DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10781, et al.]

Proposed Exemptions; Journal Company, Inc. 401(k) Savings Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Journal Company, Inc. 401(k) Savings Plan (the Plan) Located in Trenton, New Jersey

[Application No. D–10781]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of 406(a) and 406(b)(1), 406(b)(2), and 406(b)(3) 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) of the Code, shall not apply to: (a) the receipt by certain affiliates and predecessors of Journal Register East, Inc. (JRE), by Boatmen's Trust Company (the Bank), and by certain individuals alleged in a complaint to have been or to be fiduciaries of the Plan (collectively, the Defendants) of releases signed by participants in the Plan, in which such participants waive their rights to sue in connection with the acquisition and retention in such participants' accounts in the Plan of interests in certain guaranteed investment contracts (GICs) issued by Confederation Life Insurance Company (CLI); and (b) the payment by the corporate Defendants of a settlement amount to be allocated to the accounts of participants in the Plan in exchange for release from liability obtained from such participants; provided that the following conditions are satisfied:

(a) The payment of the settlement amount is a one-time cash transaction;

(b) Each participant whose account in the Plan has an interest in the GICs decides whether, in exchange for the settlement amount, to waive his or her right to sue in connection with the acquisition and retention in such participant's account in the Plan of interests in such GICs; or to opt out of such settlement and retain all such rights and causes of action;

(c) Pursuant to the terms of the settlement, the account of each participant in the Plan who waives his or her right to sue receives an amount of the settlement proceeds in proportion to the interest each such account has in the GICs;

(d) Pursuant to the terms of the settlement, the corporate Defendants are responsible for paying the attorneys' fees to the law firm representing the plaintiffs (the Plaintiffs);

(e) A portion of the fees that would have been due and payable to the Plaintiffs' attorneys will be withheld from the settlement proceeds by JRE, an employer of employees covered by the Plan, and paid to the Plaintiffs' in cash based on each Plaintiff's share of the amount of the settlement proceeds allocated to all of the Plaintiffs;

(f) Notwithstanding the waiver by any participant of his or her right to sue, the Plan does not release any claims, demands, and/or causes of action which it may have in connection with the acquisition and retention in participants' accounts in the Plan of interests in the GICs;

(g) No expenses are incurred by the Plan as a result of the settlement;

(h) The Plaintiffs' attorneys and each participant who signs the release and waives his or her right to sue will monitor the payment of the settlement proceeds by the corporate Defendants and the allocation of the proper amounts into such participants' accounts in the Plan, in order to ensure compliance with the terms of the settlement agreement; and

(i) All terms and conditions of the transaction are no less favorable than those obtainable at arm's length with unrelated third parties.

Effective Date: The proposed exemption is effective upon the date that the Defendants enter into a settlement of the lawsuit with the Plaintiffs, as described below.

Summary of Facts and Representations

1. The applicant, JRE, is a corporation organized under the laws of the State of Delaware with its principal place of business in Trenton, New Jersey. JRE is the wholly-owned subsidiary of Journal Register Company (JRC). JRC is a publicly traded corporation engaged in the publishing business. In this regard, JRC owns and operates eighteen (18) daily newspapers and 118 non-daily publications throughout the United States.

2. In December of 1993, JRC acquired ownership of the Evening Call Publishing Company (Evening Call). At the time of the acquisition, Evening Call was the publisher of a newspaper in Woonsocket, Rhode Island, and the sponsor of the Evening Call Publishing Company Savings Plan (the Evening Call Plan).

Established in August 1985, the Evening Call Plan was a defined contribution plan in which individual accounts were established and maintained for the benefit of eligible participants. Such accounts consisted of voluntary contributions deducted from participants' wages on a pre-tax or post-tax basis with matching contributions from Evening Call. Certain employees of Evening Call served as trustees and fiduciaries of the Evening Call Plan. Either Evening Call served as plan administrator or delegated that responsibility to various individuals who held the position as publisher of the newspaper.

It is represented that the plan administrator selected CLI, as funding agent for the Evening Call Plan. At that time, CLI was a Canadian corporation doing business as an insurance company in the United States through branches in Michigan and Georgia. Further, it is represented that the plan administrator selected as investment options for the Evening Call Plan an equity fund and a guaranteed investment fund, both of which were managed by CLI. Participants in the Evening Call Plan could specify how the assets allocated to their individual accounts would be invested. In this regard, the Evening Call Plan provided that all or a portion of the assets in a participant's account could be directed into either or both investment options. The guaranteed investment fund consisted entirely of investments in one or more GICs issued by CLI.

It is represented that participants were informed that investments in the GICs, made between August 1, 1986, and July 31, 1988, were guaranteed a rate of return of 9.10% per annum, compounded through July 31, 1996. Under the terms and conditions of the GICs, participants who directed assets from their accounts in the Evening Call Plan into such GICs could not change investment options until the GICs matured in 1995 and 1996. Further, it is represented that the GICs were illiquid, and that there was no secondary market for such GICs.

3. The Journal Company, Inc. 401(k) Savings Plan (the Plan), which is the subject of this exemption, is the successor in interest to the Evening Call Plan. The Evening Call Plan was merged into the Plan in December 1993. In this regard, it is represented that the assets held by the Evening Call Plan in the form of the GICs were allocated to separate accounts for those participants in the Plan who formerly were participants in the Evening Call Plan.

JRE is the employer and sponsor of the Plan. Other participating employers in the Plan are all members of the same controlled group of corporations and include affiliates, divisions, or subsidiaries of JRE or JRC. The Plan is an individual account plan into which employees of such participating employers defer salary. It is represented that there were approximately 939 participants and beneficiaries in the Plan, as of March 31, 1999. As of June 30, 1999, the estimated fair market value of the assets in the Plan was $15,868,776.

The Bank, a Delaware corporation with principal offices in St. Louis, Missouri, served, for the period from April 1, 1994, until January 28, 1998, as trustee and administrator of the Plan. The current trustee of the Plan is Merrill Lynch Trust Co.

4. In 1994, CLI was placed in receivership. In this regard, on August 11, 1994, Canadian insurance regulatory authorities placed CLI into a liquidation and winding-up process. Further, on August 12, 1994, the insurance authorities of the State of Michigan commenced legal action to place the United States operations of CLI into rehabilitation; thereby freezing the investments in GICs held by the participants' individual accounts in the Plan. At that time, CLI proceeded to liquidate its assets under a plan of liquidation approved by the Circuit Court for the County of Ingham, Michigan. It is represented that on or about March 1997, of three (3) distribution options, the Plan selected the one which provided the most immediate payment to participants in the Plan. In April of 1997, CLI began making payments on behalf of the GICs.

It is represented that seventy-five (75) participants in the Plan had interests in the GICs in their accounts which had been frozen. In early June 1997, the Plan received notice of distribution from the estate of CLI on behalf of such participants' accounts. In July 1997, payments made by CLI were allocated to the accounts of such participants in the Plan. The application states that when the accounts were unfrozen, the participants received earnings from the CLI investment that were lower than would have been received pursuant to the terms of the GICs, if such terms had been honored by CLI.

5. On August 11, 1997, twenty-six (26) individuals filed suit in the United States District Court for the District of New Jersey against the Defendants. The Defendants listed in the complaint included the Bank, JRC, Evening Call, and Journal Register Newspaper's, Inc. (JRN), the former parent of Evening Call, and certain individuals alleged to be trustees and fiduciaries of the Evening Call Plan or members of the Board of Directors of JRC and its subsidiaries, JRN and Evening Call. Some of the individual Defendants are also participants in the Plan whose accounts now hold interests in the GICs.

All of the individual Plaintiffs were employees of Evening Call and are or were employees of JRE or its affiliates. All of the Plaintiffs are members of a single bargaining unit represented by Local 128 of the Woonsocket Newspaper Guild, AFL–CIO. The Plaintiffs were all participants in the Evening Call Plan and are participants whose accounts in the Plan hold interests in the GICs. Further, the accounts in the Plan of other participants, who are neither Plaintiffs nor Defendants, also hold interests in the GICs.

The Plaintiffs filed suit against the Defendants for breach of fiduciary duty. In this regard, the complaint alleged that the Defendants breached their fiduciary duties to the Plaintiffs by failing to exercise prudence in the selection of Plan investments, by failing to monitor the continued retention of the GICs in the Plan, by failing to disclose relevant information to the Plaintiffs with respect to the GICs on a timely basis, by failing to create and maintain a system through which participants could direct investments in their accounts consistent with section 404(c) of the Act, and by failing to adequately diversify Plan assets.

As relief, the complaint demands that the Defendants make whole the Plaintiffs' and other participants' individual accounts in the Plan from all losses and damages suffered as a result of the Defendants' breaches of fiduciary duties and violations of the Act. In addition, Plaintiffs seek pre-judgment and post-judgment interest on amounts

awarded, reasonable attorneys fees, costs and expenses, and all other legal, equitable, or remedial relief, as deemed appropriate by the court.

