Issued: May 10, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–9573 Filed 5–12–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–539]

In the Matter of Certain Tadalafil or Any Salt or Solvate Thereof, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 8, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Lilly ICOS LLC of Wilmington, Delaware. A letter supplementing the complaint was filed on April 27, 2005. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tadalafil or any salt or solvate thereof, and products containing same, by reason of infringement of claims 1–4, 6–8, and 12–13 of U.S. Patent No. 5,859,006. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplemental letter, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2004).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 9, 2005, *Ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain tadalafil or any salt or solvate thereof, or products containing same, by reason of infringement of one or more of claims 1–4, 6–8, and 12–13 of U.S. Patent No. 5,859,006, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Lilly ICOS LLC, 1209 Orange Street, Wilmington, DE 19801.

(b) The respondents are the following companies alleged to be in violation of section 337 and upon which the complaint is to be served:

Pharmacy4u.us, Attn: Dave Fox, 166 W. 44th Street, New York, NY 10282, Santovittorio Holdings Ltd, d/b/a Inhousepharmacy.co.uk.

Apartado 6–6305 El Dorado, El Dorado, Panama, Expressgeneric, 722 8th Cross, 11th Main H.A.L. 2nd Stage, Bangalore, Karnataka 560008 IN.

India, Stop4rx, Box 1246 Port-au-Prince, Port-au-Prince, FE 123182, Haiti.

Cutprice Pills, c/o Domains By Proxy, Inc., 15111 N. Hayden Road, Suite 160, PMB353, Scottsdale, AZ 85260.

Allpills.us, Attn: Gerard Gibson, Madisson 12, Beverly Hills, CA 90210.

Generic Cialis Pharmacy, Del Parque Central 200 N, Managua, Nicaragua, Rx Mex-Com, S.A. de C.V., Avenida Lazaro Cardenas #4207, Colonia Las Brisas, Monterrey 64780, Mexico.

Budget Medicines Pty Ltd., 2 Brierwood Place, French's Forest, Sydney, 2068, Australia.

www.nudewfds.info, 838 Camp Street, Apartment C, New Orleans, LA 70130.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: May 9, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–9574 Filed 5–12–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11249, et al.]

Proposed Exemptions; BNP Paribas S.A., (BNP Paribas) and Its French Affiliates (the French Affiliates)

AGENCY: Employee Benefits Security 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 requests 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 requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ___, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffitt.betty@dol.gov",* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 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.

BNP Paribas S.A., (BNP Paribas) and Its French Affiliates (the French Affiliates) Located in Paris, France

[Application No. D–11249]

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).[1]

Section I. Covered Transactions

A. If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of a security between BNP Paribas, a bank established under the laws of France and any French Affiliate or branch of BNP Paribas which is a bank regulated by the Commission Bancaire (CB) or a broker-dealer holding a securities dealers license issued by the Comité des Etablissements de Crédit et des Enterprises d'Investissement (CECEI) or registered with the Autorité des Marchés Financiers (AMF) (each, a BNP Entity), and employee benefit plans (the Plans) with respect to which the BNP Entity is a party in interest, including options written by a Plan or the BNP Entity, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The BNP Entity customarily purchases and sells securities for its own account in the ordinary course of its business as a bank or broker-dealer, as the case may be;

(2) The terms of any transaction are at least as favorable to the Plan as those which the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the BNP Entity nor any of its affiliates has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the BNP Entity is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the BNP Entity shall not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

B. If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any extension of credit to a Plan by a BNP Entity to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The BNP Entity is not a fiduciary with respect to the Plan assets involved in the transaction, unless no interest or other consideration is received by the BNP Entity or any of its affiliates in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934, as amended (the 1934 Act), and any rules or regulations thereunder, if the 1934 Act, rules or regulations were applicable and is lawful under applicable foreign law.

C. If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) 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,

[1] 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.

shall not apply to the lending of securities that are assets of a Plan to a BNP Entity, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Neither the BNP Entity nor any of its affiliates has discretionary authority or control with respect to the investment of Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The Plan receives from the BNP Entity, either by physical delivery or by book entry in a securities depository located in the U.S., by the close of business on the day on which the securities lent are delivered to the BNP Entity, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable U.S. bank letters of credit issued by persons other than the BNP Entity (or any of its affiliates), or any combination thereof having, as of the close of business on the preceding business day, a market value (or, in the case of letters of credit, a stated amount) equal to not less than 100 percent of the then market value of the securities lent. All collateral shall be held in U.S. dollars, or dollar denominated securities or bank letters of credit and shall be held in physical or book entry form in the United States.

(3) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party;

(4) In return for lending securities, the Plan either (a) receives a reasonable fee which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the BNP Entity, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party;

(5) The Plan receives at least the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings) had it remained the record owner of such securities. Where dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings, the BNP Entity will put the Plan back in at least as good a position as it would have been in had it not lent the securities;

(6) If the market value of the collateral as of the close of trading on a business day falls below 100% of the market value of the borrowed securities as of the close of trading on that day, the BNP Entity delivers additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100% of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to the BNP Entity if the market value of the collateral exceeds 100% of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100% of the market value of the borrowed securities;

(7) Prior to entering into a Loan Agreement, the BNP Entity furnishes to the independent Plan fiduciary, who is making decisions on behalf of the Plan with respect to the lending of securities: (a) The most recent available audited and unaudited statements of its financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation by the BNP Entity that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statement that has not been disclosed to the Plan fiduciary. Such representation may be made by the BNP Entity's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change;

(8) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the BNP Entity delivers certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the BNP Entity, whichever is lesser, or, alternatively, such period as permitted by Prohibited Transaction Class Exemption (PTCE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded; [2]

(9) In the event that the loan is terminated and the BNP Entity fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (8) above, then the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the BNP Entity under the Loan Agreement, and any expenses associated with the sale and/or purchase. The BNP Entity is obligated to pay to the Plan the amount of any remaining obligations and expenses not covered by the collateral (the value of which shall be determined as of the date the borrowed securities should have been returned to the Plan), plus interest at a reasonable rate, as determined in accordance with an independent market source. If replacement securities are not available, the BNP Entity will pay the Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Plan, plus (b) all the accrued financial benefits derived from the beneficial ownership of such borrowed securities as of such date, plus (c) interest at a reasonable rate determined in accordance with an independent market source from such date to the date of payment. The amounts paid shall be reduced by the amount or value of the collateral determined as of the date the borrowed securities should have been returned to the Plan. The BNP entity is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan, the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the BNP Entity may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(10) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the

[2] PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein).

regulations promulgated under 29 CFR 2550.404(b)–1. However, the BNP Entity shall not be subject to the civil penalty, which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the independent Plan fiduciary fails to comply with the requirements of 29 CFR 2550.404(b)–1.

If the BNP Entity fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the failure on the part of the BNP Entity to comply with the conditions of the exemption.

Section II. General Conditions

A. The BNP Entity is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III.B, and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption.

B. The BNP Entity, in connection with any transactions covered by this exemption, is in compliance with all requirements of Rule 15a–6 of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing foreign affiliates a limited exemption from U.S. broker-dealers registration requirements (17 CFR 240.15a–6).

C. Prior to the transaction, the BNP Entity enters into a written agreement with the Plan in which the BNP Entity consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions.

