

DEPARTMENT OF LABOR**Employee Benefits Security Administration**

[Proposed Exemptions and Application Nos.: D-11344, Victor P. Olson Profit Sharing Plan; D-11355, The Revlon Employees Savings, Investment and Profit Sharing Plan (the Plan); and L-11365 American Maritime Officers Safety & Education Plan (the S&E Plan), et al.]

Notice of Proposed Exemptions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice.

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 (ERISA or 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 requests 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 requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or Fax. Any such comments or requests should be sent either by e-mail to: moffitt.betty@dol.gov, or by fax to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the

Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 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.

Victor P. Olson Profit Sharing Plan (the Plan) Located in White City, Oregon

[Application No. D-11344]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of ERISA 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)(1)(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) of the Code shall not apply to the proposed cash sale (the Sale) of a parcel of improved real property (the Property) by the Plan to Victor P. Olson (the Applicant), a party in interest with respect to the Plan, provided that the following conditions are met:

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

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

(c) The Plan will receive the greater of \$375,000 or the fair market value of the Property at the time of the Sale;

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

(e) The fair market value of the Property is determined by an independent, qualified appraiser.

Summary of Facts and Representations

1. The applicant is Victor P. Olson, the trustee of the Plan (the Trustee) as well as the Plan sponsor (the Applicant). The Applicant manufactures doors and windows. The Trustee has sole investment discretion regarding the Plan. The Plan has three participants and as of December 31, 2006, the Plan held assets valued at approximately \$754,371.87. Approximately 50% of the assets of the Plan will be involved in the proposed transaction.

2. The Property was initially purchased for \$218,687.50 from a third party on October 11, 1996 as an investment. The Property is identified by the street address, 6425 Crater Lake Highway, Central Point Oregon. The Property is currently occupied by Swede and Sons Army Surplus, a third party. The Property is comprised of a 6000 square foot metal building situated on approximately one acre of land. Other improvements include asphalt paving, concrete, and a drilled well. In addition, the Property is in close proximity to real estate owned by the Applicant.

3. The Applicant requests an exemption for the Sale. The Applicant represents that the proposed transaction would be feasible because it would be a one-time transaction for cash. A recent large benefit distribution to a Plan participant was made in cash. This cash payout from the Plan has caused the Property to comprise approximately 50% of the Plan's assets. The Applicant seeks to sell the Property to diversify the Plan investments. Furthermore, the Applicant states that the transaction would be in the best interests of the Plan because the Sale would enable the Plan to invest the proceeds from the Sale in assets with a higher rate of return. Finally, the Applicant represents that the transaction will be protective of the rights of the Plan's participants and beneficiaries because the Plan will receive the greater of \$375,000 or the fair market value of the Property, as

determined by a qualified, independent appraiser on the date of the Sale, and will incur no commissions, costs, or other expenses as a result of the Sale.

4. Richey R. Richey (Mr. Richey), a MAI appraiser with R&R Richey Co., located in Phoenix, Oregon, appraised the Property on February 12, 2007. Mr. Richey is a qualified, independent appraiser. Mr. Richey has been an appraiser since 1979. Mr. Richey used the Income Approach, Sales Comparison Approach, and assigned an additional value attributable to a "specific buyer with a special need for the property" (due to the Property's proximity to real estate owned by the Applicant) to determine the value of the Property. Mr. Richey represents that his analysis, opinion and conclusion were developed and the report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice. In the course of his analysis, Mr. Richey reviewed files of similar properties that were appraised within the last 24 months. After inspecting the Property and analyzing all relevant data, Mr. Richey determined that the fair market value of the Property as of February 12, 2007, is \$375,000.

5. In summary, it is represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Sale is a one-time transaction for cash; (b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (c) The Plan will receive the greater of \$375,000 or the fair market value of the Property at the time of the Sale; (d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and (e) The fair market value of the Property is determined by an independent, qualified appraiser.

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

FOR FURTHER INFORMATION CONTACT:

Khalif Ford of the Department, telephone (202) 693-8540 (this is not a toll-free number).

