

extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.”<sup>2</sup> Rather, [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not “engage in an unrestricted evaluation of what relief would best serve the public.” *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.)); see also *Microsoft*, 56 F.3d at 1460-62. Rather,

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is “within the reaches of the public interest.” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>3</sup> The proposed Final Judgment, therefore, need not be certain to eliminate every anticompetitive effect of a particular practice. Court approval of a final judgment requires a more flexible and less strict standard than the standard required for a finding of liability. “[A] proposed decree must be approved even

if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’”<sup>14</sup>

In this case, the proposed Final Judgment meets the appropriate standard. The Final Judgment dissolves the JSA. In addition, Capstar's divestiture of KEYF-FM in Spokane will cure the anticompetitive effects of Triathlon's prior acquisitions there. The exchanges of stations anticipated by defendants Citadel and Capstar leave both surviving parties with radio advertising market shares of approximately 40% or less in both Colorado Springs and Spokane.

### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted.

Karl D. Knutsen,

*Attorney, Colorado Bar Reg. No. 23997, Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, (202) 514-0976.*

### Certificate of Service

I, Karl D. Knutsen, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Amended Complaint and amended Competitive Impact Statement were served this 26th day of April, 1999, by United States mail, to the following:

Debra H. Dermody, Reed, Smith, Shaw, & McClay, 435 Sixth Ave., Pittsburgh, PA 15219, Counsel for Citadel Communications Corporation

David J. Laing, Baker & McKenzie, 815 Connecticut, Washington, D.C. 20006, Counsel for Triathlon Broadcasting Company

Neil W. Imus, Vinson & Elkins, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006, Counsel for Capstar Broadcasting Corporation

Karl D. Knutsen

[FR Doc. 99-12339 Filed 5-14-99; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### **United States v. Suiza Foods Corporation and Broughton Foods Company; Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Kentucky, London Division in *United States of America v. Suiza Foods Corporation and Broughton Foods Company*, Civil Action No. 99-CV-130. On March 18, 1999, the United States filed a Complaint alleging that the proposed acquisition by Suiza Foods Corporation (“Suiza”) of the stock of Broughton Foods Company (“Broughton”), would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on April 22, 1999, requires Suiza to divest the Southern Belle plant and related assets in Somerset, Kentucky, pursuant to the Final Judgment. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 200, 325 Seventh Street, N.W., and at the Office of the Clerk of the United States District Court for the District of Columbia.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, Department of Justice, 1401 H St. N.W., Suite 4000, Washington, D.C. 20530 (telephone: (202) 307-0001).

**Constance K. Robinson,**

*Director of Operations & Merger Enforcement.*

United States of America, Plaintiff, vs. Suiza Foods Corporation, d/b/a Louis Trauth Dairy, Land O'Sun Dairy, and Flav-O-Rich Dairy, and Broughton Foods Company, d/b/a Southern Belle Dairy, Defendants. Civil Action No. 99-CV-130.

### Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Eastern District of Kentucky, London Division.

(2) The parties stipulate that a Final Judgment in the form hereto attached

<sup>2</sup> 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A “public interest” determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9 (1974), *Reprinted in U.S.C.A.N. 6535, 6538.*

<sup>3</sup> *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *BNS*, 858 F.2d at 463; *United States v. National Broad. Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. See also *Microsoft*, 56 F.3d at 1461 (whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’”) (citations omitted).

<sup>4</sup> *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (quoting *Gillette Co.*, 406 F. Supp. at 716 (citations omitted)); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985). Washington, D.C. 20530

may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions of the proposed Final judgment as though the same were in full force and effect as an order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) Defendants shall prepare and deliver reports in the form required by the provisions of paragraph B of Section VI of the proposed Final Judgment commencing no later than twenty (20) calendar days after the filing of this Stipulation, and every thirty (30) calendar days thereafter pending entry of the Final Judgment.

