the miner's black lung disease, which include reimbursement of reasonable travel costs for that treatment. The CM-957 form is specifically designed to record all such costs and to serve as the miner beneficiary's formal request for reimbursement.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01-13904 Filed 6-1-01; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10951, et al.]

Proposed Exemptions; Merganser Capital Management LP (Merganser), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of proposed exemptions.

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

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

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 the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 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, 5 U.S.C. App. 1 (1996), 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.

Merganser Capital Management LP (Merganser) Located in Cambridge, Massachusetts

[Application No. D-10951]

Proposed Exemption

Based on the facts and representations set forth in the application, 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, August 10, 1990).

Section I. Transaction

If the exemption is granted, Merganser shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84-14 (49 FR

9494, Mar. 13, 1984) (PTE 84-14) for the period between April 6, 2000 and December 31, 2006, solely because of its failure to satisfy the shareholders' or partners' equity requirement under section V(a)(4) of PTE 84-14, provided that the conditions set forth in section II are met.

Section II. Conditions

(a) Merganser shall obtain an irrevocable Letter of Credit, which shall be reduced only by ERISA Claims paid on behalf of ERISA Clients.

(b) The amount available under the Letter of Credit shall be at least \$750,000 as of the first day of each fiscal year during which the Letter of Credit is maintained.

(c) Merganser shall cause the Letter of Credit to be issued to an Agent to be held for the benefit of all ERISA Clients.

(d) Merganser shall notify current and future ERISA Clients in writing of: (i) Their status as beneficiaries of the Letter of Credit; (ii) their right to make a draw against the Letter of Credit by presenting the Agent with the documentation described in (g) below; and (iii) the U.S. address of the Agent at which an ERISA Client may present such documentation. Merganser shall promptly notify all ERISA Clients of any changes in the information as to how to contact the Agent.

(e) Merganser shall provide current and future ERISA Clients with a copy of the proposed and final exemption, if granted, as published in the **Federal Register**.

(f) Merganser shall provide the Agent with a complete list of all ERISA Clients, which shall be updated each time Merganser obtains a new ERISA Client.

(g) The Letter of Credit shall be payable on demand solely to any ERISA Client (or its agent) if the ERISA Client provides the Agent with:

(i)(A) a certified copy of the final judgment against Merganser based on an ERISA Claim of such client, entered by a court of competent jurisdiction with all rights of appeal having expired or having been exhausted, or (B) a true copy of a settlement agreement between the ERISA Client and Merganser providing for damages to the ERISA Client with respect to an ERISA Claim;

(ii) in the case of a final court judgment, a certified true copy of a Sheriff's or Marshall's levy and execution on the judgment, returned unsatisfied, or such other documentation, certified by an officer of the court in which the judgment was entered, stating that the judgment remains unsatisfied following attempts

to collect the judgment in accordance with local court rules; and

(iii) a certificate of an authorized representative of the ERISA Client stating the amount of the judgment or settlement which remains unsatisfied.

(h)(i) The Letter of Credit shall be maintained until the earlier of December 31, 2006 or Merganser's satisfaction of the partners' equity requirement under section V(a)(4) of PTE 84-14.

(ii) Notwithstanding subparagraph (i), in the event that one or more ERISA Clients has a Pending ERISA Claim on December 31, 2006, Merganser shall either (A) cause the Letter of Credit to be maintained until the earlier of December 31, 2008 or a final judgment or settlement disposing of all such Pending ERISA Claims, or (B) cause a bond to be purchased which fully insures all such Pending ERISA Claims in the total amount equal to the amount of such Pending ERISA claims but not to exceed \$750,000.

Section III. Definitions

(a) "Agent" shall mean a commercial bank, trust company or other financial institution subject to federal or state banking regulation that is independent of Merganser.

(b) "Claim" shall mean a civil proceeding for monetary relief which is commenced by the filing or service of a civil complaint or similar pleading, or a request for monetary relief which could have been the subject of such a complaint or pleading but for a settlement agreement.

(c) "ERISA Claim" shall mean a Claim filed against Merganser or with respect to which a settlement is reached with Merganser prior to December 31, 2006, by reason of Merganser's alleged breach or violation of a duty described in sections 404 or 406 of the Act.

(d) "ERISA Client" shall mean any employee benefit plan covered by Title I of ERISA to which Merganser provides or provided investment management services on or before December 31, 2006.

(e) "Letter of Credit" shall mean a standby letter of credit in the amount of \$750,000 issued by a commercial bank, trust company or other financial institution subject to federal or state banking regulation that is independent of Merganser.

(f) "Pending ERISA Claim" shall mean an ERISA Claim that: (i) has been filed in court and is not the subject of a final judgment or settlement; or (ii) has been the subject of a final judgment or settlement which remains unsatisfied.

(g) A person will be "independent" of another person only if:

(i) for purposes of this exemption, such person is not an affiliate of that other person; and

(ii) the other person, or an affiliate thereof, is not a fiduciary that has investment management authority or renders investment advice with respect to assets of such person.

(h) An "affiliate" of a person means:

(i) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) any corporation or partnership of which such person is an officer, director or employee, or in which such person is a partner.

Summary of Facts and Representations

1. Based in Cambridge, Massachusetts, Merganser Capital Management LP (the Partnership) is a registered investment adviser with more than \$2.4 billion in assets under its management, including \$850 million in ERISA plan assets. The Partnership's predecessor, Merganser Capital Management Corporation (the Corporation), was founded in 1984 as a wholly-owned subsidiary of the Polaroid Corporation. In 1987, Polaroid sold the subsidiary to its founders, Edward R. Bedrosian and Edward Safran. They were equal partners, each owning fifty percent of the stock of the Corporation.