The Revlon Employees Savings, Investment and Profit Sharing Plan (the Plan) Located in New York, New York

[Application No. D-11355]

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 December 18, 2006, to (1) the acquisition of certain stock rights (Stock Right(s)) by the Plan in connection with a Stock Rights offering by Revlon, Inc. (Revlon), a holding company that wholly owns Revlon Consumer Products Corporation (RCPC), a party in interest with respect to the Plan; (2) the holding of the Stock Rights by the Plan during the subscription period of the Stock Rights offering; and (3) the disposition or exercise of the Stock Rights by the Plan, provided that the following conditions were 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 on the same terms to all shareholders of common stock of Revlon;

(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 Stock Rights offering;

(d) The Plan's acquisition of the Stock Rights resulted from an independent act of Revlon 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 Plan received the same proportionate number of Stock Rights as other owners of Class A common stock.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 18, 2006.

Summary of Facts and Representations

1. RCPC is the sponsor of the Plan. The Plan is a tax-qualified, defined

contribution profit sharing plan that incorporates a cash or deferred (i.e., 401(k)) arrangement. The trustee of the trust established under the Plan is Fidelity Management Trust Company (the Trustee).¹

Revlon is a world leader in cosmetics, skin care, fragrance and personal care. MacAndrews & Forbes Holdings Inc. (together with its affiliates, MacAndrews & Forbes), which is wholly owned by Ronald O. Perelman, beneficially owns 217,444,170 shares of the Class A Common Stock (including 37,063,156 shares of Class A Common Stock beneficially owned by a family member, with respect to which shares MacAndrews & Forbes holds a voting proxy but excluding 1,525,000 that are fully vested and exercisable within 60 days of December 11, 2006). Mr. Perelman, through MacAndrews & Forbes, also beneficially owns all of the outstanding 31,250,000 shares of the Class B Common Stock, which, together with the Class A Common Stock referenced above, represents approximately 60% of the outstanding shares of the Corporation's outstanding Common Stock. Based on the shares referenced above, Mr. Perelman, as of the Record Date, had approximately 76% of the combined voting power of the outstanding shares of the Class A and the Class B Common Stock.

2. Class A common stock and Class B common stock are in all respects identical except that (i) each share of Class A common stock entitles the holder to one vote and each share of Class B common stock entitles the holder to ten votes on all matters being voted on by Revlon's stockholders, (ii) Class A common stock is publicly traded and held in the Plan whereas Class B common stock is not publicly traded and not held in the Plan, and (iii) certain transfer restrictions apply to Class B common stock that do not apply to Class A common stock. These restrictions provide that the Class B common stock (all of which is currently held by MacAndrews & Forbes) can only be transferred to affiliates of the current holder of Class B common stock.

The Plan provides for a variety of contributions in addition to 401(k) contributions, including after-tax employee contributions, company-matching contributions, rollover

¹ Fidelity Management Trust Company became the Trustee effective January 3, 2006, at which time it replaced Putnam Fiduciary Trust Company as Trustee. Notwithstanding that Fidelity Management Trust Company serves generally as trustee of the Plan, it has not served as trustee in respect of the Stock Rights offering. Accordingly, the Investment Committee established under the Plan (the Investment Committee) served as trustee of the Stock Rights.

contributions and profit-sharing contributions. The Plan permits individual participants to direct the investment of their entire account balance under the Plan to the extent described below and is intended to satisfy the requirements of section 404(c) of ERISA with respect to all such participant investment directions.

One of the investments available under the Plan is Class A Common Stock (the Common Stock Fund).² Participants may allocate all contributions made on their behalf (and any earnings thereon) among the Common Stock Fund and all of the other investments available under the Plan.³

3. As of December 11, 2006, there were approximately 3,376 participants in the Plan. The Plan's assets totaled approximately \$131,932,023. Approximately 1,367 Plan participants and beneficiaries held shares of Class A Common Stock. The Plan held approximately 1,038,671 shares of Class A Common Stock, or approximately 0.27% of the then outstanding shares of Class A Common Stock, with a value of approximately \$1,516,459 based on the \$1.46 closing price on the New York Stock Exchange of Class A Common Stock on December 11, 2006), or approximately 1.1% of Plan assets.