D. Each BNP Entity located in the United States is fully responsible for any judgment rendered by a United States court against BNP Paribas, and the U.S. assets of BNP Paribas, including those of any BNP Entities located in the U.S., are subject to the enforcement of any such judgment.

E. The BNP Entity maintains, or causes to be maintained, within the United States for a period of six years from the date of the covered transactions, such records as are necessary to enable the persons described in paragraph F. of this Section II to determine whether the conditions of this exemption have been met, except that:

(1) If the records necessary to enable the persons described in paragraph F. to determine whether the conditions of the exemption have been met are lost or destroyed prior to the end of such year period, due to circumstances beyond the control of the BNP Entity, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than the BNP Entity and its affiliates, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph F. of this Section II.

F. Notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the BNP Entity makes the records referred to above in paragraph E. of this Section II, unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(1) The Department, the Internal Revenue Service or the SEC;

(2) Any fiduciary of a participating Plan;

(3) Any contributing employer to a Plan;

(4) Any employee organization any of whose members are covered by a Plan; and

(5) Any participant or beneficiary of a Plan.

However, none of the persons described above in paragraphs (2)–(*5*) of this paragraph F. shall be authorized to examine trade secrets of the BNP Entity, or any commercial or financial information which is privileged or confidential.

G. Prior to any Plan's approval of any transaction with a BNP Entity, the Plan is provided with copies of the proposed and final exemption with respect to the exemptive relief granted herein.

Section III. Definitions

For purposes of this proposed exemption,

A. The term ''affiliate'' of another person shall include:

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

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation, partnership or other entity of which such other person is an officer, director or partner. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

B. The term ''BNP Entity'' shall mean BNP Paribas or any branch or affiliate thereof that is a broker-dealer or bank subject to regulation by the (1) *CB or* (2) AMF.

C. The term ''security'' shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

Summary of Facts and Representations

1. BNP Paribas, which maintains its principal offices in Paris, France, is a publicly-held French bank that operates primarily in France. BNP Paribas has additional activities in major banking and securities markets worldwide. Through its branch offices and affiliates, BNP Paribas provides a full line of depository, lending and investment services to a broad base of clients and is engaged in a wide range of banking, financial and related activities. As of December 31, 2004, BNP Paribas had consolidated assets of Euro 905.9 billion ($1.231 trillion) and stockholders equity of Euro 30.2 billion ($41.02 billion). As of close of business on March 29, 2005, BNP Paribas had a market capitalization of over Euro 49 billion (over $63 billion). The banking activities of BNP Paribas and its French Affiliates are regulated by CB. The securities activities of BNP Paribas are regulated by the AMF.

As of December 31, 2004, BNP Paribas reported that its presence in the United States (excluding Banc West Corporation and its subsidiaries) was valued in excess of $185 billion. Because it is a single legal entity acting through various branches and other subsidiaries in various locations, including the United States, BNP Paribas states that each U.S.-based BNP Entity would be fully responsible for any judgment rendered by a U.S. court against BNP Paribas, and the U.S. assets of BNP Paribas, including those of any BNP Entities, located in the U.S., would likely be subject to the enforcement of any such judgment.[3]

[3] Alternatively, BNP Paribas has advised that if a judgment by a U.S. court is rendered against a French Affiliate, the judgment would be enforceable in France if the suing party has obtained an exequatur (enforcement order) from a French court. Before it issues an exequatur, the French court must determine that the judgment of the U.S. court has satisfied the following requirements: (a) The court must have subject-matter and personal jurisdiction

2. BNP Paribas seeks prospective exemptive relief from the Department to permit certain principal transactions, extensions of credit, and securities borrowing transactions between employee benefit plans subject to the Act and BNP Paribas acting through its French Affiliates and French branches. The proposed exemption would solely cover transactions affected by BNP Paribas and its French Affiliates that are located in France and regulated by the CB or AMF. Aside from BNP Paribas, such French Affiliates currently include BNP Paribas Arbitrage of Paris, France which is regulated by the Autorité de Marchés Financiers of France.

BNP Paribas requests an individual exemption on behalf of itself, its French Affiliates, and others, which may in the future, be subject to governmental regulation in France, to engage with Plans in the securities transactions described herein because such entities may be parties in interest with respect to the Plans under the Act, by virtue of being fiduciaries (for assets of the Plans other than those involved in the transactions) or service providers to such Plans, or by virtue of their relationships to such fiduciaries or service providers.

3. BNP Paribas is subject to regulations established by the CB and the AMF governing minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and books and records requirements with respect to client accounts. These regulations and the regulations established by the SEC share a common objective of protecting investors through regulation of the securities industry. The regulations of the CB and the AMF require BNP Paribas to maintain a positive tangible net worth and be able to meet its obligations as they may fall due. These rules establish comprehensive financial resource and reporting and disclosure requirements regarding capital adequacy. In addition, the regulations impose requirements with respect to risk management, internal controls and transaction reporting and record keeping and require such records to be produced at the request of the CB and the AMF. Finally, these regulations impose potential fines and penalties, which establish a comprehensive disciplinary framework.

4. In addition to the requirements and protections imposed under the regulations of the CB and the AMF, BNP Paribas will comply with all applicable provisions of Rule 15a–6 of the 1934 Act, as amended. In lieu of registration with the SEC, Rule 15a–6 provides an exemption from SEC broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''major U.S. institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker or dealer intermediary.

The term ''U.S. institutional investor'', as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if:

(a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) The employee benefit plan has total assets in excess of $5 million, or

(c) The employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors,'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term ''major U.S. institutional investor'' is defined in Rule 15a–6(b)(4), as any entity that owns or controls (or, in the case of an investment adviser, has under management) in excess of $100 million aggregate financial assets.[4] BNP Paribas represents that the intermediation of the U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

5. BNP Paribas represents that under Rule 15a–6 of the 1934 Act, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor in accordance with Rule 15a–6 must, among other things:

(a) Provide written consent to service of process for any civil action brought by, or proceeding before the SEC or self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Approve foreign associated personnel that contact U.S. investors to verify that such individuals are not subject to a ''statutory disqualification'', as defined in Section 3(a)(39) of the 1934 Act or the non-U.S. equivalent of such disqualification (*e.g.*, expulsion or suspension by a securities regulator).

(*3*) Issue all required confirmations and statements;

(*4*) As between the foreign broker-dealer and the U.S. registered broker or dealer, extend or arrange for the extension of credit in connection with the transactions;

(*5*) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;[5]

(6) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act;[6] and

(*7*) Participate in all oral communications (*e.g.*, telephone calls), subject to certain exceptions, between the foreign associated person and the U.S. institutional investor (not the major

over the litigation; (b) the court proceedings must have been properly followed (*i.e.*, the proceedings must have conformed to basic French legal notions of fundamental fairness and due process): (c) The court must have used the correct choice of law; (d) enforcement of the judgment must be consistent with French law; and (e) the substance of the judgment must not be directly contrary to French law. According to BNP Paribas, judgments from U.S. courts typically satisfy these five requirements and French courts rarely have refused to grant exequaturs to enforce U.S. judgments.

[4] Note that a SEC No-Action Letter has expanded the categories of entities that qualify as ''major U.S. institutional investors.'' See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

[5] BNP Paribas represents that all such requirements relating to recordkeeping of principal transactions would be applicable to any BNP Entity in a transaction that would be covered by this proposed exemption.