2. On April 6, 2000, Mr. Safran sold his shares back to the Corporation for \$10 million. The Corporation's purchase of the stock was financed by a \$2.5 million contribution from Mr. Bedrosian, a \$6 million unsecured loan from a commercial bank, and a secured, subordinated loan from Mr. Safran in the amount of \$1.5 million. Following the buyout, Mr. Bedrosian owned 100% of the Corporation. Five employees of the Corporation participated in a phantom stock ownership plan. The Corporation then transferred substantially all of its assets and liabilities to the Partnership, a new limited partnership formed to serve as Merganser's operating entity.

3. The general partner of the new Partnership is the Corporation. The Partnership has a single limited partner, a limited liability company owned by the same Merganser employees who had participated in the Corporation's

phantom stock ownership plan. The general partner has an eighty percent interest and the limited partner has a twenty percent interest in the Partnership.

4. The Applicant represents that as a result of the buyout of Mr. Safran, as of December 31, 2000 (the last day of its fiscal year), the Partnership has partners' equity of negative \$6.5 million, determined in accordance with "generally accepted accounting principles" (GAAP). Because the buyout was an "internal" transaction, GAAP requires that the assets of the Corporation (and the Partnership) be reflected at "book" rather than market value. As a result, goodwill, a significant asset to a firm such as this one, cannot be recognized on the Partnership's balance sheet. Because goodwill cannot be included as an asset, the Partnership will have negative equity until most of its current debt is repaid.

The Applicant further represents that, had the stock of the Corporation been sold to outsiders in an external transaction, the Corporation (and thus the Partnership) could have recognized the full market value of its assets. Following an external transaction, the Corporation (and the Partnership) would have had equity sufficient to meet the requirements of PTE 84-14, even if it had financed the transaction. Had Mr. Bedrosian personally borrowed the funds to buyout Mr. Safran using the Partnership to guarantee the loan, the Partnership would have had sufficient partners' equity. Although the partners' equity is affected by the structure of the buyout, the Partnership's earning potential is not.

The Partnership's current EBITDA (i.e., earnings before interest, taxes, depreciation, and amortization) is over \$2 million per year. It is expected that, as a result of debt repayment and earnings, the Partnership will satisfy the \$750,000 equity requirement on a GAAP basis within four or five years.

5. To qualify as a qualified professional asset manager (QPAM) under PTE 84-14, an investment adviser must have partners' equity in excess of \$750,000. As a result of its reorganization, as of April 6, 2000, the Partnership will no longer qualify as a QPAM under PTE 84-14 because it will not have \$750,000 in partners' equity.

6. The Partnership seeks an individual exemption permitting it to substitute an irrevocable standby letter of credit for the partners' equity requirement under PTE 84-14. Specifically, the Partnership will cause First Union National Bank (First Union) to issue an irrevocable standby letter of

credit for the benefit of employee benefit plans to which Merganser provides or provided investment management services on or before December 31, 2006 (ERISA Clients). The Applicant represents that, if the exemption is granted, it will serve as a QPAM, as defined in PTE 84-14, for all the ERISA Clients with respect to which it provides investment management services.

7. The letter of credit will initially be issued in the amount of \$750,000, the amount of the partners' equity requirement under PTE 84-14. As a condition of continuing relief, the Partnership will ensure that the amount available to ERISA Clients under the letter of credit as of the first day of each of the Partnership's fiscal years for which relief is needed is at least \$750,000. Thus, in the event that there is a payment under the letter of credit during one of the Partnership's fiscal years, thereby reducing the remaining amount available under the letter of credit, the Partnership will ensure that the letter of credit is increased back to \$750,000 no later than the first day of the following fiscal year.

8. The letter of credit shall be payable on demand solely to any ERISA Client (or its agent) if the ERISA Client provides:

(1) (A) a certified copy of the final judgment against Merganser based on an ERISA Claim of such client, entered by a court of competent jurisdiction with all rights of appeal having expired or having been exhausted, or

(B) a true copy of a settlement agreement between the ERISA Client and Merganser providing for damages to the ERISA Client with respect to an ERISA Claim;

(2) in the case of a final court judgment, a certified true copy of a Sheriff's or Marshall's levy and execution on the judgment, returned unsatisfied, or such other documentation, certified by an officer of the court in which the judgment was entered, stating that the judgment remains unsatisfied following attempts to collect the judgment in accordance with local court rules; and

(3) a certificate of an authorized representative of the ERISA Client stating the amount of the judgment or settlement which remains unsatisfied.

9. The letter of credit will be maintained by the Partnership for the period of the exemption, unless the Partnership satisfies the partners' equity requirement of PTE 84-14 at an earlier date. Additionally, in the event that one or more ERISA Clients has a pending ERISA claim against Merganser outstanding on December 31, 2006,

Merganser will either (i) cause the letter of credit to be maintained until the earlier of December 31, 2008 or a final judgment or settlement disposing of all such pending ERISA claims, or (ii) cause a bond to be purchased which fully insures all such pending ERISA claims in the total amount equal to the amount of such pending ERISA claims but not to exceed \$750,000.

If Merganser causes a bond to be purchased under subparagraph (ii) above, the bond would be payable under terms consistent with the letter of credit. Accordingly, the bond would cover the pending ERISA claim(s) and would be payable in the event of a final judgment with rights to appeal expired or exhausted, or in the event of a settlement. The Applicant represents that it has inquired and been told by a bond company that obtaining a bond for a claim that already has been filed is commercially feasible, although it could require substantial collateral.

10. During the life of the letter of credit, Merganser's ERISA Clients will likely change; new clients will be added and existing clients may end their relationships with Merganser. Because the letter of credit is intended to provide protection to a changing group of ERISA Clients, it will be necessary to issue the letter to an "agent" who can hold it on behalf of the multiple ERISA Clients. The agent (Agent) will be a person or entity affiliated with First Union and independent of the Partnership. The Agent will be required to demand payment from First Union on behalf of any ERISA Client under exactly the same circumstances under which First Union is obligated to pay under the letter of credit (i.e., an unsatisfied claim or judgment for ERISA Claims).