Because the Plan holds Class A Common Stock, Stock Rights were allocated to Plan participants in proportion to their holdings of Class A Common Stock under the Plan, and Plan participants were entitled to dispose of those Stock Rights on the terms and conditions described more fully below. Participants in the Plan received the same information regarding the Stock Rights offering as is provided to all stockholders. In addition, participants were provided a special notice that describes some features of the Stock Rights offering in easily understood language, together with additional information that is peculiar to their status as holders of Class A Common Stock under the Plan (for example, special rules relating to the payment of the purchase price for shares under the Stock Rights offering).

4. If the Plan were denied participation in the Stock Rights offering, Plan participants would not have received the benefit of the Stock Rights which other stockholders received, including the ability to realize value by selling Stock Rights. Revlon

has requested this exemption so that Plan participants would be eligible to participate in the Stock Rights offering on the same basis as other stockholders.⁴

5. Revlon launched the Stock Rights offering on December 18, 2006. The Stock Rights offering expired at 5 p.m., New York, New York local time on January 19, 2007. The amount of the Stock Rights offering was \$100 million (the Maximum Amount).

Each Stock Right entitles its holder to purchase a number of shares of Class A Common Stock such that the aggregate number of shares of Class A Common Stock to be offered in the Stock Rights offering, multiplied by the Subscription Price, will equal the Maximum Amount.⁵ The Stock Rights were transferable, as described to Plan participants in the Stock Rights prospectus. A market for the Stock Rights did develop and was maintained: The Stock Rights began trading on the New York Stock Exchange on December 20, 2006, and ceased trading January 18, 2007 (i.e., the day before the expiration of the offering). The Stock Rights were, in fact, sold for each Plan participant who directed a sale or who did not give a proper exercise order.

6. Revlon paid all of the fees and expenses attributable to the Stock Rights offering (other than any fees that may be charged by brokers or nominees). No fees or expenses were paid by the Plan (other than any standard commissions that may apply to the sale of any Right). The Stock Rights were sold and a commission was charged upon the sale of rights consistent with the disclosure to Plan participants in the rights offering prospectus. For any Stock Rights sold by the Plan, a commission of 2.9 cents per right was charged to the Plan account from which the Stock Right was sold. The commission was disclosed to participants in the materials provided

⁴ The distribution of the Rights was accomplished as a dividend under Delaware corporate law. Accordingly, Revlon was required to distribute the Rights to all stockholders on a pro rata basis. In exercising their fiduciary duties to all stockholders, the Board of Directors of Revlon was required to treat all stockholders (including the Plan) the same and cannot pay a dividend to some, but not all, stockholders.

⁵ Revlon is required under its credit agreement to use the proceeds of a \$110 million equity issuance by Revlon, to be completed on or before March 31, 2007, to promptly reduce its indebtedness. Revlon has determined that a rights offering such as the Stock Rights offering is the most appropriate way for it to fulfill the capital commitment while providing an opportunity for all stock holders of Revlon, including the Plan participants, to retain their pro rata ownership in Revlon. Revlon believed that it will not be able to timely fulfill its credit agreement commitment if the Stock Rights offering is delayed until prospective exemptive relief is provided.

explaining the Stock Rights offering. The commission was not paid to Revlon but to a broker-dealer, National Financial Services (NFS) of New York City, New York, for the sale transaction. NFS is an affiliate of the Trustee.