[6] Under certain circumstances described in the April 9, 1997 Letter, (*e.g.*, clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a BNP Entity. Please note that in such situations (as in other situations covered by Rule 15a–6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

U.S. institutional investor), and accompany the foreign associated person on all visits with U.S. institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

Description of the Exemption Transactions

6. The exemption will apply to transactions involving principal transactions, extensions of credit and securities borrowing transactions that would be exempt under Prohibited Transaction Class Exemption 75–1 (PTCE 75–1, 40 FR 50845, October 31, 1975) and Prohibited Transaction Class Exemption 81–6 (PTCE 81–6, 46 FR 7527, January 23, 1981, amended at 52 FR 18754, May 19, 1987) but for the fact that BNP Paribas and its French Affiliates are not supervised by the U.S. government or registered under the Securities Exchange Act in the manner required under PTCE 75–1 and PTCE 81–6.

The exemption will be applicable only to transactions effected by BNP Paribas or any affiliated French broker-dealers holding a securities dealers license issued by the CECEI or subject to the rules and regulations of the CB and the AMF and compliant with Rule 15a–6.

Principal Transactions

7. BNP Paribas represents that in the ordinary course of business, it customarily operates as a trader, dealer and market maker in securities markets wherein it purchases and sells securities for its own account and engages in purchases and sales of securities with its clients. Such trades are referred to as principal transactions. Part II of PTCE 75–1 provides exemptive relief from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code for principal transactions between plans and U.S. banks and broker-dealers which are registered under the 1934 Act and are parties in interest with respect to such plans, provided all requirements stated in part II are satisfied. In the absence of an exemption for principal transactions, such as PTCE 75–1, those responsible for trading activities on behalf of plan investors would be prevented from engaging in transactions with those broker-dealers and banks that provide the markets for the securities and are most capable of handling such transactions. Like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals.

Over the past decade, plans have increasingly invested in foreign equity and debt securities, including foreign government securities. Plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with foreign banks, such as BNP Paribas and certain of its French Affiliates. However, where BNP Paribas or certain of its French Affiliates provide services to such Plans which are covered by the Act, principal transactions with BNP Paribas or certain of its French Affiliates would be prohibited by the Act. Thus, the exemptive relief afforded U.S. banks and U.S. broker-dealers by PTCE 75–1 would not be available with respect to BNP Paribas because that class exemption is limited to (a) banks supervised by the U.S. or a State thereof and (b) broker-dealers registered with the SEC under the 1934 Act.[7] The business carried out by BNP Paribas and its French Affiliates is not so supervised or registered.

Because of the conditions of PTCE 75–1 which require that a bank be supervised by the U.S. or a U.S. State and a broker-dealer be registered with the SEC, BNP Paribas is prevented from engaging in principal transactions with Plans with respect to which it is a party in interest. This is so even though BNP Paribas is subject to the stringent regulations of the CB and AMF, and it is able to satisfy the Rule 15a–6 requirements for an exemption from registration under the Securities Exchange Act. Accordingly, BNP Paribas is requesting an individual exemption to permit it and its French Affiliates (collectively referred to herein as the BNP Entities) to engage in principal transactions with Plans under the terms and conditions set forth herein, which are equivalent to those set forth in PTCE 75–1.

The BNP Entities will comply with all conditions set forth in PTCE 75–1 other than the condition to be a U.S. bank or registered broker-dealer under the Securities Exchange Act. With respect to principal transactions, the BNP Paribas entities will engage in such transactions only where (a) BNP Paribas or the relevant French Affiliates are not a fiduciary with respect to the transaction (in other words, the BNP Entity will have no discretionary authority or control with respect to the investment of a Plan's assets involved in a principal transaction or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.); (b) the BNP Entity will customarily purchase and sell securities for its own account in the ordinary course of business as a bank or broker-dealer; (c) the transaction will be at least as favorable to the Plan as an arm's length transaction with an unrelated party would be; and (d) the BNP Entity will be a party in interest or a disqualified person with respect to the Plan assets involved in a principal transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code (*i.e.*, a service provider to the Plan), or by reason of a relationship to such a person as described in such sections.

Extensions of Credit

8. BNP Paribas represents that a normal part of the execution of securities transactions by broker-dealer on behalf of clients, including Plans, is the extension of credit to clients so as to permit the settlement transactions in the customary settlement period. Such extensions of credit are also customary in connection with the writing of option contracts.

BNP requests that the proposed exemption include relief for extensions of credit to the Plans by the BNP Entities in the ordinary course of their purchases or sales of securities, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts. In this regard, an exemption for such extensions of credit is provided under PTCE 75–1, Part V, only for transactions between Plans and U.S. registered broker or dealers.[8]

Under the conditions of this proposed exemption, as in PTCE 75–1, part V, BNP Paribas and its French Affiliates may not be fiduciaries with respect to the Plan assets involved in the transaction. However, an exception to such condition would be provided herein, as in PTCE 75–1, if no interest or other consideration is received by the BNP Entity or an affiliate thereof, in connection with any such extension of credit. In addition, the extension of credit must be lawful under the 1934 Act and any rules or regulations thereunder, if the 1934 Act rules or regulations were applicable, and such

[7] The Department notes that the proposed principal transactions are subject to the general fiduciary responsibility provisions of part 4 of Title I of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the participants and beneficiaries of a plan, when making investment decisions on behalf of the plan.

[8] PTCE 75–1, part V, provides an exemption, under certain conditions, from section 406 of the Act and section 4975(c)(1) of the Code, for extensions of credit, in connection with the purchase or sale of securities, between employee benefit plans and U.S. registered broker-dealers that are parties in interest with respect to such plans.

extension of credit must not be a prohibited transaction under section 503(b) of the Code. If the 1934 Act would not be applicable, the extension of credit must still be lawful under applicable French law, where BNP Paribas and its French Affiliates are domiciled.

Securities Lending

9. BNP Paribas or its French Affiliates, acting as principals, actively engage in the borrowing and lending of securities, typically foreign securities, from various institutional investors, including employee benefit plans.

Accordingly, BNP Paribas requests an exemption for securities lending transactions between the BNP Entities and the Plans under terms and conditions equivalent to those required in PTCE 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987). Because PTCE 81–6 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue would fall outside the scope of relief provided by PTCE 81–6.

10. BNP Paribas or its French Affiliates utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that a broker-dealer is required to deliver. BNP Paribas represents that foreign broker-dealers are those broker-dealers most likely to seek to borrow foreign securities. Thus, the requested exemption will increase the lending demand for such securities, providing the Plans with increased securities lending opportunities, which will earn such Plans additional rates of return on the borrowed securities (as discussed below).

11. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities, (*e.g.*, from the receipt of any interest, dividends, or other distributions due on those securities and from an appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash, irrevocable bank letters of credit, or high quality liquid securities, such as U.S. Government or Federal Agency obligations.

12. With respect to the subject securities lending transactions, BNP Paribas or its French Affiliates will have no discretionary authority or control with respect the investment of the Plan assets involved in the transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

13. By the close of business on the day the loaned securities are delivered, the Plan will receive from the BNP Entity (by physical delivery book entry in a securities depository, wire transfer, or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by person other than the BNP Entity or an affiliate of thereof, or any combination thereof. All collateral will be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and will be held in the United Sates. The collateral will have, as of the close of business on the business day preceding the day it is posted by the BNP Entity, a market value equal to at least 100% of the then market value of the loaned securities (or, in the case of letter of credit, a stated amount equal to same).