11. Neither First Union nor the Agent has any discretion in determining whether, respectively, to pay under the letter of credit or to demand payment under the letter of credit. If an ERISA Client meets the conditions described in the letter of credit, the duty to pay or demand payment is automatic. So long as the letter of credit is in effect, the Agent will demand and First Union will pay any ERISA Client who obtains a settlement or judgment of ERISA claims, irrespective of when the alleged violations occurred.

12. The Agent will maintain an up-to-date list of all of Merganser's ERISA Clients, each of which shall be entitled to instruct the Agent to demand payment under the letter of credit consistent with the conditions described above. This list will be made an exhibit to the agreement between the Agent and the Partnership. Each current ERISA Client will be provided with written

notice of its rights with respect to the letter of credit at the same time as it is provided with a copy of the proposed exemption for purposes of its right to comment pursuant to the Department's regulations at 29 CFR 2570.43. New ERISA Clients will be provided with written notice of their rights with respect to the letter of credit at the same time as they are provided with a copy of the proposed and final exemption, if granted, as published in the **Federal Register**. ERISA Clients will be provided with the U.S. address of the Agent, and will be promptly notified of any changes in that address. First Union's obligation to pay under the letter of credit will be fully secured by marketable collateral with value of at least \$750,000.

13. In summary, it is represented that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The requested exemption is administratively feasible because the Partnership's compliance with the proposed conditions can be readily determined. In addition, the exemption would not require continued monitoring or other involvement on behalf of the Department.

(b) The requested exemption is in the interest of the Partnership's ERISA Clients and their participants and beneficiaries because it permits the Partnership to render continuing services to the ERISA Clients and permits those ERISA Clients to continue to invest without regard to the "party in interest" status of other parties to the transactions, while providing security for any ERISA Claims arising out of these investments.

(c) The requested exemption is protective of the rights of the Partnership's ERISA Clients and their participants and beneficiaries because it requires the maintenance of a letter of credit exclusively for the Partnership's ERISA Clients.

For Further Information Contact:
Karen Lloyd of the Department,
telephone (202) 219-8194. (This is not a toll-free number).

ATGI 401(k) Plan (the Plan) Located in Houston, Texas

[Application No. D-10970]

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, August 10, 1990). If the exemption is granted, the restrictions of

sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply effective November 30, 2000 to: (1) the acquisition of Stock Rights (the Stock Rights) by the Plan in connection with a Stock Rights offering by Alpha Technologies Group, Inc. (ATGI); (2) the holding of the Stock Rights by the Plan during the subscription period of the offering; and (3) the disposition or exercise of the Stock Rights by the Plan; provided that the following conditions are met:

(a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering made available to all shareholders of common stock of ATGI;

(c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the offering;

(d) The Plan's acquisition of the Stock Rights resulted from an independent act of ATGI as a corporate entity, and all holders of the Stock Rights, including the Plan, were treated in the same manner with respect to the acquisition; and

(e) The price received by the Plan for the Stock Rights is no less than the fair market value of the Stock Rights on the date of the offering.

Effective Date: This exemption is effective as of November 30, 2000.

Summary of Facts and Representations

1. ATGI, the sponsor of the Plan, is a Delaware corporation engaged primarily in the manufacturing of thermal management products, principally heat sinks. ATGI's thermal management business is conducted through several wholly owned subsidiaries: Wakefield Engineering, Inc., which includes the Wakefield-Fall River and Wakefield-Temecula Divisions; Specialty Extrusion Corporation; Lockhart Industries, Inc.; and National Northeast Corporation (NNE).

2. The Plan is a defined contribution profit-sharing plan. The initial effective date of the Plan was November 1, 1977. The Plan is a qualified plan under Code section 401(a). As of February 19, 2001, the Plan has approximately 730 participants. According to CIGNA

Retirement & Investment Services (CIGNA), the Plan's recordkeeper, approximately 200 of these participants had shares of ATGI stock, a NASDAQ publically traded stock, allocated to their Plan accounts as of the Record Date. In total, 188,983.82 shares of ATGI stock were allocated to Plan participants' accounts on the Record Date for a total ATGI stock balance of \$1,994,971.06. These holdings of employer stock represented approximately 19.95% of the Plan's total assets as of the Record Date.

3. Steve E. Chupik, ATGI's Vice-President of Administration, serves as Plan Trustee. The Plan provides for participant-directed investment of contributions made to the Plan. Investment in employer stock is a permitted investment option under the terms of the Plan. The Plan Trustee has authority to vote all shares of employer stock owned by participants through the Plan. In addition to ATGI stock, Plan participants may choose among the following investment options: (1) the Guaranteed Long-Term Fund, (2) the Guaranteed Short-Term Securities Fund, (3) the Large Company Stock Index Fund, (4) the Fidelity Advisor Growth Opportunities Account, (5) the Janus Account, (6) the PBHG Growth Account, and (7) the American Century Vista Account.

Each participant's Plan account is also subdivided into various source accounts. Source accounts denote from which sources monies held within a participant's Plan account were received. There are six source account designations: (1) Employee Post-Tax, (2) Rollover, (3) Prior Company Matching, (4) Company Discretionary, (5) Company Matching, and (6) Employee Pre-Tax.

4. ATGI's decision to engage in the Stock Rights offering was made in ATGI's capacity as issuer of its securities, not in its capacity as a Plan fiduciary. The decision was prompted by a business need to raise capital for the expansion of ATGI's thermal management business. The offering was conducted as a mechanism for partially financing the purchase of the stock of NNE, a leading manufacturer of aluminum extrusions and heat sinks.