(6) In the event the plaintiff withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, or the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continuing compliance with the terms and provisions of the proposed Final Judgment, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(7) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

(8) Upon entry of this Stipulation as an Order of the Court, and consistent with this Stipulation, insofar as the defendants were enjoined by Orders of the Court on March 18, 1999, and April

14, 1999, from consummating their proposed transaction and from bringing their operations under common ownership and control, such previous Orders shall be vacated.

Respectfully submitted,

James K. Foster,

*Attorney, U.S. Department of Justice, Antitrust division, 1401 H Street, N.W., Room 4000, Washington, D.C. 20530, Telephone: (202) 514-8362, Facsimile: (202) 307-5802.*

Paul T. Denis,

*Arnold & Porter, 555 Twelfth Street, N.W., Washington, DC 20004, Telephone: (202) 942-5000, Facsimile: (202) 942-5999.*

*Attorney for Defendant Suiza Foods Corporation*

Joseph L. Famularo,

*United States Attorney, 110 W. Vine Street, Suite 4000, Lexington, Kentucky 50407, Telephone: (606) 233-2666.*

William J. Kolasky,

*Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, DC 20037, Telephone: (202) 663-6357, Facsimile: (202) 663-6363.*

*Attorney for Defendant Broughton Foods Company*

So Ordered, this \_\_\_\_ day of \_\_\_\_\_.  
1999.

United States District Judge

### Final Judgment

*Whereas* plaintiff the United States of America (hereinafter "United States"), having filed its Complaint herein, and defendants, by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any part with respect to any issue of law or fact herein;

*And whereas*, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And whereas*, prompt and certain divestiture of certain assets to a third party is the essence of this agreement;

*And whereas*, plaintiff requires defendants to divest, as a viable business, the Southern Belle Dairy so as to ensure, to the sole satisfaction of the plaintiff, that the Acquirer will be to continue to operate the Southern Belle Dairy as a viable, ongoing business;

*And whereas*, defendants have represented to plaintiff that the divestiture required below can and will be made as provided in this Final Judgment and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

*Now, therefore*, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed as follows*:

### I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

### II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the person(s) to whom defendants shall sell the Southern Belle Dairy (as defined below).

B. "Southern Belle Dairy" means the entire milk processing plant owned by Broughton Foods Company located in Pulaski County, Kentucky, and all related assets, including all rights and interests in it, including all property and contract rights, all existing inventory, accounts receivable, pertinent correspondence and files, customer lists, all related customer information, advertising materials, contracts or other relationships with suppliers, customers and distributors, any rights, contracts and licenses involving intellectual property, trademarks, tradenames or brands, computers and other physical assets and equipment used for production at, distribution from, or associated with, Southern Belle Dairy or any of its distribution branches and locations.

C. "Suiza Foods Corporation" means defendant Suiza Foods Corporation and includes its successors and assigns, their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.

D. "Broughton Foods Company" means defendant Broughton Foods Company and includes its successors and assigns, their subsidiaries, divisions, groups, partnerships and joint ventures, affiliates, directors, officers, managers, agents and employees.

### II. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Southern Belle Dairy may not be sold to an Acquirer that has not agreed to be bound by the provisions of this Final Judgment

#### *IV. Divestiture of Assets*

A. Suiza Foods Corporation is hereby ordered and directed, within six (6) months from the date this Final Judgment is filed with the Court, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Southern Belle Dairy to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to one (1) month, and shall notify the Court in such circumstances.

B. Unless the United States consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Southern Belle Dairy defined above. Divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion that the Southern Belle Dairy can and will be operated by the Acquirer as a viable, ongoing business. Divestiture of the Southern Belle Dairy, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the sole satisfaction of the United States that (1) the purchase is for the purpose of competing effectively in the dairy business, (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the dairy business; and (3) that none of the terms of any agreement between the Acquirer and defendant give defendant the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

C. In accomplishing the divestiture ordered by this Final Judgment, Suiza Foods Corporation shall make known, by usual and customary means, the availability of the Southern Belle Dairy. Suiza Foods Corporation shall provide any person making inquiry regarding a possible purchase a copy of the Final Judgment. The defendants shall also offer to furnish to any bona fide prospective purchaser, subject to customary confidentiality assurance, all information regarding the Southern Belle Dairy customarily provided in a due diligence process, except such information subject to attorney-client privilege or attorney work product privilege. Defendants shall make available such information to the

plaintiff at the same time that such information is made available to any other person. Defendants shall permit bona fide prospective purchasers of the Southern Belle Dairy to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

D. Defendants shall not interfere with any negotiations by the Acquirer to employ any employee whose primary responsibility is the production, sale, marketing, or distribution of products from the Southern Belle Dairy.

