

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

[Prohibited Transaction Exemption 99-16; Exemption Application No. D-10693, et al.]

Grant of Individual Exemptions; Standard Bank Employees Profit Sharing 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 (43 FR 47713, October 17, 1978) 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.

Standard Bank Employees Profit Sharing Plan (the Plan) Located in Hickory Hills, Illinois

[Prohibited Transaction Exemption 99-16; Exemption Application No. D-10693]

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, as of October 1, 1998, to the purchases by the Plan of certain residential mortgage notes (the Notes) from Standard Bank and Trust Company (the Employer), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) An independent qualified fiduciary will decide which Notes will be purchased for the Plan;

(2) Only first mortgage Notes will be purchased by the Plan;

(3) The Notes which will be purchased by the Plan will have: (a) A borrower payment history with the Employer of at least three months; (b) A maximum 15 year maturity; and (c) the loan to value ratio of the collateral will be at least 150% of the principal amount of the Note;

(4) If the mortgage loan is an original acquisition mortgage loan, the Note will not exceed two-thirds of the lower of the purchase price or of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(5) If the mortgage loan is a refinancing of the original acquisition mortgage loan, the Note will not exceed two-thirds of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(6) No more than twenty-five percent (25%) of the value of the Plan's total assets will be invested in the Notes;

(7) No more than ten percent (10%) of the value of the Plan's total assets will be invested in any one Note or Notes to any one borrower;

(8) The fees received by the independent fiduciary for serving in that capacity with respect to the Plan for the transactions described herein, combined with any other fees derived from the Employer or related parties, will not exceed one percent (1%) of his gross annual income for each fiscal year that he continues to serve in the

independent fiduciary capacity with respect to the transactions described herein; and

(9) The conditions of Prohibited Transaction Exemption (PTE) 93-71 (58 FR 51109, September 30, 1993) have been met. PTE 93-71, which expired September 30, 1998, provided prospective relief for the purchases by the Plan of certain Notes from the Employer.¹

Part II. Repurchases of Residential Mortgage Notes

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 repurchases of the Notes (the Repurchases) by the Employer: (a) In the event of default; (b) if the limitations set forth in Part I (6) and/or (7) are exceeded; and (c) at other times as determined by the independent fiduciary,² provided that the Repurchases will be at a price which is equal to the greater of the outstanding principal balance of the Note plus accrued interest through the date of repurchase, or the current fair market value of the Note as determined by the independent fiduciary.

EFFECTIVE DATE: This exemption is effective as of October 1, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on February 16, 1999 at 64 FR 7672.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment was filed by the Employer and states that paragraph 1 of the Summary of Facts and Representations contained in the Notice incorrectly states that Deloitte & Touche are the accountants for the Plan. The Plan accountants are Desmond & Ahern, Ltd. Certified Public Accountants.

¹ The applicant represents that, as mandated by PTE 93-71, the Employer has filed Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) and paid the applicable excise taxes for certain past purchases by the Plan of the Notes from the Employer which occurred prior to the effective date of PTE 93-71.

² The Department notes that if a violation of any of the terms and conditions of Part I occurs, the exemptive relief provided by Part I for purchases of the Notes by the Plan will no longer be available. However, the Department further notes that the loss of exemption under Part I will not affect the use of Part II to dispose of the Notes previously acquired by the Plan pursuant to the exemption.

The Department concurs with this correction.

FOR FURTHER INFORMATION CONTACT:

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

Plumbers and Pipefitters National Pension Fund (the Pension Plan) and Pipefitters Local No. 211 Joint Educational Trust (the Welfare Plan) (Collectively, the Plans) Located in Alexandria, VA and Houston, TX, respectfully

[Prohibited Transaction Exemption No. 99-17 Application Nos. D-10700 and L-10709]

Exemption

The restrictions of sections 406(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 (D) of the Code, shall not apply to the sale (the Sale) of certain real property (the Property) by the Pension Plan to the Welfare Plan, a party in interest with respect to the Pension Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Pension Plan and the Welfare Plan than those which either the Pension Plan or the Welfare Plan would receive in an arm's-length transaction with an unrelated party;

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

(C) The Pension Plan and the Welfare Plan incur no expenses, fees, or commissions from the Sale other than their own respective appraisal, recording, and legal expenses;

(D) The Welfare Plan pays as consideration for the Property no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale;

(E) The Pension Plan sells the Property for a price that is not less than the fair market value of the Property as determined by qualified, independent appraiser on the date of the Sale; and

(F) The fiduciaries for the Pension Plan and the Welfare Plan, respectfully, will enforce the terms of the exemption.