ATGI first began exploring the possibility of engaging in a Stock Rights offering to assist in financing the purchase of NNE in September 2000. Based upon this initial consideration, ATGI filed an S-2 Registration Statement containing a preliminary prospectus with the Securities and Exchange Commission (the SEC) on October 6, 2000. ATGI made the Stock Rights offering contingent upon the

completion of the purchase of NNE. On November 21, 2000, ATGI's Board of Directors (the Board) resolved to meet the requirements of the lender through a Stock Rights offering, and it settled upon a subscription price for the offering. A revised S-2A Registration Statement including a final prospectus were then filed with the SEC on November 30, 2000.

The acquisition of NNE was completed on January 9, 2001, and the proceeds of the Stock Rights offering were contributed to the approximately \$50 million purchase price of NNE.

5. The Basic Subscription Privilege: ATGI offered all of its shareholders as of the Record Date the opportunity to purchase additional shares of ATGI's common stock at a fixed price and in proportion to the shareholders' existing interests on the Record Date. Through the Stock Rights offering, shareholders received one stock right for each 25 shares of stock they owned on the Record Date. Shareholders became entitled to receive their Stock Rights on or about November 30, 2000 upon the effectiveness of ATGI's S-2A Registration Statement. No fractional Stock Rights were distributed. Rather, the number of Stock Rights received by a shareholder was rounded up to the nearest whole number if the fraction was greater than $\frac{1}{2}$ and rounded down to the nearest whole number if the fraction was less than $\frac{1}{2}$.

Each stock right allowed the shareholder to purchase one share of ATGI common stock at the fixed subscription price of \$7.25 per share. The Board set this subscription price after considering several factors, including the historical and current market price of the common stock, ATGI's current business prospects, recent and anticipated operating results, ATGI's need for capital, the alternatives available for raising capital, the amount of proceeds desired, the pricing of similar transactions, the liquidity of the common stock, and the need to offer shares at a price that would be attractive to investors relative to the current trading price of ATGI's common stock.

Shareholders choosing to use the Stock Rights granted to them to purchase additional shares of ATGI stock were required to exercise their rights by 5 p.m., EST, on the Expiration Date. A shareholder elected to exercise his or her Stock Rights by properly completing the rights exercise agreement provided to the shareholder along with the prospectus and delivering this rights exercise agreement to the subscription agent, the American Stock Transfer and Trust Company (the Subscription Agent), by 5 p.m., EST, on

the Expiration Date. A shareholder choosing to exercise rights also had to deliver the purchase price of the stock purchased pursuant to the exercise of rights to the Subscription Agent by 5 p.m., EST, on the Expiration Date. Shareholders were allowed to exercise as few or as many of their basic Stock Rights as they wished. The Stock Rights were nontransferable, and an exercise of Stock Rights was irrevocable. All unexercised rights expired at 5 p.m., EST, on the Expiration Date and were forfeited.

6. ATGI limited the shares of common stock it issued under the Stock Rights offering to 270,946 shares. However, ATGI expected that not all of these shares would be purchased by shareholders pursuant to the exercise of their basic subscription rights. Rather, ATGI expected that some shareholders would not exercise any or all of the Stock Rights granted to them under the basic subscription privilege. To compensate for these under-subscribing shareholders, ATGI provided shareholders who elected to exercise all of their Stock Rights pursuant to the basic subscription privilege with the opportunity to purchase those shares that were not purchased by the under-subscribing shareholders (the Over-Subscription Privilege). Shareholders were required to exercise their over-subscription rights at the same time and in the same manner as they elected to exercise their basic subscription rights.

ATGI also expected that the number of over-subscription requests might exceed the number of shares available. In this event, ATGI decided to allocate the available shares to over-subscribing shareholders in proportion to the number of shares purchased by these shareholders through the basic subscription privilege.

6. The Expiration Date of the Stock Rights Offering: the expiration date and time of the Stock Rights offering were initially set for 5 p.m., EST, January 5, 2001. However, ATGI reserved the right to extend the offering up to 10 days. On January 5, 2001, ATGI announced that it was exercising this right to extend the offering. The new expiration date and time were extended to 5 p.m., EST, January 8, 2001.

7. Pursuant to applicable securities laws, ATGI could not exclude the Plan from the Stock Rights offering. Thus, as the holder of record of the 188,983.82 shares of ATGI stock allocated to Plan participants' accounts by CIGNA as of the Record Date, the Plan Trustee received 7,556 Stock Rights through the Stock Rights offering. The Plan was treated in the same manner as all other holders of this class of securities.

To avoid engaging in a prohibited transaction, the Plan Trustee considered refusing to accept the Stock Rights offered from ATGI. However, since participation in the Stock Rights offering was expected to allow Plan participants whose Plan accounts held a minimum level of ATGI stock on the Record Date (Invested Plan Participants) to purchase shares of ATGI's common stock at a discount from market price, the Plan Trustee concluded that refusing to accept the Stock Rights might constitute a breach of his fiduciary duty to Plan participants. A refusal of the Stock Rights would have denied Invested Plan Participants the opportunity to purchase additional shares of ATGI stock at the discounted price offered to all other ATGI shareholders.

8. The Plan provides for individually-directed investment of the assets in each participant's account. Therefore, the Stock Rights received by the Plan Trustee were allocated to individual Invested Plan Participants' accounts based upon the participants' respective holdings of ATGI stock on the Record Date. All decisions regarding the exercise of the Stock Rights were made by the Invested Plan Participants. The Plan Trustee undertook measures to ensure that Invested Plan Participants were provided with adequate information regarding the Stock Rights offering so that these participants could make informed decisions regarding the exercise of their Stock Rights.

