

actually issued by the Fund directly to the Plans, rather than to the CIF and then, in turn, distributed by the CIF to the Plans.

The Department notes the applicant's clarification to the written record, as stated in the Summary. Accordingly, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

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

[Prohibited Transaction Exemption 98-50; Exemption Application Number D-10578]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of two promissory notes (the Notes) by the Plan to Dr. John B. Vick, a party in interest and disqualified person with respect to the Plan, provided the following conditions are met:

- (a) The Sale is a one-time transaction for cash;
- (b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;
- (c) The Plan receives an amount equal to the fair market value of the Notes as determined by a qualified, independent appraiser as of the date of Sale; and
- (d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the proposed exemption published on August 31, 1998 at 63 FR 46253.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219-8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 15th day of October 1998.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number: D-10554]

Proposed Amendment to Prohibited Transaction Exemption 97-11 (PTE 97-11) for the Receipt of Certain Investment Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individual Have Been Established or Maintained

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

ACTION: Notice of proposed amendment to PTE 97-11.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 97-11. PTE 97-11 is a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) or, if self-employed, a

Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer, provided that the conditions of the exemption are met. The proposed amendment, if adopted, would affect individuals with beneficial interests in such plans who receive such services as well as the broker-dealers who provide such services.

DATES: If adopted, the proposed amendment would be effective as of January 1, 1998. Written comments and requests for a public hearing should be received by the Department on or before December 7, 1998.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, 200 Constitution Ave, NW, Washington, DC 20210, (Attention: D-10554)

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams Lavigne, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219-8971, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 97-11 (62 FR 5855, February 7, 1997). PTE 97-11 provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1)(D), (E) and (F) of the Code.¹ The amendment to PTE 97-11 was requested in an exemption application dated December 23, 1997 filed on behalf of the Securities Industry Association (SIA). The SIA is a securities industry trade association representing the business interests of more than 700 securities firms in North America which collectively account for ninety percent of the securities firm revenue in the United States. The members of the SIA are, among other things, engaged in the business of providing brokerage and investment advisory services to the public.

The application was filed pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set

¹ Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

forth in 29 CFR 2570, subpart B, (55 FR 32836), August 10, 1990.)

PTE 97-11 permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is/are taken into account for purposes of determining eligibility to receive such services, provided that the conditions of the exemption are met.

The SIA has requested an amendment to PTE 97-11 which would expand the term "IRA" as defined in section III(b) of the exemption to include any IRA (currently existing or that Congress may create in the future) subject to the provisions of section 408(e) and/or section 4975 of the Code. The Department has decided not to expand the definition of IRA to include any IRA subject to the provisions of section 408(e) or section 4975 of the Code because the conditions contained in PTE 97-11 were developed based upon the specific characteristics of the IRAs and Keogh Plans described in section III(b) and (c), respectively. The Department does not believe that a sufficient showing has been made that the safeguards contained in the exemption would adequately address the concerns that the Department may have with regard to an unidentified class of IRAs.

In the alternative, the SIA requests that the Department expand the definition of the term IRA to include Roth IRAs and Education IRAs. Section III(b) of PTE 97-11 defines the term IRA as an "individual retirement account" described in section 408(a) of the Code. The definition further states that, for purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

Roth IRAs and Education IRAs were created as part of the Taxpayer Relief Act of 1997 (TRA) (Pub. L. 105-34, title III, Sec. 302(a), August 5, 1997, 111 Stat 788). Section 302(a) of the TRA amended the Code by adding section

408A and section 530 to create Roth IRAs and Education IRAs, respectively.

Section 408A(a) of the Code provides that, except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan. Section 408A(b) of the Code provides that for purposes of this title, the term "Roth IRA" means an individual retirement plan (as defined in section 7701(a)(37)) which is designated at the time of the establishment of the plan as a Roth IRA.

In Advisory Opinion 98-03A (March 6, 1998), the Department stated that a Roth IRA which satisfies the definition of an individual retirement plan contained in section 7701(a)(37)(A) ² of the Code is an "individual retirement account" described in section 408(a) of the Code for purposes of the definition of the term "IRA" contained in section III(b) of PTE 97-11. Therefore, a Roth IRA, as described above, which is not an employee benefit plan covered by Title I of ERISA (except for certain SEPs and Simple Retirement Accounts described in section 408(k) and 408(p) of the Code, respectively) would be covered by the relief provided in PTE 97-11, if all conditions therein are met. Thus, section III(b) of PTE 97-11 does not need to be expanded with respect to Roth IRAs.