Written Comments: The Department received five written comments which were found to be not relevant to the transaction; and therefore, the Department has determined to grant the exemption as proposed.

Correspondence received from the applicant's representative during the comment period stated that the Welfare Plan is interested in purchasing the Property in part for future expansion. Initially, upon purchase, the Welfare

Plan will use the Property for parking. Thereafter, it is anticipated that the fiduciaries of the Welfare Plan will contract for a study regarding the feasibility of constructing new classroom facilities.

In this regard, the Department notes that the Act's standards of fiduciary conduct will apply to the purchase and ultimate development of the Property. Section 404(a)(1) of the Act requires that a fiduciary discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of a enterprise of a like character and with like aims. Accordingly, the fiduciaries of the Welfare Plan must act "prudently" with respect to the decision to purchase the Property, as well as to the ultimate development of the Property (including where relevant, the determination as to whether to develop the Property, the types of improvements that are appropriate and the Plan's ability to finance any such improvements). The granting of this exemption should not be viewed as an endorsement by the Department of the Plan's subsequent use of such Property. Finally, we note that, if the decision by the fiduciaries to purchase and develop the Property is not prudent, the fiduciaries would be liable for any loss resulting from such breach even though the purchase of the Property was the subject of an administrative exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 27, 1999, at 64 FR 4142.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

State Bankshares Inc. 401(k) Profit Sharing Plan (the Plan) Located in Fargo, North Dakota

[Prohibited Transaction Exemption 99-18; Exemption Application No. D-10703]

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 proposed sale by the Plan of certain limited partnership interests (the Interests) to Northern Capital Trust

Company (Northern), the Plan's trustee and a party in interest with respect to the Plan, for \$93,552.93 in cash, provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) no commissions are charged in connection with the transaction; (c) the Plan receives not less than the fair market value of the Interests at the time of the transaction; and (d) the fair market value of the Interests is determined by a qualified entity independent of the Plan and of Northern.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 8, 1999 at 64 FR 11062.

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

vonRoll isola Savings Plan (the Plan) Located in Schenectady, New York

[Prohibited Transaction Exemption 99-19; Exemption Application No. D-10729]

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: (1) The making by State Street Bank and Trust Company (the Bank) of interest-free advances of cash (the Advances) to the Plan during the period from July 8, 1997 through June 22, 1998, in the aggregate amount of \$824,812.60; and (2) the repayment of the Advances by the Plan, without interest, on June 22, 1998, provided the following conditions were satisfied:

(a) No interest or expense was incurred by the Plan in connection with the Advances;

(b) The proceeds of the Advances were used only to facilitate the payment of benefits (including participant loans and in-service withdrawals) to Plan participants, and to facilitate the making of investment transfers elected by Plan participants;

(c) The Advances were unsecured;

(d) The Plan participants who remained invested in the Plan's stable value fund, which consisted primarily of a Group Flexible Annuity Contract (the GIC) from the Travelers Insurance Company (Travelers), continued to receive the full contract rate on the full amount of the GIC;

(e) The Plan's sponsor was notified of the Advances;

(f) The repayment of the Advances was made at the direction of the Plan's sponsor and was restricted to amounts received from the proceeds of the installment payments made by Travelers under the GIC, and no other plan assets were used for that purpose;

(g) The Bank will maintain or cause to be maintained for a period of six years from the date of the granting of the exemption proposed herein the records necessary to enable the persons described in paragraph (h) to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than the Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (h); and

(h)(1) Except as provided in paragraph (h)(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by:

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

(B) Any fiduciary of the Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary;

(2) None of the persons described in paragraph (h)(1)(B) and (h)(1)(C) shall be authorized to examine trade secrets of the Bank or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 4, 1999 at 64 FR 10503.

EFFECTIVE DATES: This exemption is effective from July 8, 1997 through June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, 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 are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of April, 1999.

Ivan Straszfeld,

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

[FR Doc. 99-11004 Filed 5-5-99; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 21, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-713-6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National