9. Following the Board's resolution on November 21, 2000 setting the subscription price of the Stock Rights offering, a finalized prospectus was filed with the SEC on November 30, 2000 as part of ATGI's S-2A Registration Statement. On December 4, 2000, the Plan received copies of this completed prospectus from the printer for distribution to Invested Plan Participants. Completed prospectuses and the accompanying materials described below were sent via Federal Express on December 6, 2000 to the human resource departments at ATGI's locations. On December 7, 2000, the prospectuses were distributed to the approximately 125 Invested Plan Participants employed at these locations. Approximately 70 Invested Plan Participants worked at remote locations or were not current employees of ATGI. These participants were mailed prospectuses and accompanying materials via first-class mail on December 6, 2000. In comparison, copies of the prospectus were not mailed to other ATGI shareholders until December 8, 2000.

10. A memorandum from the Plan Trustee accompanied the prospectus. The memorandum introduced the Stock Rights offering and informed Invested Plan Participants of the additional information they would be receiving at a later date.

11. The Plan Trustee provided Invested Plan Participants with a letter containing an explanation of the Stock Rights offering and outlining the procedure they should follow to exercise their Stock Rights. The letter also reminded Invested Plan Participants of the risks involved in investing in ATGI stock. Invested Plan Participants who were current employees of ATGI received the letter and the accompanying materials described below via interoffice mail on December 8, 2000. Invested Plan Participants who worked at remote locations or who were not current employees of ATGI were mailed the letter and accompanying materials via U.S. priority mail on December 7, 2000.

12. A Direction Form accompanied the above letter provided to Invested Plan Participants on December 7 and December 8, 2000. The Direction Form served as the mechanism through which Invested Plan Participants directed the Plan Trustee to exercise or to forfeit the Stock Rights allocated to them. The Direction Form also required Invested Plan Participants electing to exercise some or all of their rights to designate which of their Plan investments were to be liquidated to fund the exercise of the rights. A self-addressed envelope was included with the Direction Form to assist Invested Plan Participants in returning the Direction Form to the Plan Trustee.

In addition to the Direction Form, Invested Plan Participants received a Source Designation Form enabling them to designate from which Plan accounts, such as the employee pre-tax account or the company matching account, they wished the purchase price of any stock purchased pursuant to the exercise of rights to be withdrawn. Invested Plan Participants who had already indicated through a return of their Direction Forms that they would not be participating in the Stock Rights offering were not sent a Source Designation Form. Approximately 110 of the Invested Plan Participants who were current employees of ATGI received the Source Designation Form via facsimile on December 20, 2000. These Invested Plan Participants were asked to return this form to the Plan Trustee by December 22, 2000 by either a return facsimile or an email. Approximately 48 of the Invested Plan Participants who were employed at remote locations or

who no longer worked at ATGI were sent a Source Designation Form by U.S. priority mail on December 20, 2000. These Invested Plan Participants were asked to respond via email, facsimile, or telephone by December 26, 2000. ATGI's Human Resources Manager (the Human Resources Manager), personally contacted by telephone the Invested Plan Participants who could not be reached by facsimile. The Human Resources Manager also contacted the Invested Plan Participants who indicated through a return of their Direction Forms that they wished to participate in the Stock Rights offering but whose Source Designation Forms were not received by the deadline. Through these efforts, source designations were obtained from all but two of the Invested Plan Participants exercising rights. The Human Resources Manager also attempted to contact these two Invested Plan Participants by telephone; however, there was no response from either.

13. In addition to the Direction Form and the Source Designation Forms, a table depicting ATGI's daily stock activity, including stock closing prices, for the period from November 1, 2000 to December 6, 2000 accompanied the letter from the Plan Trustee provided to Invested Plan Participants on December 7 and December 8, 2000.

14. On December 7, 2000, the Plan Trustee provided each Invested Plan Participant with an individualized statement of his or her Plan accounts reflecting that participant's investment fund allocations and the value of that participant's various Plan accounts as of the Record Date.

15. Representatives of ATGI and the Plan made themselves available to answer participants' questions regarding the Stock Rights offering. The Human Resources Manager conducted telephone conferences with approximately 30 to 35 Plan participants and several ATGI human resource representatives. The Plan Trustee visited several of ATGI's larger locations where he answered questions presented to him during his visits with employees on the shop floor. The Plan Trustee also occupied a vacant office at these locations, allowing employees to stop in with questions without an appointment.

16. An Invested Plan Participant exercised the Stock Rights by properly completing and submitting the Direction Form to the Plan Trustee. An Invested Plan Participant was required to include the following information on the Direction Form: (i) how many Stock Rights, if any, the participant wished to exercise; (ii) assuming the participant

elected to exercise all of the Stock Rights allocated to him or her pursuant to the basic subscription privilege, whether and how many additional shares of stock the participant wished to purchase pursuant to the Over-Subscription Privilege; and (iii) which Plan investments the participant wished to liquidate to cover the purchase price of any shares of stock purchased pursuant to the exercise of rights.

If an Invested Plan Participant elected to exercise rights but failed to indicate from which investments the purchase price should be withdrawn, he or she was deemed to have elected that the purchase price be withdrawn pro rata from all of his or her investments, i.e., a failure to specify constituted a pro rata election.

The deadline for receipt of properly completed Direction Forms by the Plan Trustee was Friday, December 22, 2000. The rights of Invested Plan Participants whose Direction Forms were not received by this date were forfeited. The December 22 deadline was selected upon consultation with CIGNA and Merrill Lynch, the Plan's broker for ATGI stock transactions. The December 22 deadline for receipt of the Direction Forms by the Plan Trustee from Invested Plan Participants was selected as the latest date allowing the Plan Trustee to review and compile the Direction Forms for submission of the data to CIGNA by December 27, 2000.