As of August 1999, the Defendants had not filed a formal answer to the complaint. Notwithstanding the Plaintiffs' allegations, the Defendants maintain that there was no breach of fiduciary duty involved in the decision to select or retain the GICs in the Plan or in the handling of such GICs. Rather, the Defendants argue that losses, if any, that may have occurred as a result of the Plan's holding of the GICs were inherent risks associated with the higher returns available from such an investment, and that no compensable injury occurred. Further, JRE maintains that some of the individuals named as Defendants were not, in fact, fiduciaries with respect to the issues raised in the complaint.

The applicant also represents that the Bank contends it was not a fiduciary with respect to the issues raised in the complaint. In this regard, the applicant states that the Bank was the directed trustee of the Plan until January 28, 1998, and thereafter, was not currently a directed trustee or fiduciary of the Plan. Further, it is represented that the Bank is not now a party in interest with respect to the Plan.

6. The two (2) corporate Defendants, JRC and the Bank, have proposed a settlement of the litigation with the Plaintiffs. In this regard, within fifteen (15) days of the publication of a final exemption on the subject transactions, each of the corporate Defendants proposes to deliver to the trustee of the Plan a bank or certified check representing its respective share of the settlement amount. JRC will pay $253,125, plus interest, of the settlement amount; and the Bank will pay $50,000, plus interest, of the settlement amount. The entire settlement amount in the aggregate is equal to $303,125, plus interest. Of this settlement amount, $258,125, plus interest, is allocated for payments to the accounts of participants who accept the settlement terms; and, as discussed more fully below, $45,000, plus interest, is allocated for payment of the fees of the attorneys for the Plaintiffs.

It is represented that the settlement amount was reached based on the costs and risks of litigation and represents a compromise between the conflicting positions of the Plaintiffs and Defendants. None of the individual named Defendants who are also participants in the Plan will contribute any funds toward the settlement amount. The settlement is contingent on all named Plaintiffs executing releases. It is expected that all Plaintiffs will do so, on the recommendation of their counsel.

In the proposed settlement agreement, the Defendants will specifically deny all claims and contentions alleged by the Plaintiffs and will not admit any wrongdoing or liability. Pursuant to the terms of the settlement, an escrow account will be established into which a settlement payment in the amount of $258,125, plus interest, will be deposited.[1] Each of the seventy-five (75) Plan participants whose accounts have an interest in the GICs (including those who are not named as Plaintiffs, and those who are named as Defendants) will be informed of the settlement and its terms, and will be asked to execute and return a release of all actual or potential claims against the named Defendants, all of their affiliates, predecessors, officers, directors, and employees serving as fiduciaries, arising out of the acquisition and holding of interests in the GICs by individual participant accounts in the Plan.

Under the proposed settlement, each Plan participant whose account has an interest in the GICs must decide whether to accept the proposed settlement, or to opt out of it and retain whatever rights and causes of actions he or she may have. Each participant who chooses to accept the proposed settlement must release all claims arising from the matters involved in the litigation. It is represented that no fiduciary of the Plan will exercise discretion or provide advice to, or otherwise assist, any other participant with respect to the decision as to whether to accept the proposed settlement.

To the extent a participant agrees to release all actual or potential claims arising out of the acquisition and holding of interests in the GICs by his or her account in the Plan, it is represented that a proportional amount of the escrow shall be paid to the Plan (in proportion to the amount each such participant's account had invested in the GICs) and that such amount shall be allocated to such participant's account under the Plan. For example, if a participant's account held a one percent (1%) interest in the GICs, that participant's account would receive one percent (1%) of the $258,125, plus interest, out of the settlement proceeds. It is represented that named Defendants whose accounts in the Plan also hold interests in the GICs by reason of such Defendants' status as plan participants will receive the same treatment as all other non-plaintiff plan participants. If a participant who signed the release does not cash the distribution check or cannot be located at the time a distribution from the individual participant accounts would be appropriate under the Plan, standard provisions of the Plan will apply. Such provisions generally provide that the plan administrator will use the appropriate ''lost participant'' facilities to locate the participant, and if the participant cannot be located, the assets in the individual's account will be forfeited to the Plan, subject to restoration to the individual upon location of such missing participant.

Any participants who do not sign a release will not receive an allocation into their account from the settlement proceeds. As a result, the funds that otherwise would have been allocated to such participant's account from the settlement proceeds, had the participant signed the release, will be returned to the settling Defendants.

As described above, $258,125, plus interest, of the settlement amount is allocated for payment to the accounts of participants who accept the settlement terms; and, $45,000, plus interest, is allocated for payment to the law firm representing the Plaintiffs to cover attorneys' fees and expenses in connection with the law suit. In this regard, the law firm representing the Plaintiffs has agreed to waive a portion of such attorneys' fees. It is anticipated that of the sum of $45,000, plus interest, that otherwise would have been paid out of the settlement proceeds to the attorneys of the Plaintiffs, JRE will withhold approximately $16,000, plus interest, representing the portion of such attorneys' fees that will be waived. The portion of the Plaintiffs' attorneys' fees that is waived by the Plaintiffs' attorneys will be paid by JRE to the Plaintiffs in cash, based on each Plaintiffs' share of the amount of the settlement proceeds allocated to all of the Plaintiffs. In this regard, it is represented that it is an accepted practice to reimburse individuals, such as the Plaintiffs, for the time, effort, and financial resources they expended in

[1] The applicant anticipates treating the amounts paid under the settlement agreement, as restorative payments. In this regard, the applicant is relying on certain private letter rulings by the Internal Revenue Service that a restorative payment made to a defined contribution plan in response to claims of fiduciary breach made by participants: (a) Will not constitute a ''contribution'' or other payment subject to the provisions of either section 404 or section 4972 of the Code; (b) will not adversely affect the qualified status of such plan, pursuant to either section 401(a)(4) of section 415 of the Code; and (c) will not, when made to such plan, result in taxable income to the plan participants and beneficiaries. The Department, herein, is offering no opinion on whether the amounts received by the participants, pursuant to the terms of the settlement agreement, constitute restorative payments under the Code.

bringing the litigation and negotiating the settlement.

7. The applicant recognizes that the proposed settlement could be deemed to be an indirect exchange between a plan and a party in interest in violation of section 406 of the Act; and accordingly, has requested administrative relief.

8. It is represented that the proposed exemption is in the best interests of the Plan and its participants, because the accounts of participants which have interests in the GICs will receive an immediate and substantial portion of the return on such GICs. In this regard, when combined with amounts already received upon the liquidation of CLI, each participant's account in the Plan will receive more than 128% of the face value of their share of the GICs, including interest earned to maturity. When frozen on August 12, 1994, the GICs were valued at approximately $1,442,113. The latest maturity date of the Plan's GICs is represented to be July 31, 1996. If allowed to mature on schedule, the value would have grown to an estimated $1,497,646. In this regard, the difference (approximately $50,000) between the value on the date of the freeze and at maturity is attributable to the fact that a substantial number of the GICs began to reach their maturity dates not long after the freeze was imposed. In July 1997, the Plan received approximately $1,620,053 from CLI, which amount was distributed to the participants' accounts in the Plan. The settlement of the litigation in 1999 will add $303,125 to that amount, resulting in an amount (ignoring lost opportunity costs) that is equal to $425,532 above the value of the GICs at maturity.

With respect to compensating the Plaintiffs for any lost opportunity, while the funds were frozen, to invest in a mix of options heavily weighted in favor of equities, it is the Defendants' position that this would give rise to a claim for more than the actual loss. In this regard, although it is now known that the stock market performed well during the freeze period, the Defendants maintain: (a) That the Plaintiffs had demonstrated risk aversion by investing in the fixed-income option offered by the GICs; and (b) that once the GICs matured the Plaintiffs would have invested their accounts in a similar fixed-income option which would have earned far less than the equity-weighted mix, as suggested by their counsel.

Further, the applicant maintains that if the proposed exemption is not granted, the litigation may not be settled, and it is not possible to determine if the Plaintiffs would be successful in pursuing their claims to a judgment. Furthermore, it is possible that those participants who are not named Plaintiffs will never be able to obtain any recovery, because the litigation is not styled as a class action, and it is likely that the statute of limitations will run on the claims of the participants who are not Plaintiffs. Even if the Plaintiffs were to be successful in their suit, any recovery would be delayed substantially, and may prove to be a lesser amount than that offered as part of the proposed settlement.

9. The requested exemption is administratively feasible because it involves a one-time payment of cash to the participants' accounts in Plan in exchange for releases of liability from such participants. In this regard, it is represented that once the settlement amounts have been distributed, no further actions are contemplated under the settlement, and no further review or monitoring will be required. Further, no expenses will be incurred by the Plan as a result of the settlement. JRE will bear the costs of the exemption application and of notifying interested persons.