7. The Investment Committee considered whether it was appropriate and in the best interests of the Plan to permit the Trustee to effect sales of Stock Rights under the Plan through NFS. The Investment Committee took the following considerations into account, among others: (a) Brokerage services required to effect the sales transactions are necessary services for the operation of the Plan; (b) the reputation of NFS as a reputable broker; (c) the already established procedures between the Trustee and NFS for the prompt execution of sales transactions under the Plan; (d) the ability of NFS to accept the engagement on very short notice (i.e., the short notice provided by Revlon); (e) the reasonable price charged for the brokerage services when compared with other unrelated brokers; and (f) the short-term nature of the arrangement. Following discussion, the Investment Committee authorized the use of NFS as broker for effecting sales of Stock Rights under the Plan.

Although Fidelity is affiliated with NFS, Fidelity did not use any discretion to select NFS as broker for the Stock Rights. Plan participants paid commissions on the sale of their Stock Rights in the same manner as any other similarly situated shareholder paid commissions on the sales of their Stock Rights.

8. Each Right carries with it a basic subscription privilege and an over-subscription privilege. The basic subscription privilege entitles a Rights holder to subscribe for its pro rata share of Class A Common Stock offered in the Stock Rights offering. MacAndrews & Forbes has agreed, upon the consummation of the Stock Rights offering and at the Subscription Price, to acquire the number of shares of Class A Common Stock as equals the number of shares of Class A Common Stock that MacAndrews & Forbes would otherwise have been entitled to purchase in the Stock Rights offering pursuant to its basic subscription privilege. Except for MacAndrews & Forbes, all holders of Common Stock who elected to exercise their Rights in full were also permitted to subscribe for the remaining shares at the same Subscription Price per share, to the extent that other shareholders did not exercise all of their rights in full. Although MacAndrews & Forbes, as a holder of Common Stock, would otherwise have been entitled to such over-subscription privilege,

² No other "employer security," within the meaning of section 407 of ERISA, is presently available as an investment under the Plan.

³ Plan participants are effectively free to designate the extent to which their Plan accounts will be invested in Class A Common Stock.

MacAndrews & Forbes has agreed to subordinate such rights in order to enhance the over-subscription privilege of other stockholders.

MacAndrews & Forbes agreed to "back-stop" \$75 million of the Stock Rights offering by purchasing, on the same terms as the Stock Rights offering, such number of shares of Class A Common Stock offered but not purchased by other Rights holders as would be sufficient for the aggregate gross proceeds of the Stock Rights offering to total \$75 million. With respect to the shares offered in the Stock Rights offering in excess of the \$75 million being backstopped by MacAndrews & Forbes (i.e., shares with an approximate value of \$25 million), MacAndrews & Forbes had the right, but not the obligation, pursuant to a private placement agreement with the Revlon, to purchase additional shares of Class A Common Stock, at the Subscription Price, in the event the Stock Rights offering was not fully subscribed after Rights holders, other than MacAndrews & Forbes, exercise their basic and over-subscription privileges.

9. If a sufficient number of shares were not available to fully satisfy the over-subscription privilege requests, the available shares were to be sold *pro rata* among Rights holders who exercised their over-subscription privilege based on the number of shares each Rights holder subscribed for under the basic subscription privilege. Any excess subscription payments were returned without interest or deduction promptly after the expiration of the Stock Rights offering.

Any election to exercise a Right (whether made with respect to Stock Rights held under the Plan or otherwise) was irrevocable once made. Plan participants who wanted to exercise some or all of their Rights were required to notify the Trustee on or before the date that is approximately seven (7) calendar days before the expiration of the Stock Rights offering (the Plan Election Date).⁶

10. Participants were also entitled to direct the Trustee to sell the Rights allocated to them on the open market by notifying the Trustee of such election on

or before the Plan Election Date; any such election was irrevocable once made and was executed as soon as practicable after it is received. To the extent that a participant did not elect to either exercise or sell the Rights credited to his or her account on or before the Plan Election Date, the Investment Committee instructed the Trustee to attempt to sell such Rights on the open market in the same manner as if the participant had directed such a sale. The Investment Committee instructed the Trustee not to exercise Rights where the Subscription Price exceeds the per share public trading price of Class A Common Stock at the time for exercise (in which case an attempt was made to sell the Rights instead, although the Rights likely would have no value in such a case and thus would expire without value). A confirmation of a sale or exercise of rights, as the case may be, appeared on participant statements.