In addition to completing and returning the Direction Form, Invested Plan Participants choosing to exercise rights were also required to complete and return a Source Designation Form. On the Source Designation Form, Invested Plan Participants designated from which Plan accounts they wished the purchase price of the shares of stock purchased under the Stock Rights offering to be withdrawn. Invested Plan Participants were warned that if they failed to make this designation, funds would be withdrawn from Plan accounts in the following order: (i) Employee Post-tax; (ii) Rollover; (iii) Prior Company Matching; (iv) Company Discretionary; (v) Company Matching; and (vi) Employee Pre-Tax.

Invested Plan Participants who lacked sufficient funds in their Plan accounts to cover the purchase price of the requested shares of stock could exercise their rights pursuant to the basic or the Over-Subscription Privileges only to the extent of the funds available in their Plan accounts.

17. ATGI completed the Stock Rights offering at 5 p.m., EST, on Monday, January 8, 2001. The Stock Rights offering raised almost \$2 million towards the acquisition of NNE. All

270,946 shares of ATGI common stock offered under the Stock Rights offering were purchased. Invested Plan Participants purchased 2,427 shares pursuant to the basic subscription privilege and 5,405 shares pursuant to the Over-Subscription Privilege. Since the Stock Rights offering was over-subscribed, the shares available for purchase under the over-subscription privilege were allocated to over-subscribing shareholders in proportion to the number of shares purchased by these shareholders pursuant to their basic subscription rights.

ATGI's closing stock price on the Expiration Date was listed on NASDAQ as \$7.813.

18. The applicant states that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries because the acquisition of the Stock Rights from ATGI benefitted the Plan and its participants by providing Invested Plan Participants with a mechanism through which they could increase the net worth of their Plan accounts. Through the exercise of the Stock Rights, the Invested Plan Participants acquired stock worth \$7.813 per share as of the close of business on the Expiration Date while only paying \$7.25 per share, a net gain of \$.56 per share.

19. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering conducted by ATGI;

(c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the offering;

(d) All holders of the Stock Rights, including the Plan, were treated in the same manner with respect to the acquisition of the Stock Rights; and

(e) Through the exercise of the Stock Rights, the Invested Plan Participants acquired stock worth \$7.813 per share as of the close of business on the Expiration Date while only paying \$7.25 per share, a net gain of \$.56 per share.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and

Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact:

Khalif Ford of the Department, telephone (202) 219-8883. (This is not a toll-free number).

**The Joliet Medical Group, Ltd.
Employees Retirement Plan & Trust (the
Plan) Located in Joliet, Illinois**

[Application D-10990]

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 (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, will not apply effective November 1, 1999 to the past and continued leasing of a medical clinic (the Property) located at 2100 Glenwood Ave., Joliet, Illinois, from the Plan to Joliet Medical Group, Ltd. (the Employer), provided that the following conditions have been and will be met:

(a) The independent fiduciary has determined that the transaction is feasible, in the interest of, and protective of the Plan;

(b) The fair market value of the Property has not exceeded and will not exceed twenty percent (20%) of the value of the total assets of the Plan;

(c) The independent fiduciary has negotiated, reviewed, and approved the terms of the lease of the Property with the Employer;

(d) The terms and conditions of the lease of the Property with the Employer have been and will continue to be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(e) An independent qualified appraiser has determined the fair market rental value of the Property;

(f) The independent fiduciary has monitored and will continue to monitor compliance with the terms of the lease of the Property to the Employer throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the lease on the Property; and

(g) The Plan has not incurred and will not incur any fees, costs, commissions, or other charges or expenses as a result of its participation in the proposed transaction, other than the fee payable to the independent fiduciary.

Effective Date: This exemption is effective as of November 1, 1999.

Preamble

On February 15, 2001 (66 FR 10526), the Department published a notice of proposed exemption (the Prior Notice) from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The Prior Notice for which retroactive relief had been requested, would have provided conditional relief for the past and continued leasing of the Property, from the Plan to the Employer.

On April 3, 2001 (66 FR 17737), the Department published a withdrawal of the Prior Notice. The notice of proposed exemption herein provides the most recent information submitted by the applicant and the independent fiduciary.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which was created effective January 1, 1975. As of August 29, 2000, the Plan had net assets valued at approximately \$20,075,282 and 165 participants.

2. The Employer is a medical corporation licensed to practice medicine in the State of Illinois, whose principal place of business is Joliet, Illinois. The Employer's principal place of business is the Property. The Employer is engaged in the general practice of medicine.

3. The Property consists of a two story medical building located at 2100 Glenwood Avenue, Joliet Illinois. The Property contains approximately 10,583 square feet on each floor for a total square footage (above ground) of approximately 21,166 square feet. In addition, there is a full basement which is finished and contains an additional approximately 10,583 square feet. The fair market value of the Property represents 15.94% of the total assets in the Plan.

The Plan initially leased the Property to the Employer for an initial term of 18 years, which ended November 1, 1999. In response to an exemption application filed by the Employer, the Department granted an exemption covering the initial lease (the Initial Lease): Prohibited Transaction Exemption 81-96 (PTE 81-96), 46 FR 53816 (October 30, 1981). It is represented that since the inception of the Initial Lease, the

Employer has always paid its rent on time and otherwise complied with all of the terms and conditions of the Initial Lease and PTE 81-96. Furthermore, the independent fiduciary has continued to monitor and oversee compliance with the conditions of the exemption after the expiration of the lease because the parties determined to continue the arrangement after November 1, 1999.

4. Joseph E. Batis, (Mr. Batis), an accredited appraiser with Edward J. Batis & Associates, Inc., located in Joliet, Illinois, appraised the Property on October 24, 2000. Mr. Batis states that he is a full time qualified, independent appraiser, as demonstrated by his status as a State Certified General Real Estate Appraiser licensed by the State of Illinois. In addition, Mr. Batis represents that both he and his firm are independent of the Employer.