10. It is represented that the proposed exemption contains sufficient safeguards for the protection of the rights of the participants and beneficiaries of the Plan. In this regard, Plaintiffs' attorneys and each participant who signs the release and waives his or her right to sue will monitor the payment of the settlement proceeds by the corporate Defendants and the allocation of the proper amounts into such participants' accounts in the Plan, in order to ensure compliance with the terms of the settlement agreement. The Plaintiffs' attorney will receive a listing of the allocation for each of the Plaintiffs and will be able to confirm that the allocation has been properly performed. Further, accompanying the notification of settlement, each participant whose account holds an interest in the GICs will receive a statement that includes a calculation of the allocation of the settlement amount and a description of how such amount was calculated. Thereafter, regular statements from the trustee will reflect the allocation of the settlement amount into the account of the Plan participants who accept the settlement terms. It is further represented that the settlement provides that any breach of the settlement agreement can be remedied by the district court judge overseeing such litigation.

11. In summary, the applicant represents that the proposed transactions will meet the statutory criteria of section 408(a) of the Act and 4975(c)(2) of the Code because:

(a) The payment of the settlement amount will be a one-time cash transaction;

(b) Each participant whose account in the Plan has an interest in the GICs will decide whether to waive his or her right to sue the Defendants in exchange for the settlement amount; or to opt out of such settlement and retain all such rights and causes of action against the Defendants;

(c) Pursuant to the terms of the settlement, the account of each participant in the Plan who waives his or her right to sue the Defendants will receive an amount of the settlement proceeds in proportion to the interest each such account has in the GICs;

(d) Pursuant to the terms of the settlement, the corporate Defendants are responsible for paying the attorneys' fees of the law firm representing the Plaintiffs;

(e) A portion of the fees that would have been due and payable to the Plaintiffs' attorneys will be withheld from the settlement proceeds by JRE, the employer, and paid to the Plaintiffs in cash based on each Plaintiff's share of the amount of the settlement proceeds allocated to all of the Plaintiffs;

(f) Notwithstanding the waiver by any participant of his or her right to sue the Defendants, the Plan will not release any claims, demands, and/or causes of action which it may have against the Defendants;

(g) No expenses will be incurred by the Plan as a result of the settlement;

(h) The Plaintiffs attorneys and each participant of the Plan who signs the release and waives his or her right to sue the Defendants shall monitor the payment of the settlement proceeds by the corporate Defendants and the allocation of the proper amounts into such participants' accounts in the Plan, in order to ensure compliance with the terms of the settlement;

(i) All terms and conditions of the transaction will be no less favorable than those obtainable at arm's length with unrelated third parties; and

(j) As a result of the settlement, the participants whose accounts hold an interest in the GICs will receive an immediately and substantial portion of the investment return guaranteed by such GICs.

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the requested exemption are all participants and beneficiaries in the Plan who have an interest in the GICs. It is represented that within ten (10) days after the publication of the Notice of Proposed Exemption (the Notice) in

the **Federal Register**, JRE will notify interested persons by mailing first class to the last known mailing address of such persons a copy of the Notice and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2) to each participant and beneficiary in the Plan who has an interest in the GICs. All interested persons are invited to submit written comments or requests for a hearing on this proposed exemption to the Department. Comments and requests for a hearing must be received by the Department within 45 days of publication of the Notice in the **Federal Register**.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Sun Life Assurance Company of Canada (Sun Life), Located in Toronto, Ontario, Canada

[Application No. D–10814]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective March 22, 2000, to the (1) receipt of common stock (Common Shares) issued by Sun Life Financial Services of Canada, Inc., the holding company for Sun Life (the Holding Company), or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of any eligible policyholder (the Eligible Policyholder) of Sun Life which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, including any Eligible Policyholder which is a Plan established by Sun Life or an affiliate for their own employees (the Sun Life Plans), in exchange for such Eligible Policyholder's membership interest in Sun Life, in accordance with the terms of a plan of conversion (the Conversion Plan) adopted by Sun Life and implemented under the insurance laws of Canada and the State of Michigan.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Conversion Plan was implemented in accordance with procedural and substantive safeguards that were imposed under the insurance laws of Canada and the State of Michigan and was subject to review and/or approval in Canada by the Office of the Superintendent of Financial Institutions (OSFI) and the Minister of Finance (the Canadian Finance Minister) and, in the State of Michigan, by the Commissioner of Insurance (the Michigan Insurance Commissioner).

(b) OSFI, the Canadian Finance Minister and the Michigan

Insurance Commissioner reviewed the terms of the options that were provided to Eligible Policyholders of Sun Life as part of their separate reviews of the Conversion Plan. In this regard,

(1) OFSI (i) authorized the release of the Conversion Plan and all information to be sent to Eligible Policyholders; (ii) oversaw each step of the conversion process (the Conversion); and (iii) made a final recommendation to the Canadian Finance Minister on the Conversion Plan.

(2) The Canadian Finance Minister, in his sole discretion, could consider such factors as whether: (i) The Conversion Plan was fair and equitable to Eligible Policyholders; (ii) whether the Conversion Plan was in the best interests of the financial system in Canada; and (iii) sufficient steps had been taken to inform Eligible Policyholders of the Conversion Plan and of the special meeting (the Special Meeting) on the Conversion.

(3) The Michigan Insurance Commissioner made a determination that the Conversion Plan was (i) fair and equitable to all Eligible Policyholders and (ii) consistent with the requirements of Michigan law.

(4) Both the Canadian Finance Minister and the Michigan Insurance Commissioner concurred on the terms of the Conversion Plan.

(c) Each Eligible Policyholder had an opportunity to vote to approve the Conversion Plan after full written disclosure was given to the Eligible Policyholder by Sun Life.

(d) One or more independent fiduciaries of a Plan that was an Eligible Policyholder received Common Shares, Cash or Policy Credits pursuant to the terms of the Conversion Plan and neither Sun Life nor any of its affiliates exercised any discretion or provided ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c), with respect to such acquisition.

(e) After each Eligible Policyholder was allocated 75 Common Shares, additional consideration was allocated to an Eligible Policyholder who owned an eligible policy based on an actuarial formula that took into account such factors as the total cash value, the base premium and the duration of such eligible policy. The actuarial formula was reviewed by the Canadian Finance Minister and the Michigan Insurance Commissioner.

(f) With respect to a Sun Life Plan, where the consideration was in the form of Cash or Common Shares, an independent Plan fiduciary —

(1) Determined that the Conversion Plan was in the best interest of the Sun Life Plans and their participants and beneficiaries;

(2) Voted for the Conversion Plan on behalf of the Sun Life Plans;

(3) Received either Common Shares or Cash on behalf of a Sun Life Plan;

(4) Determined that the transactions did not violate the investment objectives and policies of the Sun Life Plans;

(5) Negotiated on behalf of the contributory Sun Life Plans and determined a reasonable allocation of proceeds between Sun Life and the participants in the Sun Life Plans; and

(6) Took (and will continue to take until the proposed exemption becomes final) all actions that were (or will be) necessary and appropriate to safeguard the interests of the Sun Life Plans.

(g) All Eligible Policyholders that were Plans participated in the transactions on the same basis within their class groupings as other Eligible Policyholders that were not Plans.

(h) No Eligible Policyholder paid any brokerage commissions or fees to Sun Life or its affiliates in connection with their receipt of Common Shares or with respect to the implementation of the initial public offering (the IPO) in which an Eligible Policyholder could elect to sell such Common Shares for cash.

(i) All of Sun Life's policyholder obligations will remain in force and will not be affected by the Conversion Plan.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Sun Life'' means Sun Life Assurance Company of Canada and any affiliate of Sun Life as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Sun Life includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under

[2] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

common control with Sun Life; (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.) or

(2) Any officer, director or partner in such person.

(c) The term ''Eligible Policyholder'' means a policyholder who—

(i) On January 27, 1998 (the Eligibility Day) was the owner of a voting policy;

(ii) Was the holder of a voting policy issued by Sun Life, if the policy was applied for by that person on or before the Eligibility Day and the application was received by Sun Life within a period specified by Sun Life in the Conversion Plan;

(iii) Was the holder of a voting policy, issued to the holder by Sun Life, that lapsed before Sun Life's Eligibility Day and was reinstated during the period beginning on the Eligibility Day and ending 90 days before the day on which Sun Life's Special Meeting was held; or

(iv) Was named by Sun Life in its Conversion Plan as an Eligible Policyholder under subsection 4(4) of the Conversion Regulations.

(d) The term ''Policy Credit'' means—

(1) For an individual or joint ordinary life insurance policy, an increase in the paid-up dividend additional cash value or dividend accumulation value;

(2) For a policy that is in force as extended term life insurance pursuant to a nonforfeiture provision of a life insurance policy, an extension of the coverage expiry date;

(3) For a policy which is a deferred annuity certificate, an increase in the deferred annuity payment; and

(5) For a policy which is an individual accumulation annuity, an increase in the account value.