E. Suiza Foods Corporation shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Final Judgment. Defendants shall not take any action that will impede in any way the operation of the Southern Belle Dairy other than in the ordinary course of their other business.

#### *V. Appointment of Trustee*

A. In the event that Suiza Foods Corporation has not divested the Southern Belle Dairy within the time period specified in Section IV.A., it shall notify the plaintiff of that fact in writing. In the event that Suiza Foods Corporation has not divested the Southern Belle Dairy within the time period specified in Section IV.A., and upon application of the United States, the Court shall appoint a trustee selected by the United States to effect the divestiture of the Southern Belle Dairy. Unless the plaintiff otherwise consents in writing, the divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Southern Belle Dairy can and will be operated by the Acquirer as a viable on-going business.

B. After the appointment of a trustee becomes effectively, only the trustee shall have the right to sell the Southern Belle Dairy. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V.C. of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the

divestiture at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

C. The trustee shall serve at the cost and expense of Suiza Foods Corporation, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Suiza Foods Corporation and the trust shall then be terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Southern Belle Dairy and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Suiza Foods Corporation shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of, and relating to, the Southern Belle Dairy, and defendants shall develop financial or other information relevant to such assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture. Defendants shall permit prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final

Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Southern Belle Dairy, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Southern Belle Dairy. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

#### VI. Notification

A. Within two (2) business days following execution of a definitive agreement, Suiza Foods Corporation or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Suiza Foods Corporation. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Southern Belle Dairy, together with full details of the same. Within fifteen (15) calendar days after receipt of the notice, the plaintiff may request from Suiza Foods Corporation, the proposed

purchaser, or any third party additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Suiza Foods Corporation or the trustee shall furnish the additional information within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after receipt of the additional information by the United States, whichever is later, the United States shall notify in writing Suiza Foods Corporation and the trustee, if there is one, whether or not it objects to the proposed divestiture. If the United States notifies in writing Suiza Foods Corporation and the trustee, if there is one that it does not object, then the divestiture may be consummated, subject only to Suiza Foods Corporation's limited right to object to the sale under Section V.B. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or V may not be consummated. Upon objection by Suiza Foods Corporation under Section V.B., the proposed divestiture under Section V shall not be accomplished unless approved by the Court.

B. Twenty (20) calendar days from the date of the filing of this Final Judgment, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Suiza Foods Corporation shall deliver to the plaintiff a written affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, for each person who during the preceding thirty (30) calendar days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in all or any portion of the Southern Belle Dairy, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Each such affidavit shall also include a description of the efforts that Suiza Foods Corporation has taken to solicit a buyer for the relevant assets and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to the information provided by the defendant, including limitations on information, shall be made within fourteen (14) calendar days

of receipt of such affidavit. Suiza Foods Corporation shall maintain full records of all efforts made to divest all or any portion of the Southern Belle Dairy.

#### VII. Financing

Suiza Foods Corporation shall not finance all or any part of any purchase of the Southern Belle Dairy made pursuant to Sections IV or V of this Final Judgment

#### VIII. Hold Separate Requirements

Unless otherwise indicated, from the date of filing of this proposed Final Judgment with the Court and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished:

A. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall preserve, maintain, and operate the Southern Belle Dairy as an independent competitor with management, production, sales and operations held entirely separate, distinct and apart from those of Suiza Foods Corporation. Suiza Foods Corporation shall not coordinate the production, marketing or sale of products from Southern Belle Dairy's business with the business that it will own as a result of the acquisition of Broughton Foods Company.

B. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall take all steps reasonably necessary to ensure that the Southern Belle Dairy will be maintained and operated as an independent, ongoing, economically viable and active competitor in the production and sale of products; that the management of the Southern Belle Dairy will not be influenced by Suiza Foods Corporation, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Southern Belle Dairy will be kept separate and apart from the operations of Suiza Foods Corporation. Suiza Foods Corporation's influence over the Southern Belle Dairy shall be limited to that necessary to carry out its obligations under the Final Judgment. Suiza Foods Corporation may receive historical aggregate financial information (excluding capacity or pricing information) relating to the Southern Belle Dairy to the extent necessary to allow Suiza Foods

Corporation to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports including provision of due diligence information required to be made available pursuant to this Final Judgment.

C. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall use all reasonable efforts to maintain the operations of the Southern Belle Dairy, and shall maintain at current or previously approved levels, whichever are higher, internal funding, promotional, advertising, sales, technical assistance, marketing and merchandising support for the Southern Belle Dairy.

D. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall provide and maintain sufficient working capital to maintain the Southern Belle Dairy as an economically viable, ongoing business.

E. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall provide and maintain sufficient lines and sources of credit to maintain the Southern Belle Dairy as an economically viable, ongoing business.

F. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, Suiza Foods Corporation shall take all steps reasonably necessary to ensure that the Southern Belle Dairy is fully maintained in operable condition at no lower than its current rated capacity levels, and shall maintain and adhere to normal repair and maintenance schedules for the Southern Belle Dairy.

G. Suiza Foods Corporation shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any assets of the Southern Belle Dairy.

H. The management of Southern Belle Dairy shall maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of every month,

consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of the Southern Belle Dairy.

I. Except in the ordinary course of business or as is otherwise consistent with this Final Judgment, Suiza Foods Corporation shall not hire and shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employees who on the date of the filing of this proposed Final Judgment work at the Southern Belle Dairy, unless such individual has a written offer of employment from a third party for a like position.

J. Until such time as the Southern Belle Dairy is divested, it shall be managed by Martin Shearer. Mr. Shearer shall have complete managerial responsibility for the Southern Belle Dairy, subject to the provisions of the Final Judgment. Following consummation of Suiza Foods Corporation's acquisition of Broughton Foods Company and until the divestiture required by Section IV.A. or V of the Final Judgment has been accomplished, and in the event that Mr. Shearer is unwilling or unable to perform these duties, Suiza Foods Corporation shall appoint, subject to plaintiffs approval, a replacement acceptable to plaintiff within ten (10) working days. Should Suiza Foods Corporation fail to appoint a replacement acceptable to plaintiff within ten (10) working days, plaintiff shall appoint a replacement.

K. Suiza Foods Corporation shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

L. Within twenty (20) calendar days of the filing of this Final Judgment, Suiza Foods Corporation shall deliver to the United States an affidavit which describes in detail all actions Suiza Foods Corporation has taken and all steps Suiza Foods Corporation has implemented on an on-going basis to preserve the Southern Belle Dairy pursuant to Section VIII of this Final Judgment. The affidavit also shall describe, but not be limited to, Suiza Foods Corporation's efforts to maintain and operate the Southern Belle Dairy as an active competitor, maintain the independent management, staffing, sales, marketing, and pricing of the Southern Belle Dairy and maintain the Southern Belle Dairy in operable condition at current capacity levels. Suiza Foods Corporation shall deliver to the United States an affidavit describing any changes to the efforts and actions

outlined in Suiza Foods Corporation's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

#### *IX. Compliance Inspection*

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the United States, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Suiza Foods Corporation or Broughton Foods Company made to their principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview either informally or on the record, directors, officers, employees, and agents of defendants, which may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in Sections VIII or IX shall be divulged by any representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to the plaintiff, such defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of

Civil Procedure," then the plaintiff shall give ten (10) calendar days' notice to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

#### *X. Retention of Jurisdiction*

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

#### *XI. Termination of Provisions*

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

#### *XII. Public Interest*

Entry of this Final Judgment is in the public interest.