11. Approximately three (3) calendar days before the expiration of the Stock Rights offering, the Trustee liquidated an amount sufficient to pay a Plan participant's exercise price by selling a pro-rata portion of the amounts held in such participant's various investment funds (other than the Common Stock Fund) and transferred such funds to the subscription agent in order to participate in the Stock Rights offering on behalf of Plan participants who elect to exercise some or all of their Rights. No Stock Rights under the Plan were exercised before this date. The shares of Class A Common Stock purchased upon the consummation of the Stock Rights offering were be allocated to the accounts of Plan participants as soon as practicable thereafter.

12. In summary, it is represented 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 made available on the same terms available to all shareholders of common stock of Revlon; (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 Stock Rights offering; (d) The Plan's acquisition of the Stock Rights resulted from an independent act of Revlon as a corporate entity; and (e) The Plan

received the same proportionate number of Stock Rights as other owners of Class A common stock.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer 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) 693-8540 (this is not a toll-free number).

American Maritime Officers Safety & Education Plan (the S&E Plan) Located in Dania Beach, Florida and Toledo, Ohio

[Exemption Application No. L-11365]

Proposed Exemption

The Department is considering granting the following 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, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(C) and 406(a)(1)(D) of the Act shall not apply to the S&E Plan's, doing business as STAR Center, entering into an agreement with Kongsberg Maritime Simulator Inc. (Kongsberg), a party in interest, to provide certain services (the Services) to Kongsberg at the Dania Beach, Florida facility (the Facility) involving hydrodynamic and geographic modeling and training required in connection with Kongsberg's contract with the U.S. Navy, provided that the following conditions are met:

Conditions

This proposed exemption is subject to the following conditions:

(a) The S&E Plan will charge and will be paid for the Services at the rates approved by the Board of Trustees of the S&E Plan (the Trustees) for similar services provided to unrelated third parties;

(b) The terms of the arrangement between the S&E Plan and Kongsberg are at least as favorable to the S&E Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) An independent auditor will perform annual audits of the S&E Plan to identify and reconcile any recordkeeping discrepancies involving the Services; and

(d) The S&E Plan will maintain, for a period of six (6) years, the records necessary to determine whether the

⁶ This date was before the expiration date of the Stock Rights offering in order to enable the Trustee to review and implement participant directions (including the liquidation of individual account balances necessary to fund each participant's exercise price) and provide such aggregate instructions to the subscription agent under the Offering within the time constraints imposed generally with respect to the Stock Rights offering. Because the Stock Rights offering was extended for at least thirty (30) calendar days, Revlon did not anticipate that this requirement was unduly restrictive for Plan participants.

conditions of this exemption have been met.

Summary of Facts and Representations

1. The S&E Plan is a jointly administered multiemployer welfare training plan funded pursuant to a collective bargaining agreement. The purposes of the S&E Plan are to (a) develop and execute programs for the education, development and improvement of licensed marine officers, (b) develop and execute programs to increase safety in the operation of marine vessels, (c) create and execute programs to develop and maintain a skilled pool of licensed marine officers and (d) develop and execute a research program on a variety of issues of interest to S&E Plan participants and their employers. The S&E Plan conducts training and accommodates the students attending training at the Facility. As of January 6, 2006, the S&E Plan had 3,495 participants and beneficiaries and \$43,563,887 in plan assets.

Kongsberg is an industry leader in supplying simulators that are used in the training of professional mariners. The S&E Plan, doing business as the STAR Center, utilizes Kongsberg marine simulators to provide training for participants of the S&E Plan.

2. Kongsberg has provided services to the STAR Center that include: Delivering simulation software and hardware; providing training on the use of its products; and providing software updates and technical support to the STAR Center. Accordingly, Kongsberg could be viewed as a party in interest to the Plan as a service provider under ERISA § 3(14) and certain transactions between the S&E Plan and Kongsberg would be prohibited transactions under ERISA section 406(a).

