

Benacke represents that the fair market value of the Property was \$200,000, as of January 25, 1999.

4. The applicants propose a sale of the Property (i.e., the Sale) by the Plan to the Trustees for \$200,000, the Property's current fair market value. The applicants represent that the Sale is administratively feasible in that it will be a one-time transaction for cash in which the Plan will pay no fees or commissions. The applicants also represent that the Sale is in the best interest of the Plan since the Property is currently vacant and any future rental of the Property to unrelated parties will require substantial Plan expenditures for renovations. In addition, the applicants represent that the Sale is protective of the Plan since the Plan will receive cash for the Property which the Plan can invest in assets appropriate for the Plan's sole participant.

5. In summary, the applicant represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(a) 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;

(b) The Trustees will purchase the Property from the Plan for the greater of \$200,000 or the fair market value of the Property as of the date of the transaction as determined by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash; and

(d) The Plan will pay no fees or commissions in connection with the Sale.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Motta of the Department, telephone (202) 219-8883 (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 of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section

401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and 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 22nd day of June 1999.

**Ivan Strasfeld,**

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

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## **DEPARTMENT OF LABOR**

### **Pension and Welfare Benefits Administration**

**[Prohibited Transaction Exemption 99-23; Exemption Application No. D-10021, et al.]**

### **Grant of Individual Exemptions; First Security Corporation (FSC), 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.

### **First Security Corporation (FSC), Located in Salt Lake City, UT**

[Prohibited Transaction Exemption 99-23; Exemption Application No. D-10021]

### **Exemption**

#### **Section I. Exemption for the IN-KIND Transfer of Assets**

The restrictions of section 406(a) and section 406(b) 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 (F) shall not apply to the in-kind transfers, that occurred on December 28, 1994, to any open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the Investment Company Act) to which FSC or any of its affiliates (collectively, First Security) serves as investment adviser and/or may provide other services, of the assets of various employee benefit plans (the Plan or Plans) that are held in certain collective investment funds (the CIF or CIFs) maintained by First Security, in exchange for shares of such Funds, provided that the following conditions were met:

(a) A fiduciary (the Second Fiduciary) which was acting on behalf of each affected Plan and which was independent of and unrelated to First Security, as defined in paragraph (g) of Section II below, received advance written notice of the in-kind transfer of assets of the CIFs in exchange for shares of the Funds, a full and detailed written disclosure of information concerning any such Fund including, but not limited to—

(1) A current prospectus for each of the Funds in which such Plan considered investing;

(2) A statement describing the fees for investment management, investment advisory, or other similar services, any fees for secondary services (Secondary Services), as defined in paragraph (h) of Section II below, and all other fees charged to or paid by the Plan and by the Funds to First Security, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why First Security considered such investment to be appropriate for the Plan;

(4) A statement describing whether there were any limitations applicable to First Security with respect to which assets of a Plan may be invested in the Funds, and, if so, the nature of such limitations; and

(5) When available, upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption.

(b) On the basis of the information described above in paragraph (a) of this Section I, the Second Fiduciary authorized in writing—

(1) The investment of assets of the Plans in shares of the Fund, in connection with the transactions set forth in Section I;

(2) The investment portfolios of the Funds in which the assets of the Plans were invested; and

(3) The fees received by First Security in connection with its services to the Funds. Such authorization by the

Second Fiduciary was consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) All transferred assets were securities for which market quotations were readily available, or cash.

(d) No sales commissions or redemption fees, including fees that are payable pursuant to Rule 12b-1 of the Investment Company Act, were paid by the Plans in connection with the in-kind transfers of the assets of the CIFs in exchange for shares of the Funds.

(e) Neither First Security nor its affiliates, including any officers or directors, would be permitted to purchase from or sell to any of the Plans shares of any of the Funds.

(f) The Plans were not sponsored or maintained by First Security.

(g) The transferred assets in exchange for shares of such Funds constituted the Plan's *pro rata* portion of all assets that were held by the CIFs prior to the transfer. A Plan not electing to invest in the Fund received a cash payment representing a *pro rata* portion of the assets of the terminating CIF before the final liquidation took place.

(h) The CIFs received shares of the Funds that had a total net asset value equal to the value of the transferred assets of the CIFs exchanged for such shares on the date of transfer.

(i) The current market value of the assets of the CIFs transferred in-kind in exchange for shares of the Funds was determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a-7(b) (Rule 17a-7) under the Investment Company Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established pursuant to Rule 17a-7 for the valuation of such assets. Such procedures required that all securities for which a current market price could not be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ were to be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of First Security.

(j) Not later than 30 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, First Security sent by

regular mail to the Second Fiduciary, which was acting on behalf of each affected Plan and which was independent of and unrelated to First Security, as defined in paragraph (g) of Section II below, a written confirmation that contained the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4) under the Investment Company Act;

(2) The current market price, as of the date of the transfer, of each such security involved in the purchase of Fund shares; and

(3) The identity of each pricing service or market maker consulted in determining the value of such assets.

(k) Not later than 90 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, First Security sent by regular mail to the Second Fiduciary, which was acting on behalf of each affected Plan and which was independent of and unrelated to First Security, as defined in paragraph (g) of Section II below, a written confirmation that contained the following information:

(1) The number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) The number of shares in the Funds that were held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(l) As to each individual Plan, the combined total of all fees received by First Security for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans hold shares acquired in connection with an in-kind transfer transaction, was not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(m) On an ongoing basis, First Security has provided and will continue to provide a Plan investing in a Fund—

(1) At least annually with a copy of an updated prospectus of such Fund; and

(2) At least annually with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to First Security, upon the request of such Second Fiduciary.