Dated: \_\_\_\_\_

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

#### **Competitive Impact Statement**

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

##### *I. Nature and Purpose of the Proceeding*

Plaintiff filed a civil antitrust Complaint on March 18, 1999, in United States District Court for the Eastern District of Kentucky, London Division, alleging that the proposed acquisition of Broughton Foods Company ("Broughton") by Suiza Foods Corporation ("Suiza") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Suiza and Broughton compete head-to-head to sell milk to school districts, and that in 55 of those school districts located in South Central Kentucky, the acquisition is likely to substantially lessen competition in the sale of school milk, and that therefore school districts and students would likely pay higher school milk prices or experience lower school milk quality and service.

The prayer for relief seeks: (a) an adjudication that the proposed transaction described in the Complaint

would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

After this suit was filed, a proposed settlement was reached that permits Suiza to complete its acquisition of Broughton, yet preserves competition in the South Central Kentucky school districts where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement have been filed with the Court.

The proposed Final Judgment orders Suiza to divest the entire Southern Belle Dairy plant based in Pulaski County, Kentucky, and all related assets. Unless the plaintiff grants a time extension, Suiza must divest the Southern Belle Dairy and related assets within six (6) months after the filing of the Complaint in this action or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If Suiza does not divest the Southern Belle Dairy and related assets within the divestiture period, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires that, until the divestiture mandated by the Final Judgment has been accomplished, Suiza and Broughton shall take all steps necessary to maintain and operate the Southern Belle Dairy as an active competitor, such that the sale and marketing of its products shall be conducted separate from, and in competition with, all of Suiza's products, maintain sufficient management and staffing, and maintain the Southern Belle Dairy in operable condition at current capacity configurations.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

##### *II. The Alleged Violations*

###### *A. The Defendants*

Suiza, a large nationwide operator of milk processing plants, is a Delaware corporation headquartered in Dallas, Texas. Suiza had sales of approximately \$1.8 billion in 1997. Using the Flav-O-Rich, PET and Trauth names, Suiza

distributes its products to Kentucky grocery stores, convenience stores, schools, and institutions from its dairies located in London and Newport, Kentucky; and Bristol and Kingsport, Tennessee.

Broughton is an Ohio corporation with its headquarters in Marietta, Ohio. Broughton had sales of approximately \$87.2 million in 1997. In Kentucky, Broughton, using the Southern Belle and Broughton's names, distributes its products to grocery stores, convenience stores, independent distributors, schools, and institutions from its dairies in Somerset, Kentucky and Marietta, Ohio.

###### *B. Description of the Events Giving Rise to the Alleged Violations*

On September 10, 1998, Suiza and Broughton entered into an agreement and plan of merger, pursuant to which Suiza intends to purchase all of the stock of Broughton for \$109.7 million and assume Broughton liabilities of \$13 million. The statutory waiting period during which the firms were prohibited from completing their proposed acquisition expired March 19, 1999, 15 U.S.C. 18a(e)(2). The Complaint was filed on March 18, 1999, together with a Motion For Preliminary injunction. On April 9, 1999, the defendants agreed to not complete their proposed acquisition pending trial and the Motion For Preliminary Injunction was withdrawn. On April 29, 1999, the Stipulation and Proposed Final Judgment to resolve the suit was filed with the Court in London, Kentucky.

###### *C. Anticompetitive Consequences of the Proposed Transaction*

The Complaint alleges that the sale of school milk constitutes a relevant product market and a line of interstate commerce. Milk is a product that has special nutritional characteristics and no practical substitutes, and dairies sell milk to schools with special services, including storage coolers, daily or every-other-day delivery to each school, limited hours delivery, constant rotation of old milk and replacement of expired milk. Moreover, school districts must provide milk in order to receive substantial funds under federal school meal subsidy programs. The Complaint defines the sale of milk together with its delivery services as the product "school milk." There are no other products that school districts would substitute for school milk in the event of a small but significant price increase. If the price of school milk rose by a small but significant amount, school districts would be forced to pay the increase.