Effective Date: If granted, this proposed exemption will be effective as of March 22, 2000.

Summary of Facts and Representations

1. Sun Life is an insurance company that is incorporated under the laws of Canada. Formerly, Sun Life was a mutual life insurance company that had no issued or outstanding capital stock. On March 22, 2000 (the Effective Date), Sun Life changed its business structure from a mutual life insurance company to a stock life insurance company through a process called ''demutualization'' (also referred to herein as the ''Conversion'').[3]

Sun Life is subject to the Insurance Companies Act of Canada (ICA). Its United States branch, which functions as a business unit through which the insurer engages in the business of insurance in the United States, is subject to the insurance laws of the State of Michigan. Sun Life maintains its headquarters at 150 King Street West, Toronto, Ontario, Canada M5H IJ9.

Sun Life, which has a Standard & Poor's rating of ''AA+'' and a Duff & Phelps rating of ''AAA,'' carries on its insurance business in Canada and internationally through its branches in the United States, the United Kingdom, Hong Kong, Bermuda and the Philippines. In addition, Sun Life carries on the business of life insurance, investment management, mutual fund management, banking, and the provision of trust services through various subsidiaries in Canada and internationally. The insurance business in which Sun Life and its international operations are engaged include the sale of various insurance products, which include individual, group life, disability and health insurance, as well as annuities and pensions.

Sun Life's principal place of business in the United States is One Sun Life Executive Park, Wellesley Hills, Massachusetts. The insurer uses Michigan as its port of entry in the United States. Consequently, the Michigan Department of Insurance (the Michigan Insurance Department) has the principal insurance regulatory authority over Sun Life in the United States.

2. Sun Life and its affiliates provide a variety of fiduciary and other services to pension and welfare plans that are covered under relevant provisions of the Act and/or the Code. These services include, but are not limited to, investment management and contract administrative services, such as the payment of benefits and the preparation of reports and schedules as required by law. By providing these services, Sun Life may be considered a party in interest with respect to such Plans under section 3(14)(A) and (B) of the Act or other related provisions of section 3(14).

3. Sun Life sponsors several Plans which received distributions in the Conversion that were allocated to Plan participants. These Plans are referred to collectively as ''the Sun Life Plans'' and are described below.

(a) *The Sun Life United States Agents' and Salaried Field Representatives' Retirement Plan (the Retirement Plan)* is a pension plan that has both defined benefit and defined contribution components. As of December 31, 1999, the defined benefit component of the Retirement Plan had $30,991,406 and 506 participants (336 retirees and 254 terminated vested participants). Also as of December 31, 1999, the defined contribution component of the Retirement Plan had $3,519,425 in total assets and 184 participants. A pension committee currently exercises investment discretion over the assets of this Plan.

(b) *The Sun Life Staff Life Insurance Plan (the Staff Life Insurance Plan)* is a welfare plan that is a term life plan. The Staff Life Insurance Plan has no assets other than policies of insurance that provide benefits to participants. As of December 31, 1999, the Staff Life Insurance Plan had 1,680 participants who received life insurance, 670 participants who received optional benefits and 125 retirees.

(c) *The Sun Life United States Staff Group Life Insurance Plan (the Group Life Insurance Plan)* is also a welfare plan that is a term life plan. The sole assets of the Group Life Insurance Plan consist of insurance policies that provide benefits to participants. As of December 31, 1999, the Group Life Insurance Plan had 237 participants.

The Decision To Demutualize

4. As a mutual insurer, Sun Life had no stockholders. However, certain of its policyholders were considered owners of the company. In this capacity, the policyholders had certain rights, including the right to elect directors of the company. These membership interests are referred to herein as ''Ownership Interests.''

In November 1998, a bill was introduced in the Canadian Parliament to amend the ICA to set forth the statutory rules that for the first time would allow the demutualization of Canadian mutual life insurance companies with assets in Canada of CDN$7.5 billion or more. When the bill was introduced, the Canadian Department of Finance reported that Canada's four largest mutual life insurance companies already had announced their intention to develop demutualization plans.

The Canadian Department of Finance released Mutual Company (Life Insurance) Conversion Regulations (the Conversion Regulations), which became effective on March 12, 1999 and which implemented the new legislation. On January 27, 1998, Sun Life issued a press release stating that its Board of Directors had requested Sun Life's management to develop a plan to convert Sun Life from a mutual life insurance company to a publicly-traded stock company.

[3] By a special act of the Canadian Parliament that was ratified in 1865, Sun Life originally had a corporate existence as a stock life insurance company. However, it was converted to a mutual life insurance company in 1962 and it remained that way until March 22, 2000, at which time it became a stock life insurance company once again.

5. The principal purpose of the Conversion was to create a corporate structure that would allow Sun Life to position itself for long-term growth and increased financial strength in ways that were not then available. Sun Life believed that as a result of the flexibility to be offered by the stock company structure and the access to capital markets, it would be in a position to enhance its market leadership, financial strength and strategic position. In addition, Sun Life believed that it would be able to pursue opportunities for growth, thereby providing greater protection to policyholders.

As a result of the Conversion, Sun Life became a stock insurer and a subsidiary of Sun Life Financial Services of Canada, Inc., a newly-formed holding company. In addition, the Conversion provided economic value to Eligible Policyholders in the form of Common Shares (which are traded on the Toronto, New York, London and Philippines stock exchanges),[4] Cash or Policy Credits, in return for their respective Ownership Interests in Sun Life.

6. Therefore, Sun Life requests a retroactive administrative exemption from the Department that would apply, effective March 22, 2000, to the receipt of Common Shares, Policy Credits or Cash by Eligible Policyholders which are Plans, including the Sun Life Plans identified above, in exchange for their mutual membership interests in Sun Life. To represent the interests of the Sun Life Plans with respect to the Conversion, Sun Life has retained U.S. Trust Company, N.A. (U.S. Trust) to serve as the independent Plan fiduciary.[5]

The proposed exemption includes a requirement that all Eligible Policyholders that were Plans participated in the transactions on the same basis within their class groupings as other Eligible Policyholders that were not Plans. Thus, Sun Life did not treat Plan policyholders any differently from non-Plan policyholders within their respective class groupings.

Regulatory Supervision

7. The various steps of the Conversion were subject to the approval of Sun Life's Board of Directors, OSFI, which had oversight responsibility for the entire conversion process, the Canadian Finance Minister, the Michigan Insurance Commissioner, and other regulatory authorities in Canada, the United Kingdom, Hong Kong, and the Philippines (collectively referred to as the Regulators). In pertinent part, the Conversion Regulations require that the conversion of a mutual life insurance company be implemented in accordance with a detailed proposal that sets forth the terms and means of effecting the Conversion.

In accordance with this requirement, Sun Life's Board of Directors adopted the Conversion Plan on September 28, 1999. A draft of the Conversion Plan was submitted to OSFI, as principal Regulator, along with certain specified information, including, among other things, opinions of Sun Life's actuary and an independent actuary and opinions of a valuation expert and a financial market expert.

After reviewing and commenting on the Conversion Plan, OSFI authorized Sun Life to send approximately one million Eligible Policyholders (of which less than one percent were Plans) notice of the Special Meeting to consider the Conversion Plan. Policyholder Information Statements were mailed to Eligible Policyholders on October 20, 1999. Eligible Policyholders voted in favor of the Conversion Plan at the Special Meeting which was convened on December 15, 1999 in Toronto, Ontario, Canada. Each Eligible Member was entitled to cast one vote. Because the Conversion Plan was approved by the Eligible Policyholders at the Special Meeting,[6] Sun Life's Board of Directors applied to the Canadian Finance Minister for approval of the Conversion Plan and the issuance of Letters Patent of Conversion in order to effect the Conversion. On March 22, 2000, the Canadian Finance Minister approved the Conversion Plan and issued the Letters Patent of Conversion.

It should be noted that Canadian law does not require that the Canadian Finance Minister make any particular findings in deciding whether to approve the Conversion Plan. Therefore, approval was entirely within the discretion of the Canadian Finance Minister. However, the Canadian Finance Minister, in deciding whether to approve the Conversion Plan, could consider such factors as: (a) Whether the Conversion Plan was fair and equitable to policyholders; (b) whether the Conversion Plan was in the best interest of the financial system in Canada; and (c) whether sufficient steps had been taken to inform policyholders of the Conversion Plan and of the special meeting on the Conversion.

8. Because Sun Life operates in the United States through its U.S. branch under the Michigan state of entry statute, the demutualization law of Michigan (the Michigan Demutualization Law) also applied to Sun Life's proposed Conversion. The Michigan Demutualization Law's requirements are similar to those of the ICA and the Conversion Regulations. Among other things, the statute requires that the Conversion Plan be submitted to the Michigan Insurance Commissioner prior to a vote by Sun Life's Eligible Policyholders. In addition, the Conversion Plan cannot become effective without the approval of the Michigan Insurance Commissioner following a public hearing, and such Conversion Plan cannot be amended without the prior approval of the Michigan Insurance Commissioner.