14. The loan will be made pursuant to a written Loan Agreement, which may in the form of a master agreement covering a series of securities lending transactions between the Plan and the BNP Entity. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the BNP Entity pay all transfer fees and transfer taxes relating to the securities loans.

15. In return for lending securities, the Plan will either (a) receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) have the opportunity to derive compensation through the investment of cash collateral. Where the Plan has that opportunity, the Plan may pay a loan rebate of similar fee to the BNP Entity, if such fee is not greater than what the Plan would pay in comparable arm's length transaction with an unrelated party. Earnings generated by non-cash collateral will be returned to the BNP Entity. The Plan will be entitled to at least the equivalent of all distributions on the borrowed securities made during the term of the loan. Such distributions will include cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of any applicable tax withholdings) had it remained the record owner of such securities.

16. If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the BNP Entity will deliver additional collateral, by the close of business on the following business day, to bring the level of collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the BNP Entity may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent.

17. Before entering into a Loan Agreement, the BNP Entity will furnish to the independent Plan fiduciary (a) the most recent available audited statement of the BNP Entity's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the BNP Entity agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

18. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the BNP Entity will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the BNP Entity, whichever is least, or, alternatively, such period as permitted by PTE 81–6, as it may be amended or superseded. In the event the loan is terminated and the BNP Entity fails to return the borrowed securities or the equivalent thereof with the designated time, the Plan will have certain rights under the Loan Agreement to realize upon the collateral. The Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of the BNP Entity under the Loan Agreement, and any

expenses associated with replacing the borrowed securities.

The BNP Entity is obligated to pay to the Plan the amount of any remaining obligations and expenses not covered by the collateral (the value of which shall be determined as of the date the borrowed securities should have been returned to the Plan), plus interest at a reasonable rate as determined in accordance with an independent market source. If replacement securities are not available, the BNP Entity will pay the Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Plan, plus (b) all the accrued financial benefits derived from the beneficial ownership of such borrowed securities as of such date, plus (c) interest at a reasonable rate determined in accordance with an independent market source from such date to the date of payment. The amounts paid shall be reduced by the amount or value of the collateral determined as of the date the borrowed securities should have been returned to the Plan. Notwithstanding the foregoing, the BNP Entity may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the lending independent Plan fiduciary.

19. The independent Plan fiduciary will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirement under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1.[9]

20. In summary, BNP Paribas represents that the subject transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) With respect to principal transactions effected by the BNP Entities, the proposed exemption will enable the Plans to realize the same benefits of efficiency and convenience which derive such Plans could derive from principal transactions executed by U.S. registered broker-dealers or U.S. Banks, pursuant to PTCE 75–1, part II;

(b) With respect to extensions of credit by the BNP Entities in connection with purchases or sales of securities, the proposed exemption will enable the BNP Entities and the Plans to extend credit in the ordinary course of business to effect agency or principal transactions within the customary three-day settlement period, or in connection with the writing of options contracts for transactions between Plans and U.S. registered broker-dealers, pursuant to PTCE 75–1, part V;

(c) With respect to securities lending transactions effected by the BNP Entities, the proposed exemption will enable the Plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions between plans and U.S. registered broker-dealers or U.S. Banks, pursuant to PTCE 81–6; and

(d) The proposed exemption will provide the Plans with virtually the same terms and conditions upon the transactions executed by the BNP Entities as those imposed on U.S. banks and U.S. registered, pursuant to PTCE 75–1 and PTCE 81–6.

Notice to Interested Persons

Notice of proposed exemption will be provided to all interested persons by first class mail within 4 days of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on the proposed exemption and/or to request a hearing. Comments and hearing requests are due within 34 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia Quezada of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

Best Business Products Inc. Employee Stock Ownership Plan (the ESOP) Located in Sioux Falls, SD

[Exemption Application No. D–11305]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B, 55 FR 32836, 32847 (August 10, 1990).[10] If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective July 7, 2004, to: (1) The purchase from the ESOP by Best Business Products, Inc. (BBP), a party in interest with respect to the ESOP, of shares of the voting common stock of BBP (the Stock) which were allocated to the accounts of the participants in the ESOP; and (2) the transfer to BBP of shares of the Stock which were held by the ESOP in a suspense account in exchange for the assumption by BBP of the ESOP's obligation to pay the balance of a note (the Note) to Betty B. Best (Ms. Best), a party in interest with respect to the ESOP; provided that prior to entering into the subject transactions: (a) An independent fiduciary (the Independent Fiduciary) was responsible for each of the transactions, and in accordance with the fiduciary provisions of the Act, reviewed, analyzed, and determined that the ESOP should enter into each of the transactions; (b) the Independent Fiduciary reviewed, negotiated, and approved the terms of each of the transactions, and determined on behalf of the ESOP and solely in the interest of the ESOP, its participants, and beneficiaries that the terms of each of the transactions were fair and reasonable; (c) the Independent Fiduciary monitored compliance with the terms of each of the transactions by the parties; (d) an independent qualified appraiser determined the fair market value of the Stock as of the date each of the transactions were entered; and (e) the ESOP incurred no fees, commissions, or other charges or expenses as a result of its participation in each of the transactions.

Effective Date: If the proposed exemption is granted, the exemption will be effective July 7, 2004.

Summary of Facts and Representations

1. BBP, a South Dakota Corporation, located in Sioux Falls, SD, sells, installs, and services electronic office equipment and sells related supplies to customers throughout the state of South Dakota and in southwestern Minnesota. It is represented that BBP has, at all relevant times, been taxed pursuant to subchapter ''S'' tax provisions of the Code. As of December 31, 2003, BBP had $5.7 million in assets, $1.9 million in liabilities, and $3.8 million in shareholder equity.

Ms. Best is the major shareholder of BBP, the President of BBP, and the sole director of BBP. As such, Ms. Best is a party in interest with respect to the

[9] Section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor.

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

ESOP, pursuant to section 3(14)(E) and 3(14)(H) of the Act.

2. For the benefit of its eligible employees and their beneficiaries, BBP adopted the ESOP, effective January 1, 1997, as an employee stock ownership plan, as amended and restated from time to time, to meet the requirements of the Act and the Code. As an employer any of whose employees are covered by the ESOP, BBP is a party in interest with respect to the ESOP, pursuant to section 3(14)(C) of the Act.

On December 31, 1997, BBP entered into a trust agreement with the First National Bank in Sioux Falls (the Bank), a South Dakota Banking Corporation, in which the Bank agreed to serve as the trustee of the assets of the ESOP. As a trustee, the Bank is a fiduciary and party in interest with respect to the ESOP, pursuant to section 3(14)(A) of the Act. It is represented that the Bank served in this capacity as trustee until replaced by Ms. Best on December 19, 2001. Since that time, Ms. Best has been the sole trustee of the assets of the ESOP held in the trust. As a trustee, Ms. Best is a fiduciary and party in interest with respect to the ESOP, pursuant to section 3(14)(A) of the Act.

As of July 7, 2004, the date the subject transactions were entered, there were 71 participants and beneficiaries in the ESOP. As of December 31, 2003, the aggregate fair market value of the total assets available to pay benefits to participants in the ESOP was $822,889. As of the same date, the value of the ESOP's assets, after subtracting liabilities was $338,681.