(n) All dealings between the Plans and any of the Funds have been and will remain on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(o) First Security has maintained and will maintain for a period of 6 years the records necessary to enable the persons, as described below in paragraph (p)(1) of this Section I, 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 First Security, the records are lost or destroyed prior to the end of the 6 year period; and

(2) No party in interest, other than First Security, 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 below by paragraph (p) of this Section I.

(p)(1) Except as provided in paragraph (p)(2) of this Section I and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (o) of Section II above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (p)(1)(B) and (p)(1)(C) of this Section I shall be authorized to examine trade secrets of First Security, or commercial or financial information which is privileged or confidential.

## Section II. Definitions

For purposes of this exemption,

(a) The term “First Security” means FSC and any affiliate of FSC, as defined in paragraph (b) of this Section II.

(b) An “affiliate” of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term “Fund,” “Funds” or “Affiliated Funds” means any open-end management investment company or companies registered under the Investment Company Act for which First Security serves as investment adviser and/or provides any Secondary Service as approved by such Funds. As noted in the Preamble, the Funds are also referred to as the “Affiliated Funds” to distinguish them from certain third party funds for which First Security and its affiliates provide subadministrative services and which are not involved in conversion transactions that are described herein.

(e) The term “net asset value” means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund’s prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term “relative” means a “relative” as that term is defined in section 3(15) of the Act (or a “member of the family” as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term “Second Fiduciary” means a fiduciary of a plan who is independent of and unrelated to First Security. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to First Security if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with First Security;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of First Security (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with the transactions described in this proposed exemption.

If an officer, director, partner, or employee of First Security (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan’s investment manager/adviser or (B) the approval of any purchase or sale by the Plan of shares of the Funds, in connection with the transactions described in Section I, then paragraph (g)(2) of this Section II, shall not apply.

(h) The term “Secondary Service” means a service, other than an investment management, investment advisory, or similar service, which is provided by First Security to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

**EFFECTIVE DATE:** This exemption is effective as of December 28, 1994.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on April 22, 1999 at 64 FR 19808.

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

**San Diego Electrical Pension Trust (the Pension Plan); and San Diego Joint Apprenticeship and Training Trust (the Training Plan; collectively, the Plans), Located in San Diego, California**

[Prohibited Transaction Exemption 99-24; Exemption Application Nos. D-10581 and L-10582]

## Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed purchase by the Training Plan from the Pension Plan of a minority interest (the Minority Interest) in certain improved real property jointly owned by the Plans, provided that the following conditions are satisfied:

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

(2) The terms and conditions of the transaction are not less favorable to either Plan than those each could obtain in a comparable arm’s length transaction with an unrelated party;

(3) The Training Plan pays no more, and the Pension Plan receives no less, than the fair market value of the Minority Interest, as of the date of the transaction, as determined by a qualified, independent appraiser;

(4) Neither the Pension Plan nor the Training Plan pays any commissions or fees in connection with the transaction;

(5) The trustees of the Plans (other than their common trustees), the Pension Plan’s investment manager, and

a qualified, independent fiduciary that has been retained to represent the Training Plan, have reviewed the terms and conditions of the transaction and determined that such terms and conditions are in the best interests of, and appropriate for, their respective Plans; and

(6) The independent fiduciary for the Training Plan monitors the proposed transaction and takes whatever actions necessary to safeguard the interests of the Training Plan.

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 April 22, 1999 at 64 FR 19813.

#### Written Comments

The Department received no written comments or requests for a public hearing with respect to the notice of proposed exemption (the Notice). However, in a letter dated April 19, 1999, the Department was informed that Washington Capital Management (WCM), an investment management firm located in San Diego, California, has purchased the business of AMRESKO Advisors, Inc. (AMRESKO) and succeeded to all of AMRESKO's rights and obligations under its client contracts. Like AMRESKO, WCM is a registered investment adviser and "qualified professional asset manager", as defined in Prohibited Transaction Class Exemption 84-14 (49 FR 9494, March 13, 1984). Therefore, all duties and responsibilities of AMRESKO as the independent fiduciary for the Training Plan, which are described in the Summary of Facts and Representations in the Notice, shall now apply to WCM.

Accordingly, based upon the information contained in the entire record, the Department has determined to grant the proposed exemption.

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

**Daniel N. Cunningham IRA (the Cunningham IRA); Sidney B. Cox IRA (the Cox IRA) (collectively, the IRAs), Located in Fresno, California**

[Prohibited Transaction Exemption 99-25; Exemption Application Numbers: D-10723 and D-10724]

#### Exemption

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 purchase (the Purchase) by each

IRA<sup>1</sup> of certain shares of Clovis Community Bank common stock (the Stock) from Mr. Daniel N. Cunningham and Mr. Sidney B. Cox (the Account Holders), disqualified persons with respect to the IRAs, provided that the following conditions are met:

(a) The Purchase of the Stock by each IRA is a one-time transaction for cash;

(b) Each IRA purchases the Stock for a price not exceeding the fair market value of the Stock at the time of each Purchase;

(c) The terms and conditions of each Purchase are at least as favorable as those available in an arm's length transaction with an unrelated third party;

(d) Each IRA does not pay any commissions or other expenses in connection with each Purchase;

(e) The IRA assets invested in the Stock do not exceed 25% of the total assets of each IRA at the time of the transaction; and

(f) Each IRA, at all times, will hold less than one percent (1%) of the outstanding shares of the Stock.

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 Thursday, May 13, 1999 at 64 FR 25924 (the Prior Notice).

*Correction:* The Prior Notice was published with an effective date. Because the applicants represent that each Purchase will take place only after the grant of this exemption, the effective date has been removed.

**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

<sup>1</sup> Because each IRA has only one participant, there is no jurisdiction under 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

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, D.C., this 22nd day of June, 1999.

**Ivan Strasfeld,**

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

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#### 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, July 14, 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.