The Michigan Insurance Commissioner is authorized to retain, and did subsequently retain, independent legal and actuarial advisers to assist in reviewing the proposal. Under the Michigan Demutualization Law, the Michigan Insurance Commissioner must approve or disapprove the Conversion Plan within 90 days after its submission, and cannot approve it unless he or she finds the Conversion Plan ''does not prejudice the interests of its members, is fair and equitable, and is not inconsistent with the purpose and intent of the Michigan Demutualization Law.'' If approved, the Conversion would take effect as of the Effective Date specified in the Conversion Plan (*i.e.,* on March 22, 2000).

On November 22, 1999, a public hearing was held with respect to the Conversion Plan in Lansing, Michigan. On December 8, 1999, the Michigan

[4] Eligible Policyholders who received Common Shares were accorded the following rights after the Conversion: (a) The right to vote on matters submitted to such participating policyholders; (b) the right to participate in the distribution of Sun Life's profits; (c) the right to participate in the distribution of Conversion benefits; and (d) the right to participate in the distribution of any remaining surplus after satisfaction of all obligations in the event Sun Life is liquidated.

[5] Sun Life also requested that the exemption cover the acquisition and holding of Common Shares by the Sun Life Plans where such transactions were in violation of sections 406(a)(1)(E) and (a)(2) and 407(a)(2) of the Act. However, as discussed in Representation 16, U.S. Trust determined that there were no such violations because of the forms of consideration it had elected for the various Sun Life Plans. In particular, U.S. Trust elected Cash consideration for the Staff Life Insurance Plan and the Group Life Insurance Plan, and Common Shares for the Retirement Plan.

The Department notes that no opinion is being provided herein regarding whether the receipt of Common Shares by the Retirement Plan, once U.S. Trust made the election, was covered by the statutory exemption provided under section 408(e) of the Act.

[6] Such approval required the affirmative vote of not less than two-thirds of the votes cast by the Eligible Policyholders voting in person or by proxy.

Insurance Commissioner entered an order approving such Plan.

The Transaction

9. As noted above, the Conversion Plan provided for Sun Life to demutualize and convert to a stock life insurance company pursuant to section 237 *et seq.* of the ICA, the Conversion Regulations and the terms of the Conversion Plan. Specifically, in advance of the Conversion, Sun Life incorporated the Holding Company in Canada under the ICA as a new stock life insurance company. Specifically, in September 1999, Sun Life purchased shares of the Holding Company for CDN$10 million, as required under the ICA.

At the Effective Date of the Conversion, Section 2.2 of the Conversion Plan provides for the following transactions, which among others, took place as part of the Conversion:

- All policyholder rights with respect to, and interests in, Sun Life ceased;
- Sun Life issued its common shares to the Holding Company;
- The Holding Company issued its Common Shares to Eligible Policyholders who were issued such shares in exchange for their Ownership Interests and other Eligible Policyholders received Policy Credits or Cash in accordance with Article 4 of the Conversion Plan; and
- Sun Life surrendered to the Holding Company, and the Holding Company purchased for cancellation, for consideration equal to the initial issue price thereof, all of the Common Shares Sun Life held immediately before the Effective Date.

10. The applicant represents that the Conversion did not (and will not) affect the terms of any of Sun Life's policies. Rather, all policies will continue in force with Sun Life in accordance with their current terms notwithstanding the Conversion. In particular, the Conversion will not affect the level of premiums, coverage or benefits payable under any Policies, and dividends will continue to be declared with respect to participating policies at the discretion of Sun Life's Board of Directors. Accordingly, the Conversion will not adversely affect the contractual rights of any participating policyholder. However, all policyholder rights with respect to, and interests in, Sun Life as a mutual company ceased upon the Conversion.

In connection with the Conversion, Eligible Policyholders became entitled to their benefits (in whatever form) on the Effective Date (*i.e.,* March 22, 2000). Share certificates, which entitled Eligible Policyholders to Common Shares, were mailed prior to the Effective Date and became ''live'' certificates upon the closing of the Conversion. Policy Credits were also credited to other Eligible Policyholders on the Effective Date. On March 23, 2000, a public offering of the Holding Company's Common Shares (*i.e.,* the IPO) was closed, at which time the Holding Company paid Cash to Eligible Policyholders who were entitled to receive consideration in this form.

11. Specifically, Policy Credits were posted to each Eligible Policyholder in the United States whose participating policy was—

- An individual retirement annuity contract within the meaning of section 408(b) [of the Code] or a tax sheltered annuity contract within the meaning of section 403(b) of the Code, including for this purpose, custodial accounts under section 403(b)(7) and retirement income accounts under section 403(b)(9);
- An individual annuity contract that had been issued directly to the Plan participant pursuant to a Plan qualified under section 401(a) of the Code or pursuant to a Plan described in section 403(a) [of the Code] directly to the Plan participant; or
- An individual life insurance Policy that had been issued directly to the Plan participant pursuant to a Plan qualified under section 401(a) [of the Code];[7]

Notwithstanding the above, Common Shares were paid to policyholders of individual annuity contracts who were in pay status or whose policies had been terminated and the payment of Common Shares would not raise qualification issues under the Code. Similarly, Common Shares were paid in connection with individual retirement annuities covered under section 408(b) of the Code where the receipt of Common Shares would also not raise qualification issues under the Code.[8]

Finally, the Holding Company made a direct cash payment to each Eligible Policyholder who would be subject to a mandatory cash-out, if Sun Life knew that the policyholder's Participating Policy was subject to a lien or to a bankruptcy proceeding or to certain other title restrictions.[9]

12. Eligible Policyholders whose addresses are unknown to the Holding Company have been classified as ''Lost Policyholders.'' Lost Policyholders who have been issued Common Shares in connection with the Conversion will have such shares recorded in their names on the Holding Company's share register. Common Shares issued to a Lost Policyholder who do not take certain specified actions[10] within 35 months of the Effective Date will revert to the Holding Company together with any dividends paid on such shares. However, after such reversion, the Holding Company will be required to deliver the Common Shares and accumulated dividends (without interest)[11] to the Lost Policyholder if he or she subsequently claims them.

13. About 40 percent of Sun Life's Eligible Policyholders were Canadian residents, 15 percent were U.S. residents, and 45 percent were residents of other countries. While United States residents would comprise roughly 15 percent of the total number of Eligible Policyholders, such policyholders would receive approximately 25 percent of the total Common Shares distributed in Sun Life's Conversion.[12]

14. As required by the Conversion Regulations, the Conversion Plan was accompanied by an opinion prepared by the actuary for Sun Life and an opinion prepared by an independent actuary that the allocation of benefits to Eligible Policyholders in the Conversion was fair and equitable. Eligible Policyholders who were issued Common Shares in the Conversion could elect, by February 16, 2000, to have some or all of those shares (the Electing Shares) sold for cash in the

[7] In certain circumstances, Policy Credits could also be posted to Eligible Policyholders who did not reside in the United States or where the Board of Directors had determined that the receipt of Common Shares would be disadvantageous to the policyholders.

[8] If an Eligible Policyholder was in ''pay status,'' Sun Life states that the policyholder would have reached an age where he or she would be entitled to receive a distribution under his or her Sun Life policy. Under these circumstances, any distribution of Common Shares or Cash to such policyholder would not be considered premature and would not trigger adverse consequences, such as the disqualification of the Plan.

[9] Sun Life anticipated that fewer than 10 percent of the Eligible Policyholders would receive demutualization benefits in the form of Cash or Policy Credits and that at least 90 percent of the Eligible Policyholders would be issued common Shares.

[10] In order to cease being a Lost Policyholder, a policyholder must take one of the following actions: (a) Respond to a letter from Sun Life or the Holding Company requesting confirmation of his or her current address; (b) contact Sun Life or the Holding Company and confirm his or her current address; (c) inform Sun Life or the Holding Company of a change of address; or (d) otherwise confirm his or her current address to Sun Life or the Holding Company in a manner satisfactory to Sun Life or the Holding Company, as applicable.

[11] Sun Life represents that it does not propose to pay interest on accumulated dividends to Lost Policyholders because it is not the standard practice among insurance companies to do so, whether in the context of demutualizations, or more generally, of shareholders who are late in claiming dividends.

[12] The differences between the relative numbers of Eligible Policyholders residing in each country and the estimated percentages of total Common Shares to be distributed to such Eligible Policyholders who resided in each covered country were attributable to the fact that Conversion benefits would be allocated in part based on such factors as the type, duration, face amount and cash surrender value of an eligible policy, and not simply on a per capita basis.