The applicant represents that because of the unique nature of the maritime industry, and the specialized niches held by Kongsberg and the STAR Center, the STAR Center is especially suited to provide training-related services to Kongsberg. Kongsberg has recently signed a contract with the United States Navy to supply a total of 57 navigation simulators that will constitute a critical part of an ongoing U.S. Navy program for navigation, seamanship and ship handling training. Because of the experience and expertise of the STAR Center, Kongsberg wishes to subcontract with the STAR Center to permit the STAR Center to perform certain hydrodynamic modeling and geographic modeling necessary for the development of the navigation simulators, and to provide training assistance. The S&E Plan wishes to

contract with Kongsberg to provide these services since it would be in furtherance of the overall purposes of the S&E Plan and beneficial to the STAR Center and the S&E Plan participants, as well as the United States Navy.

3. The Facility is home to the STAR Center. S&E Plan participants attend courses at the STAR Center, which is among the most comprehensive and advanced maritime training and research facilities in the world. The STAR Center provides participants in the S&E Plan with complete license training, license upgrading and certifications with respect to various U.S. Coast Guard and international treaty requirements. The STAR Center also has the capability to develop models of vessels and ports that can be utilized in training programs.

At the core of the STAR Center is the 360-degree full mission training bridge, from which officers can simulate command of various types of vessels in over a hundred different waterways from around the world. The instructors at the STAR Center and the simulator's programmers use the simulator to re-create a variety of situations and conditions in order to train participants in safe and efficient vessel operations and effective responses to hazardous environments and extreme conditions. Many of the models utilized on the simulators are developed at the STAR Center. The Facility includes other types of simulators as well. The students' training on the simulators is interactive and provides for real-time exercises. It is the STAR Center's ability to provide hands-on, real-time training in a controlled environment and model different environments that makes the S&E Plan a valuable benefit to its participants and makes S&E Plan participants even more valuable to contributing employers. Simulators used at the STAR Center were purchased from Kongsberg and the S&E Plan has an on-going maintenance contract with Kongsberg.

4. Participants in the S&E Plan work predominantly on U.S.-flag ships in foreign and domestic commercial trade. Many serve onboard civilian ships under contract to the United States government. In addition, participants also serve as engine and deck officers and stewards in the U.S.-flag Great Lakes dry bulk and tanker fleets and on various vessels and tug barges on inland waterways. The S&E Plan, through the STAR Center, provides centralized training locations for employees in the maritime industry. In addition, maritime officers are subject to Federal laws and significant regulation and licensing requirements by the United

States Coast Guard, the Department of Defense and the Department of Transportation. The S&E Plan and the STAR Center provide a centralized way for maritime officers to obtain licenses and training required by the various governmental agencies.

5. Kongsberg will pay the S&E Plan for these services at the rates approved by the Trustees for similar services provided to unrelated third parties. The following is a description of the service that would be provided by the S&E Plan.

Hydrodynamic Modeling: The applicant represents that the key to realistic ship-handling simulation is an accurate representation of ship maneuvering characteristics. The mathematical modeling of ship behavior is referred to as "Hydrodynamic Modeling." The applicant represents that the STAR Center has developed skills in this area over the last several years and has personnel uniquely qualified in the development of hydrodynamic models required by Kongsberg.

Geographic Modeling: In order to represent the environment necessary for ship-handling simulation, a "Geographic Model" needs to be created. This model includes a visual representation of a particular port or waterway as well as the bathymetric (underwater contours) and environmental conditions, such as water current and wind. The STAR Center has developed a substantial in-house capability to create these models. Although the field of simulation modeling is expanding, models that will run on a Kongsberg simulator require the use of proprietary software tools. The applicant represents that the STAR Center is the largest external developer of Kongsberg-specific geographic models and has the capability and a reputation for creating accurate geographic models.