3. On June 12, 1998, it is represented that an Amendment to the Articles of Incorporation of BBP was adopted which combined two classes of shares (voting and non-voting) into a single class of shares of voting common stock and which authorized a stock dividend converting each single share of common stock then outstanding into 100 shares. It is represented that in July 1998, there were 181,100 shares of Stock issued and outstanding of which Ms. Best was the sole shareholder.

It is represented that the Stock that is the subject of this exemption (*i.e.* the voting common stock of BBP) is the only class of stock authorized or issued by BBP. The Stock is not publicly traded.

4. On July 17, 1998, the ESOP purchased a block of Stock from Ms. Best for a purchase price of $2.6 million dollars.[11] As a result of this transaction, of the 181,100 shares of Stock issued and outstanding, Ms. Best retained ownership to 126,770 shares, and the ESOP acquired 54,330 shares of the Stock, representing approximately 70 percent (70%) and approximately 30 percent (30%), respectively of the equity of BBP. It is represented that the acquisition of the block of Stock by the ESOP provided equity ownership to employees so that such employees had a direct stake in the success of BBP.

On July 17, 1998, the ESOP acquired title to the block of Stock (54,330 shares) in exchange for a loan (the Loan)[12] in the amount of $2.6 million dollars, representing the entire purchase price for such block of Stock. The Loan was evidenced by a non-recourse Note payable to Ms. Best. The Note was payable in annual installments of principal and interest over a period of ten (10) years, beginning September 1, 1998. The interest rate applied to the outstanding balance on the Note was the prime interest rate in effect from time to time as published by the ''Wall Street Journal.'' Payment of the Loan was secured by a pledge to Ms. Best of a security interest in the block of Stock purchased by the ESOP. In addition, BBP guaranteed payment of the Note.

5. In a letter dated, July 17, 1998, James L. Werness, JD (Mr. Werness), a principal of the Hawthorne Company (Hawthorne), determined that the purchase of the block of Stock by the ESOP for consideration of $2.6 million dollars was fair and equitable and that the purchase price paid was not more than the ''fair market value'' of such block of Stock. In support of this opinion, Hawthorne prepared an appraisal report, dated June 20, 1998, to establish the fair market value of the block of Stock purchased by the ESOP.

It is represented that the professional staff of Hawthorne is qualified to provide the 1998 valuation of the Stock. In addition, Hawthorne has made similar statements regarding its qualifications with respect to annual valuations of the Stock which Hawthorne prepared during the period 1998 through 2004, as discussed more fully in paragraph 8, below. In this regard, Mr. Werness is a member of the Institute of Business Appraisers and a candidate member of the American Society of Appraisers. Other principals of Hawthorne have earned the following designations: (a) Accredited Senior Appraiser from the American Society of Appraisers, (b) Certified Business Appraiser through the Institute of Business Appraisers, and (c) Chartered Financial Analyst.

Hawthorne certified that its research, analysis, and conclusions on the value of the Stock were conducted on an independent basis. In this regard, it is represented that neither Hawthorne, nor any employee of Hawthorne owns any present or prospective future interest in BBP or its affiliates. Further, Hawthorne represented that it does not know of any other relationship that would prevent it from, in fact, acting independently in connection with this valuation. Hawthorne made similar statements regarding its independence with respect to annual valuations of the Stock prepared by Hawthorne during the period from 1998 through 2004, as discussed more fully in paragraph 8, below.

It is represented that because the block of Stock purchased by the ESOP in 1998 represented a small percentage of all the voting rights in BBP, Hawthorne would normally have defined the fair market value of such block of Stock as a ''minority interest value.'' However, as the block of Stock was subject to a buy/sell agreement, discussed more fully in paragraph 6, below, that entitled the holder to ''put'' the shares of Stock back to BBP and required BBP to pay a price for such shares equal to the *pro-rata* enterprise value, Hawthorne conducted its analysis on the basis of an ''enterprise'' level of value. Accordingly, in the opinion of Hawthorne, the fair market value of the ESOP's block of Stock (54,330 shares), as of June 30, 1998, was $48.00 per share for a total value of $2,607,840.[13]

[11] The applicant maintains that the statutory exemption, pursuant to section 408(e) of the Act, provided relief for the 1998 purchase by the ESOP of the block of Stock from Ms. Best, where the shares of the Stock are qualifying employer securities, as defined in section 407(d)(5) of the Act, the purchase of the shares of Stock was made for adequate consideration, and no commission was charged to the ESOP with respect thereto. The Department is offering no view, herein, as to the applicant's reliance on section 408(e) of the Act with respect to the purchase of the block of Stock by the ESOP in 1998, nor has the Department made a determination that the applicant satisfied all of the requirements of section 408(e) of the Act. Further, the Department is not providing any relief, herein, with respect to such purpose.

[12] The applicant maintains that the statutory exemption, pursuant to section 408(b)(3) of the Act, provided relief for the 1998 Loan between the ESOP and Ms. Best, because the Loan: (a) was primarily for the benefit of the participants and beneficiaries of the ESOP; (b) contained an interest rate that was not in excess of a reasonable rate; (c) was used to purchase employer stock; and (d) satisfied the other requirements, as set forth in the Department's regulations at 29 CFR 2550.408b–3. The Department is offering no view, herein, as to the applicant's reliance on section 408(b)(3) of the Act with respect to the 1998 Loan, nor has the Department made a determination that the applicant satisfied all of the requirements of section 408(b)(3) of the Act. Further, the Department is not providing any relief, herein, with respect to such Loan transaction.

[13] The Department, herein, is offering no view as to whether the value per share of the block of Stock purchased by the ESOP in 1998, based on the methodology used by Hawthorne in appraising such

Continued

6. On July 17, 1998, contemporaneously with the purchase of the block of Stock by the ESOP, Ms. Best and BBP entered into a buy-sell Agreement, referred to in paragraph 5, above. It is represented that this agreement was entered in order to protect the election by BBP of subchapter ''S'' corporation status and to ensure that possible future transfers of ownership of Stock occur in a business-like manner. Accordingly, Ms. Best and BBP contractually agreed to restrictions on the transferability of the Stock and provided for the purchase of Stock in certain events.

It is represented that the ESOP was not a party to such buy-sell agreement. Notwithstanding the fact that the ESOP was not a party, it is represented that the shares of Stock owned by the ESOP, its assignees or distributees possesses all the benefits and advantages contemplated in the buy-sell agreement, including but not limited to a ''put'' provision contained in such agreement.

7. It is represented that BBP from 1998 through 2003 made dividend payments totaling approximately $489,278 to the ESOP as an owner of the Stock. In addition, during the same period, BBP made periodic contributions to the ESOP totaling approximately $1,851,037 that enabled the ESOP to make installment payments on the Loan under the terms of the Note held by Ms. Best. It is represented that as the ESOP made installment payments, shares of Stock held in a suspense account in the ESOP were allocated to the accounts of participants. In this regard, 28,532.896 shares of Stock had been allocated, as of July 7, 2004, to the accounts of the participants in the ESOP (the Allocated Shares), and as of the same date, 25,797.104 shares of Stock were in a suspense account (the Unallocated Shares) held by the ESOP.