In his appraisal, Mr. Batis relied primarily on the "Appraisal Process". Included within the steps of this process are three approaches to a value estimate: the Cost Approach, the Direct Sales Comparison Approach and the Income Approach. According to Mr. Batis, these methods best represent the actions of buyers and sellers in the market place. After Mr. Batis independently applies each approach to value, the three resultant value estimates are reconciled into an overall estimate of value. In the reconciliation process, the appraiser analyzes each approach with respect to its applicability to the property being appraised. Also considered in the reconciliation process is the strength and weakness of each approach with regards to supporting market data. After inspecting the Property and analyzing all relevant data, Mr. Batis determined that a fee simple interest in the Property had a fair market value of approximately \$3,200,000. On February 27, 2001, Mr. Batis updated the appraisal and determined the fair market monthly rental value of the Property to be \$32,000 and the annual fair market rental value to be \$384,000.

5. An independent party, the First Midwest Trust Company (the Bank) has served and continues to serve as the independent fiduciary. The Bank represents that since the inception of the Initial Lease, the Employer has complied with all of the terms and conditions of the Initial Lease and PTE 81-96. The Bank certifies that the transaction is appropriate and in the best interests of the Plan and that the terms and conditions of the proposed transactions are at least equal to what the Plan would receive from an unrelated party in similar transaction. In addition, the Bank will monitor the transaction and will have the

responsibility for exercising the Plan's rights in the proposed transaction. On March 28, 2001 the Bank represented that the annual fair market rental value of the Property should reflect 12% of the fair market value of the Property ($3,200,000 \times .12 = \$384,000$).

6. The Employer will enter into a five year, "triple net" lease with the Plan leasing the Property to the Employer for a "floating" monthly rental of 1% of the current appraised value of the subject realty ($\$3,200,000 \times 1\% = \$32,000$). A new appraisal by an independent, qualified appraiser would be performed every other year to update the rent. The minimum guaranteed monthly rental value (regardless of any possible decrease in the appraisal) is \$32,000. The terms of the lease provide for a primary term of five years with an option to renew and extend for two additional successive terms of five years each subject to the approval of the independent fiduciary. In the event of a default, the Employer is required to reimburse the Plan on demand for all costs reasonably incurred by the Plan in connection therewith, including attorney's fees, court costs and related costs plus a reasonable rate of return on the amount of accrued but unpaid rent due the Plan, as determined by an appropriate third party source.

7. Since the Initial Lease, the Employer has continued to pay rent to the Plan in a timely manner without default or rental delinquencies. However, the Employer is aware of the fact that a prohibited transaction occurred in violation of the Act subsequent to the expiration of the lease under PTE 81-96 (November 1, 1999). Therefore, the Employer has requested exemptive relief with respect to the past and continued leasing of the Property by the Plan to the Employer. If granted, the proposed exemption will be retroactive to November 1, 1999.

8. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The independent fiduciary has determined that the transaction is feasible, in the interest of, and protective of the Plan;

(b) The fair market value of the Property has not exceeded and will not exceed twenty percent (20%) of the value of the total assets of the Plan;

(c) The independent fiduciary has negotiated, reviewed, and approved the terms of the lease with the Employer on the Property;

(d) The terms and conditions of the lease with the Employer on the Property have been and will continue to be no less favorable to the Plan than those

obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(e) An independent qualified appraiser has determined the fair market rental value of the Property;

(f) The independent fiduciary has monitored and will continue to monitor compliance with the terms of the lease of the Property to the Employer throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the lease; and

(g) The Plan has not incurred and will not incur any fees, costs, commissions, or other charges or expenses as a result of its participation in the proposed transactions, other than the fee payable to the independent fiduciary.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact: Khalif Ford of the Department, telephone (202) 219-8883 (this is not a toll-free number).

ACE Business Travel Accident Plan (the Plan) Located in Philadelphia, Pennsylvania

[Application No. L-10955]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by ACE American Insurance Company (ACE USA) from the insurance contracts sold by Life Insurance Company of North America (CIGNA) or any successor company to CIGNA which is unrelated to ACE INA Holdings, Inc. (ACE INA), to provide accidental death and dismemberment benefits to participants in the Plan, provided the following conditions are met:

(a) ACE USA—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with ACE INA that is described in section 3(14)(E) or (G) of the Act,

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act,

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended, and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Pennsylvania) by the Insurance Commissioner of the Commonwealth of Pennsylvania within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of such contracts or the reinsurance thereof;

(d) The Plan only contracts with insurers with a rating of A or better from A. M. Best Company (Best's). The reinsurance arrangement between the insurers and ACE USA will be indemnity insurance only, i.e., the insurer will not be relieved of liability to the Plan should ACE USA be unable or unwilling to cover any liability arising from the reinsurance arrangement; and

(e) For each taxable year of ACE USA, the gross premiums and annuity considerations received in that taxable year by ACE USA for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which ACE USA is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by ACE USA. For purposes of this condition (e):

(1) the term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by ACE USA. This total is to be reduced (in both the numerator and the denominator of the fraction) by

experience refunds paid or credited in that taxable year by ACE USA; and

(2) all premium and annuity considerations written by ACE USA for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79-41 (PTE 79-41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans if certain conditions are satisfied.

In PTE 79-41, the Department stated its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79-41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. ACE INA is a publicly traded insurance holding company incorporated under the laws of the Commonwealth of Pennsylvania. ACE INA provides a full range of insurance related services through its subsidiaries, including ACE USA.