Training: The STAR Center is currently the largest user of Kongsberg simulators in the country and has years of experience utilizing these simulators in approved training programs. The applicant represents that because of this experience, the STAR Center is qualified to assist Kongsberg in training other users in the proper operation of the simulators.

6. The applicant represents that the STAR Center has developed and improved its capabilities over the last thirteen years and is recognized as a provider of specialized simulator training services. Because this is a small industry, and there are a limited number of entities with the requisite experience and expertise in simulation training, the inability of the S&E Plan to contract

with Kongsberg to provide modeling and training services unduly restricts the operations of the S&E Plan. By providing the Services, the S&E Plan would be able to develop hydrodynamic and geographic models that will improve the overall quality of maritime officers and increase safety in the operation of marine vessels, thus furthering the purposes of the S&E Plan, and would be able to increase the level of expertise in the application of modeling tools and techniques by the S&E Plan, thus expanding the training opportunities for S&E Plan participants, many of whom are employed on vessels assigned to areas of conflict overseas. Many S&E Plan participants serve on vessels engaged in the transportation and supply of cargo to troops stationed in conflicts around the world. Finally, the revenue received by the STAR Center from the Services will help offset operating costs of the STAR Center. This, in turn, will allow the S&E Plan to provide expanded services to plan participants without increasing contribution levels.

7. To ensure that the interests of the S&E Plan and their participants are well protected, the S&E Plan has retained Bond Beebe C.P.A. (Bond Beebe) as outside auditors to perform the annual audit of the Services. Bond Beebe will perform annual audits of the S&E Plan to identify and reconcile any recordkeeping discrepancies involving the Services.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The S&E Plan will charge and will be paid for the Services at the rates approved by the Trustees for similar services provided to unrelated third parties; (b) The terms of the arrangement between the S&E Plan and Kongsberg are at least as favorable to the S&E Plan as those obtainable in an arm's length transaction with an unrelated party; (c) An independent auditor will perform annual audits of the S&E Plan to identify and reconcile any recordkeeping discrepancies involving the Services; and (d) The S&E Plan will maintain, for a period of six (6) years, the records necessary to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

Notice to Interested Parties: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer and Department within 15 days of the date of publication of this notice of proposed

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

FOR FURTHER INFORMATION CONTACT:

Khalif Ford of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions 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 25th day of April, 2007.

Ivan Strasfeld,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

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DEPARTMENT OF LABOR

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability for Program Year (PY) 2005 Performance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, in collaboration with the Department of Education, announces that nine states are eligible to apply for Workforce Investment Act (WIA) (Pub. L. 105-220, 29 U.S.C. 2801 *et seq.*) incentive awards under the WIA Regulations.

DATES: The nine eligible states must submit their applications for incentive funding to the Department of Labor by June 14, 2007.

ADDRESSES: Submit applications to the Employment and Training Administration, Office of Performance and Technology, 200 Constitution Avenue, NW., Room S-5206, Washington, DC 20210, Attention: Karen Staha and Traci DiMartini, Telephone number: 202-693-3698 (this is not a toll-free number). Fax: 202-693-3490. E-mail: staha.karen@dol.gov and dimartini.traci@dol.gov. Information may also be found at the ETA Performance Web site: <http://www.doleta.gov/performance>.

SUPPLEMENTARY INFORMATION: Nine (9) states (see Appendix) qualify to receive a share of the \$16.3 million available for incentive grant awards under WIA section 503. These funds, which were contributed by the Department of Education from appropriations for the Adult Education and Family Literacy Act and the Carl D. Perkins Vocational and Technical Education Act, are available for the eligible states to use through June 30, 2009, to support innovative workforce development and education activities that are authorized under title I (Workforce Investment Systems) or title II (the Adult Education and Family Literacy Act (AEFLA)) of WIA, or under the Perkins Act (Pub. L. 105-332, 20 U.S.C. 2301 *et seq.*). In order to qualify for a grant award, a state must have exceeded performance levels agreed to by the Secretaries, Governor, and State Education Officer for