The Complaint alleges that the relevant geographic market in which to assess the competitive effects of the proposed acquisition is a 39-county area of Kentucky ("South Central Kentucky"), and narrower markets contained therein, including each of the 55 listed school districts likely to be affected by the acquisition ("South Central Kentucky School Districts"). As a practical matter, South Central Kentucky School Districts would be unable to turn to additional school milk producers not currently bidding or not currently intending to bid for school milk contracts within South Central Kentucky School Districts to supply them with school milk if the price of school milk were to increase by a small but significant amount.

The Complaint alleges that Suiza's proposed acquisition of Broughton would lessen competition substantially in the sale of school milk in each of the South Central Kentucky School Districts. In 32 of the listed school districts, only two competitors would likely remain after the acquisition. Because dairies bid on each school milk contract separately, where the acquisition would reduce the number of bidders on these contracts from three to two, the likelihood that the remaining bidders will bid less aggressively against each other on both price and service terms is significantly increased.

In 23 of the listed school districts, the effect of the proposed acquisition would be to establish a monopoly. In these counties, the proposed acquisition would give the post-acquisition firm the power unilaterally to raise prices or to decrease the level or quality of service provided to these school districts.

The Complaint also alleges that entry by other dairies or distributors would not be timely, likely or sufficient to deter any anticompetitive effect caused by the acquisition. Dairies or distributors would be unlikely to decide that it has become profitable to compete for this low margin, low volume, seasonal business as a result of a small but significant increase in school milk prices.

The Complaint also alleges, in support of its allegations concerning relevant product market, likely competitive effects, and entry, the existence of an admitted school milk bid-rigging conspiracy between Southern Belle Dairy and Flav-O-Rich Dairy continuing from the late 1970s through 1989, in 23 of the 39 counties likely to be affected by the acquisition. Although the dairies involved in the conspiracy were later purchased by Broughton (Southern Belle) and Suiza (Flav-O-Rich), the history of school milk

bid rigging in South Central Kentucky indicates that school milk markets there are conducive to collusion. The proposed acquisition would likely increase the danger of tacit or overt collusion in those school districts where the acquisition would reduce the number of competing firms from three to two, and in districts with no remaining competition, the proposed acquisition would recreate the harmful effects of the criminal bid-rigging conspiracy.

For all of these reasons, plaintiff concludes that the proposed transaction is likely to lessen competition substantially in the sale of school milk in South Central Kentucky, and result in increased prices and/or reduced quality and services, all in violation of Section 7 of the Clayton Act.

### *III. Explanation of the Proposed Final Judgment*

The proposed Final Judgment would preserve existing competition in the sale of school milk in South Central Kentucky. It requires the divestiture of all of the Southern Belle Dairy operation. This relief maintains the level of competition that existed premerger and ensures that the affected markets will suffer no reduction in competition as a result of the merger, and the South Central Kentucky School Districts will continue to have alternatives to Suiza/Flav-O-Rich in purchasing school milk.

Unless plaintiff grants an extension of time, the divestiture must be completed within six (6) months after the filing of the Complaint in this matter or within five (5) business days after notice of entry of this Final Judgment by the Court, whichever is later. The proposed Final Judgment also requires that, until the divestiture mandated by the Final Judgment has been accomplished, Suiza and Broughton shall take all steps necessary to maintain and operate the Southern Belle Dairy as an active competitor, such that the sale and marketing of its products shall be conducted separate from, and in competition with, all of Suiza's products; maintain sufficient management and staffing, and maintain the Southern Belle Dairy in operable condition at current capacity configurations.

The divestiture must be to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Unless plaintiff otherwise consents in writing, the divestiture shall include all the assets of the Southern Belle Dairy being divested, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will

be used as a viable, ongoing business. In addition, the purchaser must intend in good faith to continue the operations of the Southern Belle Dairy business that were in place prior to the filing of the Complaint, unless any significant change in the operations planned by a purchaser is accepted by the plaintiff in its sole discretion. This provision is intended to ensure that the business to be divested remains competitive with Suiza in South Central Kentucky.