IPO.[13] The purchasers of the Electing Shares were required to be either independent investment dealers or investment banks (the Underwriters) who had entered into underwriting agreements with Sun Life and the Holding Company with respect to the IPO. In regard to purchases of Electing Shares by the Holding Company, Plans that were covered under the provisions of the Act were not permitted to engage in such transactions as the transactions were considered prohibited transactions. No commissions or fees were charged to Eligible Policyholders seeking to sell Electing Shares.[14]

A total of 143,602,914 Common Shares were sold in the IPO.[15] The total number of Common Shares sold in the IPO was set by the Holding Company and the Underwriters prior to the IPO. The Holding Company also paid the Underwriters' fees that were associated with the Underwriters' purchase of the Common Shares from Eligible Policyholders [16] and the sale of the Common Shares in the IPO.[17]

Except for a very small number of Common Shares that were sold to fund mandatory direct Cash payments (as distinguished from Cash elections), and Policy Credits, all of the Common Shares sold in the IPO represented shares allocated to Eligible Policyholders who decided to redeem their shares for Cash. (All Eligible Policyholder Cash requests were honored, *i.e.,* no policyholder who elected Cash received Common Shares.)

On March 31, 2000, each Underwriter exercised an ''overallotment option'' granted to them in their respective Underwriting Agreements. The option permitted the Underwriters to purchase an additional 21,540,437 Common Shares from the Holding Company that were equal to 15 percent of the main offering. The sale of the Common Shares closed on April 4, 2000. As a result, Canadian Eligible Policyholders received 14,001,284 Common Shares, U.S. Eligible Policyholders received 5,385,109 Common Shares and International Eligible Policyholders received 2,154,044 Common Shares.

CIBC Mellon Trust Company, or its successors or assigns, is serving as the registrar and transfer agent (the Transfer Agent) for the Common Shares. The Transfer Agent will record the Common Shares on a share register on behalf of the Holding Company. The Transfer Agent also will be responsible for transmitting dividend payments from the Holding Company to the Holding Company shareholders.

15. In addition to allowing Eligible Policyholders to sell their Electing Shares in the IPO, Sun Life has established a service, effective March 23, 2000, which affords Eligible Policyholders, including U.S. Eligible Policyholders, who hold Common Shares in their Sun Life Share Accounts, the opportunity to sell such shares after the IPO. The sales are being executed through TD Waterhouse Investor Services (TD Waterhouse), an unrelated broker-dealer. All sales through TD Waterhouse are being treated as ordinary brokerage transactions that are made at prevailing market prices on the New York Stock Exchange and are subject to TD Waterhouse's normal commission rates. Sun Life represents that no time limit has been imposed on sales of Common Shares through TD Waterhouse. [18]

16. Following the Conversion, a participating account mechanism (the Participating Account) will be implemented by Sun Life, as provided for in the Conversion Plan. With respect to the participating policies in force at the date of the Conversion, the Participating Account will operate like a closed block. In other words, a set of assets for such policies (*e.g.,* bonds, mortgages, real estate, cash and cash equivalents), that are designed to meet Sun Life's contractual obligations and policyholder reasonable dividend expectations with respect to those policies, will be earmarked. Sun Life represents that the Participating Account will not alter, diminish, reduce, or in any way affect a policyholders' contractual rights. Although the details of the Participating Account have been developed by Sun Life in conjunction with OSFI and the Michigan Insurance Department, Sun Life's actuaries and the actuarial advisers to OSFI have not yet determined the specific dollar amount of assets that will be placed in the Participating Account. [19]

[13] In other words, if an Eligible Policyholder was a resident of the United States and was issued less than 1,000 Common Shares, the policyholder was required to make a cash election for all of such shares. However, if the Eligible Policyholder was issued 1,000 or more Common Shares in the IPO, the policyholder could make a cash election to sell any of such shares.

[14] The offering price for the Common Shares was CDN$12.50 per share and U.S.$8.50 per share. These were equivalent amounts using the exchange rate on the date of the pricing, which occurred on March 22, 2000. The Canadian dollar price applied to Common Shares that were sold in Canada and the U.S. dollar price applied to shares that were sold both in the United States and internationally.

[15] Of this total, Canadian Eligible Policyholders received 93,341,894 Common Shares, U.S. Eligible Policyholders received 35,900,729 Common Shares and International Eligible Policyholders received 14,360,291 Common Shares.

[16] Sun Life concluded (and it advised its Eligible Policyholders and the Internal Revenue Service) that its payment of the Underwriters' fee for Eligible Policyholders who sold their Common Shares in the IPO would be treated as a dividend for Canadian tax purposes. Sun Life further advised its Eligible Policyholders that Canadian non-resident withholding tax would apply to such deemed dividend, and that the rate would generally be 15 percent. The amount of the tax would be withheld from the proceeds of the sale of the Common Shares and would be remitted to the Canadian tax authorities. Finally, Sun Life advised its Eligible Policyholders that they could take the amount of the Canadian withholding tax into account as a credit or a deduction in determining their United States income tax.

[17] Consistent with sections 1 and 4(1)(e)(i) of the Conversion Regulations, the Conversion Plan generally provides that the policyholder eligible to participate in the distribution of Common Shares, Cash or Policy Credits resulting from the Conversion Plan is the ''owner'' of the policy, and that the ''owner'' of any policy shall generally be determined on the basis of the records of Sun Life. Sun Life further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, Sun Life represents that it is required under the foregoing provisions of Canadian law and the Conversion Plan to make distributions resulting from such Plan to the employer, or trustee as owner of the policy, except as provided below.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when Sun Life incurred the obligation to distribute Common Shares, Cash or Policy Credits, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[18] Sun Life initially proposed to offer a share selling service (the Share Selling Service) to recipients of Common Shares. Under the Share Selling Service, Eligible Policyholders would be permitted to sell their Common Shares at prevailing market prices without the payment of fees or commissions. Sun Life represents that it was unable to offer the Share Selling Service to Eligible Policyholders residing in the United States because the New York Stock Exchange and the Securities Exchange Commission would have required Sun Life to issue Common Shares to Eligible Policyholders in non-certificated form provided the Common Shares had been included in Depository Trust Company's Direct Registration System (the DRS). Because Sun Life's registrar and transfer agent did not have the equipment and systems necessary to access the DRS, Sun Life decided to issue Common Shares to Eligible Policyholders in certificated form. Nevertheless, for technical and logistical reasons, Sun Life declined to offer the Share Selling Service using physical share certificates.

[19] The Participating Account, which includes polices issued both before and after the Conversion, responds to concerns that a demutualization will adversely affect the value of dividend-paying policies since Sun Life's profits, following the Conversion will be shared with the shareholders. It is represented that traditionally, insurers have addressed the concern over the value of dividend-paying policies by segregating pre-demutualization participating policies in a ''closed block''

Continued

Under the ICA, participating policyholders also will have rights upon completion of the Conversion that are accorded to participating policyholders of a stock life insurance company in Canada. Such rights include the right to elect at least one-third of the Sun Life's Directors as well as the right to any dividends that are declared.

17. As noted above, in the case of the Sun Life Plans, U.S. Trust is representing their interests and it has acknowledged and accepted the duties, responsibilities and liabilities required of an independent fiduciary. In this regard, U.S. Trust represents that it is an affiliate of United States Trust Company of New York (USTC). USTC was founded in New York in 1853 and is subject to regulation as a trust company by the State of New York. USTC is the principal subsidiary of U.S. Trust Corporation, a member of the Federal Reserve System and the Federal Deposit Insurance Corporation, and an entity having approximately $4.1 billion in assets as of December 31, 1999. USTC has over $75 billion in assets under management, a significant percentage of which consists of the assets of Plans that are covered by the Act and/or Code.

In addition, U.S. Trust has served as an independent fiduciary for numerous Plans that acquire or hold employer securities and it has managed, at various times, over $16 billion in employer securities that have been held by such Plans. In managing these investments, U.S. Trust has acted as a fiduciary in a number of transactions involving the acquisition, retention and disposition of employer securities.

U.S. Trust is independent of Sun Life and its affiliates. In this respect, it has no business, ownership or control relationship, nor is it affiliated with Sun Life and its affiliates. In addition, U.S. Trust derives less than one percent of its annual income from Sun Life and its affiliates.

U.S. Trust states that it was retained by Sun Life to consider, on behalf of the Sun Life Plans, whether to approve the Conversion Plan and, if approved, whether to receive consideration in the form of Common Shares or Cash. Specifically, U.S. Trust determined, pursuant to its engagement letter with Sun Life and subject to satisfaction of certain contingencies, that the consummation of the transactions would be prudent for each of the Sun Life Plans. In particular, U.S. Trust: (a) Determined that the Conversion Plan was in the best interest of the Sun Life Plans and their participants and beneficiaries; (b) voted for the Conversion Plan on behalf of the Sun Life Plans; (c) received either Common Shares or Cash on behalf of a Sun Life Plans; (d) determined that the transactions would not violate the investment objectives and policies of the Sun Life Plans; (e) negotiated a reasonable allocation of proceeds between Sun Life and the participants in the Sun Life Plans based upon employee and employer contributions made to such Sun Life Plans over a three year period; and (f) took (and will continue to take until the proposed exemption becomes final) all actions that were (or will be) necessary and appropriate to safeguard the interests of the Sun Life Plans.