8. It is represented that, in 1998, BBP experienced a loss of several key employees, some of whom were subsequently employed by competitors. It is further represented that the electronic business machine industry has become more competitive, and that the earnings of BBP have suffered. In this regard, over the course of six (6) years from 1998 through 2004, the value of the Stock declined.

The applicants submitted to the Department annual valuation reports prepared by Hawthorne during the period from 1998 through 2003, and working papers for the fiscal year ending December 31, 2004. According to Hawthorne, the aggregate ''enterprise value'' (EV) [14] or the aggregate ''controlling interest value'' (CIV),[15] and the per share value of the Stock during the period from 1998 through 2004 was as follows:

Date	Total value of 181,100 shares of stock	Per share value of the stock (per share)
June 20, 1998	$8,700,000 EV	$48.00
December 31, 1999	$6,450,606 EV	35.62
December 31, 2000	$5,833,910 CIV	32.21
December 31, 2001	$5,816,940 CIV	32.12
December 31, 2002	$5,475,453 CIV	30.14
December 31, 2003	$5,222,109 CIV	28.84
Working papers 2004	$5,118,699 CIV	28.26

9. It is represented that given the loss of several key employees, losses in earnings as a result of a more competitive industry, and the costs of maintaining the ESOP, effective July 7, 2004, BBP decided to terminate the ESOP. On September 24, 2004, BBP submitted to the Internal Revenue Service (IRS) FORM 5310, Application for determination for Terminating Plan, with respect to the ESOP. In connection with the termination of the ESOP, it is represented that all participants became 100 percent (100%) vested, as of June 30, 2004. On January 14, 2005, the IRS issued a favorable determination letter on the termination of the ESOP.

10. In connection with the termination of the ESOP, BBP determined to make lump sum distributions to each of the participants of the ESOP in order to increase employee morale and to allow BBP to invest its remaining resources in creating a more viable company. Accordingly, under the terms of a Stock Purchase and Sale Agreement, dated July 7, 2004, BBP purchased the Allocated Shares (28,532.896 shares of Stock) from the ESOP for an aggregate purchase price in cash of approximately $900,000 at a price per share of $31.54.

It is further represented that since the ESOP was being terminated and would receive no more contributions from BBP, it was expected that the ESOP would default on the payments on the Note held by Ms. Best. In order to avoid such default, on July 7, 2004, the Independent Fiduciary (described more fully in paragraph 14, below) transferred the Unallocated Shares (25,797.104 shares of the Stock) in the suspense account held by the ESOP to BBP in exchange for an assumption by BBP of the ESOP's responsibility to pay to Ms. Best the balance due under the Note as of that date in the amount $1,234,538.

It is represented that as a result of the transactions which are the subject of this proposed exemption, the ESOP's ownership interest in BBP decreased from 30 percent (30%) to zero. It is further represented that notwithstanding the transfer of title to the Unallocated Shares to BBP, such shares continued to be subject to the pledge securing the Note in favor of Ms. Best. Accordingly, it is represented that after the subject transactions were completed, the Unallocated Shares were still considered to be issued and outstanding.

11. The applicant has requested a retroactive administrative exemption, effective July 7, 2004, the date when the subject transactions were entered. In this regard, it is represented that before entering into such transactions, the applicant was advised by legal counsel. In this regard, legal counsel for the applicant has certified in writing that he was aware that such transactions were prohibited under section 406 of the Act, but that he believed the statutory exemption, set forth in section 408(e) of the Act, applied to the subject transactions and that an administrative

block of Stock constituted ''adequate consideration'' for purposes of section 408(e) of the Act.

[14] Hawthorne defines ''enterprise value'' or ''EV'' in its 1998 appraisal report as the value attributable to the ownership of 100 percent of the common stock of a corporation.

[15] Hawthorne defines ''controlling interest value'' or ''CIV'' in its 1998 appraisal report as the value attributable to the ownership of a block of stock which maintains greater than 50 percent ownership, yet less than 100 percent ownership.

exemption, pursuant to section 408(a) of the Act was not necessary. Further, legal counsel for the applicant has certified in writing that because the applicant relied in good faith on the advice of counsel, the applicant carried out the subject transactions with only the precautions required by section 408(e) of the Act in place at the time the transactions were entered. In this regard, it is represented that the ESOP received not less than adequate consideration, as determined by an independent appraiser, and no commission was charged with respect to such transactions.

Legal counsel for the applicant has represented that upon further review, he subsequently advised the applicant that the subject transactions may have resulted in violations of sections 406(a)(1)(A) and (D), 406(b)(1) and (b)(2) of the Act. In this regard, although section 408(e) of the Act contains a statutory exemption for the sale of ''qualifying employer securities'' (QES), as defined in section 407(d)(5) of the Act, by an ''eligible individual account plan,'' as defined in section 407(d)(3)(A) of the Act, to a ''party in interest,'' as defined in section 3(14) of the Act, other sections of the Act provide that this statutory exemption may not be available under certain circumstances. Specifically, section 408(d) of the Act excludes owner-employees (including shareholder-employees, such as Ms. Best), and any corporation that is 50 percent (50%) or more owned by such persons (such as BBP) from using the statutory exemption provided under section 408(e) of the Act for purchases or sales of QES.

The applicant notes that, in the Taxpayer Relief Act of 1997, Congress provided some relief from the exclusion, set forth in section 408(d) of the Act, (for taxable years beginning after December 31, 1997) with regard to subchapter ''S'' corporations that maintain ESOPS. Specifically, section 408(d)(2)(B) of the Act provides an exception to the exclusion under 408(d) of the Act for sales of QES to an employee stock ownership plan by a shareholder-employee or related subchapter ''S'' corporation. The applicant maintains that the failure of Congress to provide an exception for the purchase of QES by a subchapter ''S'' corporation from its employee stock ownership plan was a drafting oversight. In the opinion of the applicant, there would seem to be more need for protection of an employee stock ownership plan when purchasing stock of a closely held corporation and taking on debt than when selling such shares for cash.

Notwithstanding the argument presented in the paragraph above, the applicant has acknowledged that BBP, even though it is a subchapter ''S'' corporation, is excluded from relying on the statutory exemption, under section 408(e) of the Act, and that the purchase of the Allocated Shares by BBP from the ESOP does not fall within the exception to the exclusion found in section 408(d)(2)(B) of the Act. Accordingly, the applicant has requested a retroactive administrative exemption for the purchase of the Allocated Shares by BBP from the ESOP, pursuant to 408(a) of the Act.

It is the position of the applicant that the transfer of the Unallocated Shares to BBP in exchange for the assumption by BBP of the ESOP's obligation under the Note is not a new sale transaction, but should be considered part of the original acquisition by the ESOP of the block of Stock. In this regard, as part of the original acquisition, the applicant points out that the block of Stock purchased by the ESOP was pledged to Ms. Best, and that BBP guaranteed the debt owed by the ESOP under the Note. It is the position of the applicant that in order to avoid default on the Note once the ESOP was terminated: (a) BBP, pursuant to its guaranty of the Note, assumed, with the consent of Ms. Best, the ESOP's debt under the Note; and (b) the ESOP transferred its interest in the Unallocated Stock to BBP, subject to the pledge of the Stock to Ms. Best.