Section 530(b)(1) of the Code provides in part, that the term "education individual retirement account" means a trust created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of the designated beneficiary of the trust (and designated as an education individual retirement account at the time created or organized). Section 530(b)(1) further provides: but only if the written governing instrument creating the trust meets the following requirements:

(A) No contribution will be accepted—(i) unless it is in cash, (ii) after the date on which such beneficiary attains age 18, or (iii) except in the case of rollover contributions, if such contributions would result in aggregate contributions for the taxable year exceeding \$500; (B) the trustee is a bank (as defined in section 408(n) of the Code or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section or who has so demonstrated with respect to any individual retirement plan; (C) no part of the trust assets shall not be invested in life insurance contracts; (D) the assets of the trust shall not be commingled

² Section 7701(a)(37) of the Code defines the term "individual retirement plan" to mean: (A) an individual retirement account described in section 408(a) of the Code, and (B) an individual retirement annuity described in section 408(b) of the Code.

with other property except in a common trust fund or common investment fund; and (E) upon the death of the designated beneficiary, any balance to the credit of the beneficiary shall be distributed within 30 days after the date of death to the estate of such beneficiary.

The Education IRA is subject to disqualification provisions which are similar to those in section 408(e)(2) and (4) of the Code which are applicable to IRAs described in section 408(a) of the Code (traditional IRAs).³ In addition, as with traditional IRAs, the Education IRA balance can be transferred to different sponsoring institutions.⁴ Further, the TRA amended the definition of "plans" as defined in section 4975(e)(1) of the Code to include an educational IRA described in section 530 of the Code. Based on the SIA's representations, it appears that Education IRAs share many of the same characteristics as those IRAs covered by the exemption. Thus, the Department sees merit in the SIA's request and, accordingly, has modified the definition of IRA in section III(b) of PTE 97-11 to include Education IRAs. The Department notes that all of the conditions of PTE 97-11 must be satisfied with respect to Education IRAs, as with all other IRAs and Keogh Plans covered by the exemption.

Notice to Interested Persons

Because many participants in IRAs and Keogh Plans and broker-dealers could conceivably be considered interested persons, the only practical form of notice is publication in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the IRAs and Keogh Plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

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

³ See section 530(e) of the Code.

⁴ See section 530(d)(5) of the Code.

(3) If granted, the proposed amendment will be applicable to a transaction only if the conditions specified in the class exemption are met.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendment

Under 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), the Department proposes to amend PTE 97-11 as set forth below:

Section III(b) is amended to read: "The term "IRA" means an individual retirement account described in Code section 408(a) or an education individual retirement account described in section 530 of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions."

Signed at Washington, DC this 6th day of October 1998.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number: D-10567]

Proposed Amendment to Prohibited Transaction Exemption 93-33 (PTE 93-33) for the Receipt of Certain Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained

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

ACTION: Notice of Proposed Amendment to PTE 93-33.

SUMMARY: This document contains a notice of pendency before the Department of Labor of a proposed amendment to PTE 93-33. PTE 93-33 is a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a bank, provided that the conditions of the exemption are met. The proposed amendment, if adopted, would affect individuals with beneficial interests in such plans who receive such services as well as the banks that provide the services.

DATES: If adopted, the proposed amendment would be effective January 1, 1998. Written comments and requests for a public hearing should be received by the Department on or before December 7, 1998.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N-5649, 200 Constitution Ave, NW, Washington, DC 20210, (Attn: D-10567).

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams Lavigne, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U. S. Department of Labor, (202) 219-8971 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 93-33 (58 FR 31053, May 28, 1993, as amended, 59 FR 22686, May 2, 1994). PTE 93-33 provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA)

and the sanctions resulting from the application of sections 4975 (a) and (b), 4975(c)(3) and 408(e)(2) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1)(D), (E) and (F) of the Code.¹ The amendment proposed herein was requested in an exemption application dated January 26, 1998, filed by the American Bankers Association (the ABA). The ABA is the largest banking trade association in the United States representing the interests of banking institutions. Its membership includes community, regional and money center banks and holding companies, savings associations, trust companies and savings banks. The application was filed pursuant to 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).

PTE 93-33, as amended, permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a bank pursuant to an arrangement in which the account balance in the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided the conditions of the exemption are met.

The ABA requests an amendment to PTE 93-33 which would expand the definition of the term "IRA" as defined in section III(b) of the exemption to include any plan account (currently existing or that Congress may create in the future) subject to the provisions of section 408(e) and/or section 4975 of the Code. The Department has decided not to expand the definition of the term "IRA" to include any plan account subject to the provisions of section 408(e) and/or section 4975 of the Code because the conditions contained in PTE 93-33, as amended, were developed based upon the specific characteristics of the IRAs and Keogh Plans described in section III(b) and (c) respectively. The Department does not believe that a sufficient showing has been made that the safeguards contained in the exemption would adequately address the concerns that the Department may have with regard to an unidentified class of new accounts.

In the alternative, the ABA requests that the Department expand the definition of the term "IRA" to include

¹ Section 102 of Reorganization Plan No. 4 of 1978 (42 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.