U.S. Trust states that the aforementioned determinations were based upon its analyses of Sun Life's Conversion Plan and financial performance. In addition, U.S. Trust explains that its determinations were based upon the assumption that the exemption would be granted. Further, U.S. Trust notes that the consummation of the transactions was conditioned upon approval by Eligible Policyholders of the Conversion Plan, including the receipt of Canadian and Michigan regulatory approvals, and other conditions set forth in the Conversion Plan.

As a general matter, U.S. Trust states that its determinations regarding the proposed transactions were based upon its economic analysis of the consideration to be acquired by the Sun Life Plans. In this connection, U.S. Trust represents that it performed a comprehensive analysis of Sun Life in the context of prevailing market conditions and concluded that the proposed aggregate consideration that would be received by the Sun Life Plans was fair to such Plans from financial point of view. In forming its conclusion, U.S. Trust asserts that it reviewed various documents, including but not limited to, (a) Sun Life's annual reports and related financial information; (b) a Statement of Actuarial Opinion regarding the methodology used to allocate the demutualization benefits among the policyholders; (c) opinions of the appointed actuary; and (d) ratings of Sun Life by Standard & Poor's and Duff & Phelps. In addition, U.S. Trust represents that it hired independent legal counsel and reviewed all relevant information regarding the Plans and public documents provided by the Michigan Insurance Commissioner.

On December 15, 1999, U.S. Trust states that its Special Fiduciary Committee (the Special Fiduciary Committee), including representatives from corporate counsel and other bank management, met and determined that the transactions were in the best interests of the participants and beneficiaries of the Sun Life Plans. Then, on February 9, 2000, the Special Fiduciary Committee convened again and determined to elect to receive compensation in the form of 139,787 Common Shares for the Retirement Plan, and to elect to receive Cash for the Staff Life Insurance Plan (*i.e.,* the cash equivalent of 53,144.5 shares) and the Group Life Insurance Plan (*i.e.* the cash equivalent of 34,573.5 shares).

Both the Staff Life Insurance Plan and the Group Life Insurance Plan provide for employee contributions.[20] Therefore, U.S. Trust represents that it asked Sun Life to describe whether and how participants in those Plans would be assured of enjoying benefits equal to that portion of the demutualization consideration allocated to each Plan that was attributable to past participant contributions.

With respect to the Staff Life Insurance Plan under which participants make contributions solely to pay for optional benefits and Sun Life makes contributions for basic benefits, U.S. Trust explains that the proportion of total premiums paid by participants was 38 percent. Therefore, Sun Life proposed to allocate 38 percent of the demutualization proceeds to pay for optional participant benefits under the Staff Life Insurance Plan. According to U.S. Trust, Sun Life expects that the demutualization proceeds would be sufficient to pay for a 1.5 year ''premium holiday'' for participants

containing assets sufficient to cover the liabilities associated with those policies in order to protect the policies from the demands of shareholders. In effect, experience and investment gains and losses associated with policies in the closed block will only affect the closed block. Thus, the block will be closed in two contexts—(a) no new policies can be added and (b) the block will be ''closed off'' from the rest of the insurer's business.

With respect to Sun Life's Participating Account which operates like the closed block, an appointed actuary, who reports to OSFI, will certify that the assets placed in the Participating Account are sufficient to cover the liabilities associated with the pre- and post-demutualization participating policies, including the reasonable dividend expectations of those policyholders. Sun Life is required to place additional assets in the Participating Account, if necessary, and may transfer amounts out of such account after five years only if the appointed actuary determines that the assets are more than sufficient to cover the liabilities of the participating policies.

[20] U.S. Trust did not address the allocation of Common Shares to the Retirement Plan in its independent fiduciary report. Sun Life represents that because the Retirement Plan has both a defined benefit and a defined contribution component, the Common Shares that were received as a result of the Conversion were pursuant to an investment in the defined benefit component. Therefore, the Common Shares are being held with the other assets of the Retirement Plan.

with respect to the optional benefit based on a sale of the Common Shares at the assumed IPO price and current premium costs.

Under the Group Life Insurance Plan, U.S. Trust notes that participants contributed 54 percent of the total premiums paid by this Plan until 1997, after which time the Plan became totally noncontributory. U.S. Trust points out that Sun Life proposed to increase the benefit levels of the current participants so that these participants would be able to share in the demutualization proceeds in a manner proportionate to their past contributions. In this regard, benefits for participants in the Group Life Insurance Plan would be enhanced by 54 percent of the Conversion consideration received, thereby representing the same ratio participant premium payments bore to the total premiums paid. Although Sun Life expected the demutualization proceeds would be sufficient to pay for two years of the benefit enhancement based on a sale of the Common Shares at the assumed IPO price and current premium costs,[21] U.S. Trust explains that the Group ife Plan would remain noncontributory.

In evaluating Sun Life's proposed methods of providing benefits to participants equal to the portion of the demutualization consideration received by each Sun Life Plan that was attributable to participant contributions, U.S. Trust states that it took into account such factors as: (a) The practical impossibility of allocating benefits directly to the participants whose contributions contributed to the demutualization proceeds;[22] (b) the substantial overlap between the groups of participants making such contributions and the participants receiving benefits; (c) the use of an allocation method involving participant contributions over a period of years rather than a single year; and (d) the economic value to participants of the proposed ''premium holiday.'' Based upon these factors, U.S. Trust determined that the proposed method for allocating benefits to each Sun Life Plan was reasonable and fair to the respective Plan participants as a group.

18. In summary, it is represented that the transactions satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Conversion Plan, which was implemented pursuant to stringent procedural and substantive safeguards imposed under Canadian and Michigan law, will not require any ongoing supervision by the Department.

(b) One or more independent Plan fiduciaries, including U.S. Trust, which is representing the interests of the Sun Life Plans, had an opportunity to determine whether to vote to approve the Conversion Plan and was responsible for all such decisions.

(c) Eligible Policyholders that were Plans were allowed to acquire Common Shares, Cash or Policy Credits, in exchange for and in extinguishment of, their membership interests in Sun Life, and no Eligible Policyholder paid any brokerage commissions or fees to Sun Life or its affiliates in connection with their receipt of Common Shares or with respect to the sale of Electing Shares in the IPO.

(d) Neither Sun Life nor its affiliates exercised discretion with respect to voting on the Conversion Plan or with respect to an election made by any Eligible Policyholder which was a Plan, nor did Sun Life or its affiliates provide ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c) with respect to any election made by such Plan policyholder.

(e) The Conversion did not (and will not) reduce policy benefits, values or guarantees, or increase premiums, in any way, and dividend-paying policies will continue to receive dividends if and when declared.

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

IRA FBO Floyd A. Ross (the IRA), Located in Ukiah, California

[Application No. D–10871]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase by the IRA of certain closely held common stock (the Stock) from the Ross Family Trust (the Family Trust), a disqualified person with respect to the IRA,[23] provided that the following conditions are satisfied:

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

(b) The terms and conditions of the purchase are at least as favorable to the IRA as those available in a comparable arm's length transaction with an unrelated party;

(c) The IRA pays a purchase price that is no greater than the fair market value of the Stock at the time of the transaction, as established by a qualified, independent appraiser;

(d) The IRA pays no commissions nor other expenses in connection with the purchase; and

The fair market value of the Stock represents no more than 25 percent of the total assets of the IRA at the time of the transaction.

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described under section 408(a) of the Code. The IRA was established by Floyd A. Ross, who is the sole participant. As of June 30, 2000, the IRA had total assets of $373,222.91. The trustee of the IRA is the Capital Guardian Trust Co.

2. It is proposed that the IRA purchase shares of the Stock from the Family Trust, established October 23, 1985, with Mr. Ross and his wife as the grantors and co-trustees.[24] All of the community property of the grantors and their separate property as husband and wife have been conveyed to the Family Trust.

The Stock consists of shares of the Savings Bank of Mendocino County (the Bank), a state chartered bank headquartered in Ukiah, California. Mr. Ross is the Executive Vice President of the Bank. According to the applicant, the Bank was established in 1903, and a majority of the 100,000 shares outstanding of the Stock is held by a descendant of one of the Bank's founders, who is not related to Mr. Ross. There are a total of 265 registered shareholders of the Stock. The Family Trust holds 1,332 shares of the Stock. Mr. Ross does not own any shares of the Stock in his personal capacity. The Stock has paid quarterly dividends every year and has paid $4.50 per share each quarter of the current year.

3. The Stock has been appraised by F. D. Grothe, a qualified, independent

[21] In this proposed exemption, the Department is not commenting on or providing exemptive relief with respect to the allocation methodology utilized by U.S. Trust.