The applicant has requested that if the Department disagrees with this analysis, relief should be provided for the transfer of the Unallocated Stock to BBP and the assumption by BBP of the ESOP's obligation under the Note. Accordingly, retroactive administrative relief, pursuant to section 408(a) of the Act, has been proposed for both: (a) The purchase of the Allocated Shares by BBP from the ESOP, and (b) the transfer of the Unallocated Shares to BBP in exchange for the assumption of the ESOP's obligation to pay Ms. Best under terms of the Note.

12. BBP maintains that the subject transactions were in the interest of the ESOP, because the ESOP received a price for the Allocated Shares in excess of the fair market value of such shares. As discussed more fully in the paragraphs below, the final negotiated price paid by BBP for the Allocated Shares, was $31.54 per share.

13. The application file contains a letter dated April 15, 2004, to the trustee of the ESOP prepared by Mr. Werness, one of the principals of Hawthorne, the independent, qualified appraiser. The letter is incorporated into an appraisal report, dated May 4, 2004, prepared by Hawthorne that provided an annual update of the value of the Stock for the year ended December 31, 2003. In this regard, it is represented that Hawthorne established that the fair market value of the Stock owned by the ESOP was $28.84 per share, as of December 31, 2003.

The file also contains a letter from Mr. Werness, dated July 7, 2004. In this letter, Mr. Werness offers an opinion regarding ''adequate consideration'' with respect to the subject transactions that closed on July 7, 2004. In connection with this opinion, it is represented that Hawthorne, among other things: (a) Reviewed the annual financial statements of BBP prepared by Henry Scholten & Company, CPA and reviewed the April 2004, interim financial statement of BBP; (b) reviewed various documents involved with the subject transactions, including the Stock Purchase and Sale Agreement, Consent Minutes of the Board of Directors of BBP, Amendments to the Trust Agreement for the ESOP, and Amendment to the ESOP; (c) held discussions with certain members of the management of BBP and representatives of BBP regarding the operations, financial condition, future prospects, and projected performance of BBP; (d) reviewed Hawthorne's history of valuations conducted on behalf of the trustee of the ESOP; and (e) conducted other studies, analyses, and inquiries deemed appropriate. Based on the business, economic, market, and other conditions as such existed on July 7, 2004, the date of the letter and the date the subject transactions closed, it is the opinion of Hawthorne that the aggregate purchase price paid by BBP for the Stock was not less than the fair market value of such Stock and that the ESOP received no less than ''adequate consideration.''

In addition to Hawthorne's opinion regarding ''adequate consideration,'' on the date the subject transactions closed, as discussed in the paragraph above, the application file also contains a letter to counsel for BBP, dated November 11, 2004, from Mr. Werness, which encloses working papers relating to the projected performance schedule of BBP for the fiscal year ending December 31, 2004. In this letter, Mr. Werness states that the working papers were provided to the special trustee, as discussed in the paragraph below, prior to the date when the subject transactions were entered. These working papers indicate a per share value for the Stock of $28.26. Accordingly, it is represented that the $31.54 per share price paid by BBP to the ESOP for the Allocated Shares included an 11.6% premium over the

$28.26 per share fair market value for such shares of Stock.

14. The applicant maintains that safeguards were in place at the time each of the transactions were entered which were designed to protect the interests of the ESOP and its participants and beneficiaries. It is represented that as early as May 2004, Stanton Trust Company, N.A. (Stanton) and counsel for BBP had conversations regarding the subject transactions. Subsequently, in an engagement letter, dated June 3, 2004, BBP appointed Stanton to act as special trustee on behalf of the ESOP.

According to its letter of engagement, Stanton agreed to act as the Independent Fiduciary and to review, analyze, and determine whether or not to accept the subject transactions on behalf of the ESOP in accordance with fiduciary provisions of the Act. To assist in this regard, Stanton retained the services of Lindquist & Vennum P.L.L.P. (L&V) to act as its legal counsel and retained Hawthorne to act as a financial advisor.

Based on Stanton's review of the opinion prepared by Hawthorne and related documents and schedules, its review of documents and information provided by BBP, and other documents deemed necessary and appropriate, Stanton issued a letter, dated July 7, 2004, the date the transactions were entered. In this letter, Stanton states that its role as special trustee is limited to an evaluation of the proposed transactions on behalf of, and solely in the interest of the participants and beneficiaries of the ESOP and determining that the transactions are fair and reasonable to the ESOP and its participants. Further, Stanton stated in the July 7 letter that: (1) The sale of 28,532.896 shares of the Allocated Shares by the ESOP at a price of $31.54 per share for a total purchase price of approximately $900,000, and (2) the exchange by the ESOP of its outstanding debt in the amount of $1,234,538 for transfer to BBP of the 25,797.104 Unallocated Shares held in suspense is fair and reasonable to the ESOP and its participants and beneficiaries.

The application file also contains letters, dated March 2, and March 24, 2005, from Robert J. Hartman, JD (Mr. Hartman) of L&V, acting as legal counsel to Stanton. In this regard, in a declaration under penalty of perjury, dated April 1, 2005, the current President of Stanton, confirms that Mr. Hartman and the law firm of L&V have represented Stanton from the inception and throughout the engagement of Stanton as special trustee to the ESOP and that representations made in Mr. Hartman's March 2, and March 24, 2005, letters to the Department are true and correct.

Mr. Hartman represents that the purpose of his letter of March 2, 2004, is to identify the actions taken by Stanton to complete the transactions and confirm that such actions were taken in full compliance with Stanton's obligations as a fiduciary to the ESOP and in the best interest of the ESOP participants. Further, Mr. Hartman represents that prior to Stanton issuing its July 7, 2004, opinion that the transactions were fair and reasonable, Stanton, Hawthorne, and L&V reviewed documents, including but not limited to those concerning the establishment of the ESOP and the trust, those relevant to the subject transactions, valuation reports prepared by Hawthorne for 2001, 2002, and 2003, financial statements of BBP, and minutes of the Board of Directors of BBP. It is further represented that interviews were conducted with Mr. Werness of Hawthorne, the trust officer of the Bank, the record keeper for the ESOP, and the counsel for BBP.

Based on the review of the foregoing documents and interviews with the parties closely associated with BBP, Mr. Hartman represents that Stanton concluded: (a) That financial records and appraisals confirmed that BBP sales had declined for each of the three preceding years, and the office products market had become increasingly competitive; (b) that the value of BBP had declined and was likely to continue to decline; (c) that Ms. Best had rejected an offer to sell BBP to an unrelated third party and planned to turn over operations of BBP to her grandson who had little or no experience in the company; and (d) that BBP retained the ability to terminate the ESOP, distribute the Stock, and allow the participants to put the shares back to BBP at $28.26 per share.

Based on the conclusions in the paragraph above, Mr. Hartman represents that Stanton determined that the best interest of the participants were served by selling the Allocated Shares to BBP. To this end, Mr. Hartman states that Stanton negotiated favorable terms in connection with the sale for the exclusive purpose of protecting the interest of the ESOP participants and enhancing the benefits to participants. In this regard, it is represented that Stanton: (a) Negotiated a sale price for the Allocated Shares that included a premium over the interim valuation performed by Hawthorne; (b) negotiated specific ''tag along'' rights for the ESOP in the event of a subsequent sale of BBP at a higher price following the transactions; and (c) obtained a representation from BBP that it would consider regular profit sharing contributions following the termination of the ESOP, subject to the financial circumstances of BBP. In light of the foregoing, it is the opinion of Mr. Hartman that Stanton fully discharged its fiduciary obligation to the ESOP in connection with the subject transactions.