If defendants fail to divest the Southern Belle Dairy within the time period specified in the Final Judgment, the Court, upon plaintiff's application, is to appoint a trustee nominated by plaintiff to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the Southern Belle Dairy, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which its is accomplished. After appointment, the trustee will file monthly reports with the plaintiff, defendants and the Court, setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The relief in the proposed Final Judgment is intended to remedy only the likely anticompetitive effects of Suiza's proposed acquisition of Broughton in South Central Kentucky. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or to bring actions, where appropriate, challenging other past or future activities of the defendants.

### *IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover



three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

#### V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modifications, interpretation or enforcement of the Final Judgment.

#### VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against the defendants. Plaintiff is satisfied, however, that the divestiture contained in the proposed Final Judgment will preserve competition in the sale of school milk in South Central

Kentucky as it was prior to the proposed acquisition, and that the proposed Final Judgment would achieve all the relief the government would have obtained through litigation, but merely avoids the time and expense of a trial.

#### VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider—

(1) The competition impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."<sup>1</sup> Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should

\* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States v. Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>2</sup>

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" <sup>3</sup>

The relief obtained in this case is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

<sup>2</sup> *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *BNS*, 858 F.2d at 463; *United States v. National Broadcasting Co.* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. See also *Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the reaches of the public interest") (citations omitted).

<sup>3</sup> *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), quoting *Gillette*, 406 F. Supp. at 716 (citations omitted); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

<sup>1</sup> 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in *U.S.C.C.A.N.* 6535, 6538.



**VIII. Determination Documents**

There are not determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated April 28, 1999.

Respectfully submitted,

James K. Foster,

*Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW; Suite 4000, Washington, DC 20530, (202) 307-0001.*

**Certificate of Service**

I, James K. Foster, hereby certify that, on April 28, 1999, I caused the foregoing document to be served on defendants Suiza Foods Corporation and Broughton Foods Company, by facsimile and first-class mail, postage prepaid, to:

Paul Denis, Esq.,

*Arnold & Porter, 555 12th Street, NW, Washington DC 20004-1202, Counsel for Suiza Foods Corporation.*

William Kolasky,

*Wilmer, Cutler, & Pickering, 2445 M Street, NW, Washington, DC 20037, Counsel for Broughton Foods Company.*

James K. Foster

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before June 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by June 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 1.

Signed at Washington, D.C. this 11th day of May, 1999.

**Richard McGahey,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 99-12378 Filed 5-14-99; 8:45 am]

BILLING CODE 4510-29-M

use of this provision. In addition, other approaches used by employers to benefit from the existence of surplus assets will be discussed.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before June 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by June 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 1.

Signed at Washington, DC this 11th day of May 1999.

**Richard McGahey,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 99-12379 Filed 5-14-99; 8:45 am]

BILLING CODE 4510-29-M

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****Working Group on the Benefit Implication Due to the Growth of a Contingent Workforce Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting**

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study what the benefit implications are due to the growth of a contingent workforce will hold an open public meeting on Tuesday, June 8, 1999, in Room N-3437 A-B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to take testimony on the federal legal framework on the subject.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****Working Group Exploring the Possibility of Using Surplus Pension Assets To Secure Retiree Health Benefits Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting**

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Tuesday, June 8, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to explore the possibility of using surplus pension assets to secure retiree health benefits.

The session will take place in Room N-3437 A-B U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1:00 p.m. to approximately 4:00 p.m., is for working group members to explore current accessibility of surplus assets in defined benefit pension plans with a particular emphasis on Internal Revenue Code Section 420 provisions and the historic

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****Working Group Studying Issues Surrounding the Trend in the Defined Benefit Plan Market With a Focus on Employer-Sponsored Hybrid Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting**

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Wednesday, June 9, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study issues surrounding trends in the defined benefit market with a focus on employer-sponsored hybrid plans.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon in Room N-3437