[22] According to U.S. Trust, both the Staff Life Insurance Plan and the Group Life Insurance Plan will bear the cost of allocating demutualization proceeds among participants based on actual contributions.

[23] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

[24] Section 4975(e)(2)(G) of the Code defines the term ''disqualified person'' to include a trust of which (or in which) 50 percent or more of the beneficial interest of such trust is owned, or held by, a fiduciary of a plan.

appraiser. Mr. Grothe is a Certified General Real Estate Appraiser licensed in the State of California and maintains his appraisal business in Lakeport, California. He also serves as the California Probate Referee for Lake and Mendocino Counties in Northern California, which encompass the areas served by the Bank. In an appraisal report, dated April 7, 2000, Mr. Grothe states that, in his duties as Probate Referee, he is required to appraise all assets, including closely held stock, in probate estate cases heard in the Superior Courts of the State of California for Lake and Mendocino Counties. In this capacity, he is required to value the Bank's Stock two to four times a year, upon the death of one of the Stock's shareholders. Thus, Mr. Grothe is familiar with the appropriate valuation methodologies for determining the fair market value of the Stock.

Mr. Grothe concluded that the fair market value of the Stock was $755.00 per share, as of April 7, 2000. He states that the Bank is nationally ranked among the top one percent of small banks. Mr. Grothe attached to his report a list of the last five sales of the Stock. He states that these sales are market-driven and are higher than the average book value of the Stock, which, according to the 1999 Annual Report, was $635.80 per share. He also states that the market for stocks in small, independent banks is driven by larger banks wanting to expand into certain areas. It has been Mr. Grothe's experience that most merger sales are at two to two and one-half times book value. Thus, in Mr. Grothe's opinion, the $775.00 per share market price could be very conservative, in the event of a merger or buyout.

4. Accordingly, the applicant represents that the Stock is an excellent investment opportunity for the IRA. Thus, it is proposed that 25 percent of the IRA's assets ($93,305.73) be used to purchase approximately 120 shares (assuming a value of $775.00 per share) of the 1332 shares of the Stock held by the Family Trust.[25] The Stock to be acquired by the IRA will represent less than one percent of the total outstanding shares of the Stock at the time of the transaction.

The IRA's purchase price will be the fair market value of the Stock at the time of the transaction, based upon an updated independent appraisal. The IRA will pay no commissions nor other expenses in connection with the purchase. The applicant represents that, although the Stock is closely held, there is a definite market for the Stock. Therefore, the applicant states that the proposed purchase of the Stock by the IRA will not adversely affect the liquidity needs of the IRA.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The purchase will be a one-time transaction for cash; (b) the terms and conditions of the purchase will be at least as favorable to the IRA as those available in a comparable arm's length transaction with an unrelated party; (c) the IRA will pay a purchase price that is no greater than the fair market value of the Stock at the time of the transaction, as established by a qualified, independent appraiser; (d) the IRA will pay no commissions nor other expenses in connection with the purchase; and (e) the fair market value of the Stock will represent no more than 25 percent of the total assets of the IRA at the time of the transaction.

Notice to Interested Persons

Because Mr. Ross is the sole participant in his IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Platt Orthopedics Retirement Plan (the Plan), Located in Rancho Mirage, California

[Application No. D–10875]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain improved real property (the Property) to Morris and Arthur Platt, disqualified persons with respect to the Plan,[26] provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other expenses relating to the sale; and (3) the Plan receives an amount equal to the average of two independent appraisals of the Property's fair market value, as of the date of the sale.

Summary of Facts and Representations

1. The Plan, which is a defined contribution profit sharing plan sponsored by Platt Orthopedics (the Employer), has three participants, Morris and Arthur Platt and Arthur Platt's wife. Morris and Arthur Platt, orthopedic surgeons, are the owners of the Employer and the trustees of the Plan. Their practice was formerly in the State of New York but was relocated to Rancho Mirage, California. The fair market value of the assets of the Plan was $762,832, as of December 31, 1998, the date of the Plan's most recently available financial statement.

2. The Property consists of a five-story commercial building on a 2,319 sq. ft. lot, located at 165 Orchard Street, Borough of Manhattan, New York, New York. The building is vacant and boarded up and in need of renovation. The adjacent lots are owned by persons unrelated to the Plan, the Employer, and the Platts.

3. The Property was acquired by the Plan from Orcho Realty, an unrelated party, in 1996, for a total purchase price of $435,000. Orcho Realty also financed the purchase of the Property, which the Plan now owns free and clear. The applicants represent that the following amounts were expended by the Plan at various times from September 3, 1996 to December 31, 1999 in connection with the purchase of the Property (mortgage and interest payments), plus expenses (maintenance, taxes, and insurance): $206,381.25 in 1996; $60,100 in 1997; $98,347 in 1998; and $134,023 in 1999. Thus, including the $435,000 purchase price, the Plan has made total expenditures of $498,851.25 with respect to the Property from 1996 to 1999. The applicants represent that the Property has not been leased to, nor used by, by anyone, including a disqualified person with respect to the Plan, at any time since its acquisition by

[25] See ERISA Advisory Opinion 2000–10A (July 27, 2000) for a recent discussion of the Department's views regarding co-investing by an IRA and certain disqualified persons in a limited partnership. The Department notes that no relief is being provided in this proposed exemption beyond the IRA's initial purchase of the Stock for any additional prohibited transactions that may occur as a result of co-investing by the IRA and the Family Trust in shares of the Stock.

[26] Because Morris and Arthur Platt, who are owner-employees, and Arthur Platt's wife are the only participants in the Plan, the Plan is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

the Plan. The Property has produced no income for the Plan.

4. The applicants have obtained two appraisals of the Property by qualified, independent appraisers, both certified in the State of New York. The first appraiser is Eric A. Sterling, IFA, ASA, GAA, of Sterling Appraisals Associates, Inc. (the Sterling Appraisal), located in Bronx, New York. The Sterling Appraisal, relying on the Direct Sales Comparison Approach to valuation, estimated that the fair market value of the Property was $460,000, as of September 23, 1999. The second appraiser is John M. Watch, of JW Consulting (the Watch Appraisal), located in Flushing, New York. The Watch Appraisal utilized the Market Approach and Cost Approach and concluded that the fair market value of the Property was $525,000, as of September 24, 1999.

The Sterling Appraisal examined four recent sales of comparable properties, while the Watch Appraisal examined five recent sales of comparable properties, in the local real estate area, in making a determination of the fair market value of the Property. The zoning of the Property is ''C6–1, Commercial.'' Both appraisals noted that the improvements are in poor condition and that the Property needs to be restored before it can attain its highest and best use, which likely would be a ''Mixed Use'' apartment building with retail space on the ground level.

5. The applicants represent that they have attempted to sell the Property on the open market but were advised by a broker that, because the Property needs extensive renovation, it would be difficult to sell at all, except for a bargain price. The applicants propose, therefore, to purchase the Property from the Plan for an amount in cash equal to the fair market value of the Property, as of the date of the sale. This amount would be based upon an average of the two independent appraisals referred to in Item 4, above, because of a significant disparity in the valuations. This amount was $492,500, as of September, 1999. The appraisals will be updated at the time of the transaction. The Plan would pay no commissions nor other expenses relating to the sale.

The applicants represent that the exemption will be in the best interests of the Plan because the sale will allow the Plan to divest itself of a non-income producing, illiquid asset. In addition, the sale proceeds will be reinvested in other assets that will increase diversification of the Plan's assets, achieve a higher overall rate of return for the Plan's assets, and facilitate the payment of retirement benefits.

6. In summary, the applicants represent that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code for the following reasons: (a) The sale will be a one-time transaction for cash; (b) the Plan will pay no commissions nor other expenses relating to the sale; (c) the Plan will receive an amount equal to the average of two independent appraisals of the Property's fair market value, as of the date of the sale; and (d) the sale will allow the Plan to reinvest the sale proceeds in other assets that will achieve greater diversification and a higher overall rate of return for the Plan's assets.

Notice to Interested Persons

Because Morris and Arthur Platt, and Arthur Platt's wife, are the only participants in the Plan to be affected by the subject transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of August, 2000.

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 2000–45; Exemption Application Nos. D–10809 and D–10865]

Grant of Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 99–15, Involving Salomon Smith Barney Inc. (Salomon Smith Barney), Located in New York, NY

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

ACTION: Grant of individual exemption to modify and replace PTE 99–15.

SUMMARY: This document contains a final exemption (the Final Exemption) by the Department of Labor (the Department) which amends and replaces PTE 99–15 (64 FR 1648, April 5, 1999), an exemption granted to Salomon Smith Barney. PTE 99–15 relates to the operation of the TRAK Personalized Investment Advisory Service product (the TRAK Program) and the Trust for Consulting Group Capital Markets Funds (the Trust). These transactions are described in a notice of pendency (the Proposed