2. ACE USA is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its principal administrative offices in Philadelphia, Pennsylvania. ACE USA is a wholly-owned subsidiary of ACE INA, and is currently licensed to do

business in all states and the District of Columbia. ACE USA is principally engaged in the business of underwriting insurance including property and casualty, accident and health, commercial automobile, aviation, crime, credit, crop/hail, fidelity, general liability, inland marine, ocean marine, surety and worker's compensation insurance. The applicant represents that \$416 million in premiums was underwritten by ACE USA in 1999.

3. ACE INA and most of its subsidiaries provide their eligible employees with certain welfare benefits through the Plan. The Plan is a fully insured "employee welfare benefit plan" within the meaning of section 3(1) of the Act that provides accidental death and dismemberment benefits to approximately 4,800 eligible employees and beneficiaries. Eligible employees include all full time and part time salaried employees working at least 24 hours per week. Eligible employees and beneficiaries receive accidental death or dismemberment coverage in the event that the employee dies or is severely injured as a result of an accident while traveling on company business. Coverage under the Plan equals five times salary, rounded to the highest \$1,000, up to a maximum of \$2,500,000. All premiums are paid by ACE INA and/or its subsidiaries.

4. The benefits provided under the Plan are currently underwritten by CIGNA, an unaffiliated insurance carrier. ACE INA, as a fiduciary of the Plan, has entered into a policy with CIGNA for 100% of this coverage. ACE INA proposes to use its subsidiary, ACE USA, to reinsure 50% of the risk through a reinsurance contract between ACE USA and CIGNA in which CIGNA would pay 50% of the premiums to ACE USA. From the participants' perspective, the participants have a binding contract with CIGNA, which is legally responsible for the risk associated under the Plan. CIGNA is liable to provide the promised coverage regardless of the proposed reinsurance arrangement. The applicant has also requested that the proposed exemption apply to any successor company to CIGNA that is also unrelated to ACE INA should ACE INA, as a fiduciary of the Plan, decide to insure this coverage with another carrier under the same kind of arrangement.

5. The applicant represents that the proposed transaction will not in any way affect the cost to the insureds of the accidental death and dismemberment insurance benefits, and the Plan will pay no more than adequate consideration for the insurance. Also, Plan participants are afforded insurance

protection from CIGNA at competitive rates arrived at through arm's-length negotiations. CIGNA is rated "A+" by Best's, whose insurance ratings are widely used in financial and regulatory circles. CIGNA has assets in excess of \$3.8 billion and reserves set aside for group accident and health policies of approximately \$2.2 billion. CIGNA will continue to have the ultimate responsibility in the event of loss to pay insurance benefits to the employee or the employee's beneficiary.¹ The applicant represents that ACE USA is a sound, viable company which does a substantial amount of business outside of its affiliated group of companies. ACE USA is substantially dependent upon insurance customers that are unrelated to itself and its affiliates for premium revenue.

6. The applicant represents that the proposed reinsurance transaction will meet all of the conditions of PTE 79-41 covering direct insurance transactions:

(a) ACE USA is a party in interest with respect to the Plan (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with ACE INA, which maintains the Plan.

(b) ACE USA is licensed to do business in all states and the District of Columbia.

(c) ACE USA has undergone an examination by an independent certified public accountant for the last completed taxable year immediately prior to the taxable year of the proposed reinsurance transaction.

(d) ACE USA has received a Certificate of Authority from its domiciliary state, Pennsylvania, which has neither been revoked nor suspended.

(e) The Plan will pay no more than adequate consideration for the insurance. The proposed transaction will not in any way affect the cost to the insureds of the accidental death and dismemberment benefits.

(f) No commissions have been paid or will be paid with respect to the acquisition of direct insurance or the reinsurance agreements between CIGNA (or any successor) and ACE INA and ACE USA.

(g) For each taxable year of ACE USA, the "gross premiums and annuity considerations received" in that taxable year for group life and health insurance (both direct insurance and reinsurance) for all employee benefit plans (and their employers) with respect to which ACE USA is a party in interest by reason of

¹ The applicant represents that any successor to CIGNA would be a legal reserve life insurance company with assets and reserves similar to CIGNA, and thus be of such a size as to afford similar protection and responsibility.

a relationship to such employer described in section 3(14)(E) or (G) of the Act will not exceed 50% of the "gross premiums and annuity considerations received" by ACE USA from all lines of insurance in that taxable year. ACE USA has received no premiums for the Plan insurance in the past. ACE USA wrote \$416 million in premiums in 1999. At least 80% of ACE USA's premiums for 1999 were derived from insurance (or reinsurance thereon) sold to entities other than ACE INA and its affiliated group. In addition, ACE USA is substantially dependent upon insurance customers that are unrelated to CIGNA and its affiliates for premium income.

7. In summary, the applicant represents that the proposed transaction will meet the criteria of section 408(a) of the Act because: (a) Plan participants and beneficiaries are afforded insurance protection by CIGNA, an "A+" rated group insurer, at competitive market rates arrived at through arm's-length negotiations; (b) ACE USA is a sound, viable insurance company which does a substantial amount of public business outside its affiliated group of companies; and (c) each of the protections provided to the Plan and its participants and beneficiaries by PTE 79-41 will be met under the proposed reinsurance transaction.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Informaiton

The attention of interested persons is directed to the following:

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

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code,

the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

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

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

Signed at Washington, DC, this 30th day of May, 2001.

Ivan Strassfeld,

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

[FR Doc. 01-13905 Filed 6-1-01; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D-10918, et al.]

Prohibited Transaction Exemption 2001-19; Grant of Individual Exemptions; Texas Instruments Employees Pension Plan (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

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

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and

representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Texas Instruments Employees Pension Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption No. 2001-19; Application No. D-10918]

Exemption

The restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 406(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 Sale (the Sale) by the Plan to Texas Instruments, Inc. (the Employer) of a parcel of improved real property (the Property) located in Dallas, Texas. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those which the Plan could obtain in