In his letter of March 2, 2005, Mr. Hartman also addresses the issue of independence of both L&V and Stanton. In this regard, Mr. Hartman represents that prior to the subject transactions neither L&V nor Stanton had had any dealings with BBP. It is further represented by Mr. Hartman that under the terms of Stanton's engagement letter with BBP, Stanton was not required to complete the transactions, and Stanton's fee was not conditioned upon such completion. Further, Mr. Hartman represents that had Stanton concluded that the transactions were not in the best interest of participants, Stanton would have withdrawn from the engagement.

Mr. Hartman also enclosed with his letter of March 2, 2005, information regarding his qualifications and those of Stanton. With regard to his qualifications, Mr. Hartman represents that he practices in the employee benefits area, with an emphasis on qualified and non-qualified deferred compensation and on counseling clients on fiduciary matters. Further, Mr. Hartman represents that he has extensive experience with the creation and operation of employee stock ownership plans and has served as a special counsel to trustees of such plans with respect to fiduciary issues.

With regard to Stanton's qualifications, Mr. Hartman encloses documents which state that Stanton has been providing trust, custody, and other fiduciary services to institutions and individuals since 1919 and is dedicated to the professional management of its clients' assets. In addition, it is represented that Stanton has extensive employee stock ownership plan experience as an independent fiduciary for leveraged and non-leveraged transactions.

In addition to his letter of March 2, 2005, Mr. Hartman submitted another letter, dated March 24, 2005, to the Department in which he clarified that Stanton was fully aware that the subject transactions included both the sale of the Allocated Shares to BBP and the transfer of the Unallocated Shares to BBP in exchange for assumption by BBP of the ESOP's debt under the Note. Further, Mr. Hartman stated that the actions taken by Stanton outlined in his letter of March 2, 2005, apply with equal effect to both of the subject transactions.

In addition in his March 24, 2005 letter, Mr. Hartman informed the Department that, although no longer employed by Stanton, Richard Joseph (Mr. Joseph), formerly the President of Stanton, was the individual who analyzed and completed the subject transactions on behalf of Stanton. However, both Stanton and Mr. Joseph agreed to the accuracy of the discussion in Mr. Hartman's March 24 letter and confirmed the same by signing such letter.

15. The applicant maintains that the requested exemption is administratively feasible in that the application contains all of the facts and law necessary for the Department to issue an exemption.

The applicant further maintains that the exemption is feasible in that it involves a one-time transaction for cash in the case of the purchase by BBP of the Allocated Shares and a one-time exchange of the Unallocated Shares for the assumption by BBP of the ESOP's liability under the Note.

Further, it is represented that the cash received by the ESOP in the sale of the Allocated Shares was immediately credited to the accounts of the each of the Participants in proportion to the shares of Stock that were sold from each participant's account. It is represented that each of the participants in the ESOP will be given the option to elect a lump sum distribution in cash or to rollover the distribution into a 401(k) plan sponsored by BBP or into such participant's individual retirement account.

16. It is represented that were the sale to BBP of the Allocated Shares rescinded, the Allocated Shares distributed to participants upon termination of the ESOP, and the Allocated Shares purchased by BBP directly from the participants at the then fair market value, the participants might receive substantially less on such shares, than if the exemption were to be granted.

17. In summary, the applicant represents that the subject transactions met the statutory criteria of section 408(a) of the Act and 4975(c)(2) of the Code because: (a) Stanton was responsible for each of the transactions, and in accordance with the fiduciary provisions of the Act, reviewed, analyzed, and determined that the ESOP should enter into each of the transactions; (b) Stanton reviewed, negotiated, and approved the terms of each of the transactions, and determined on behalf of the ESOP and solely in the interest of the ESOP, its participants, and beneficiaries that the terms of each of the transactions were fair and reasonable; (c) Stanton monitored compliance with the terms of each of the transactions by the parties; (d) Hawthorne, acting as the independent qualified appraiser, determined the fair market value of the Stock as of the date each of the transactions were entered; (e) the ESOP incurred no fees, commissions, or other charges or expenses as a result of its participation in each of the transactions; (f) the subject transactions were one-time transactions; (g) the purchase price which the ESOP received from sale of the Allocated Shares to BBP included a premium over the fair market value of such shares; (h) each of the participants in the ESOP will be given the option to elect a lump sum distribution in cash or to rollover the distribution into a 401(k) plan sponsored by BBP or into such participant's individual retirement account; (i) the cash received by the ESOP in the sale of the Allocated Shares was credited to the accounts of the each of the Participants in proportion to the Allocated Shares that were sold from each participant's account; (j) the proceeds from the sale of the Allocated Shares provide participants with additional investment liquidity and diversification.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include participants and beneficiaries of the ESOP, alternative payees, participants who are current employees but who are absent from the work site, the employer, officers and employees of the employer, fiduciaries of the ESOP, Stanton, and all other interested persons or parties involved in the subject transactions. It is represented that these various classes of interested persons will be notified as follows.

All participants and beneficiaries and all other interested persons will be provided with a copy of the notice of this proposed exemption (the Notice), plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing. The Notice and the Supplemental statement will be provided to all interested persons within fifteen (15) days of the publication of the Notice in the **Federal Register**.

The Notice and the Supplemental Statement will be personally delivered to all participants who are current employees of BBP and who are present at the work site on the date the Notice and Supplemental Statement are provided. The Notice and the Supplemental Statement will be sent by first class mail to all other participants and beneficiaries or other interested persons. It is represented that for the purpose of sending the Notice and Supplemental Statement by mail, the last known addresses of such participants, beneficiaries, or other interested persons maintained by the ESOP will be used.

The Department must receive written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (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 10th day of May, 2005.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 05–9577 Filed 5–12–05; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2005–05; Exemption Application No. D–11212, et al.]

Grant of Individual Exemptions; R. G. Daily Company, Inc. Defined Benefit Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

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

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

R.G. Dailey Company, Inc. Defined Benefit Plan (the Plan) Located in Ann Arbor, MI

[Prohibited Transaction Exemption 2005–05; Exemption Application No. D–11212]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply to the in kind contributions made to the Plan on August 12, 1999, June, 12, 2000, May 17, 2001 and March 21, 2002 by the Employer, a disqualified person with respect to the Plan, of certain publicly-traded securities (the Securities), provided: (a) Each contribution was a one-time transaction; (b) the Securities were valued at their fair market value as of the date of the contribution, as listed on a national securities exchange; (c) no commissions were paid in connection with the transactions; (d) the terms of the transactions between the Plan and the Employer were no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated parties; and (e) Mr. Dailey, who was the only person affected by the transactions, believes that the transactions were in the best interest of the Plan.

[1] Because Mr. Robert M. Dailey was the sole sponsor of the R.G. Dailey Company, Inc. (the Employer) and the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

EFFECTIVE DATE: This exemption is effective for in kind contributions of Securities to the Plan occurring on the following dates: August 12, 1999, June 12, 2000, May 17, 2001 and March 21, 2002.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 23, 2005 at 70 FR 14718.

Written Comments

During the comment period, the Department received one written comment and no requests for a public hearing. The comment was submitted by the applicant and is intended to clarify the proposal. Basically, the comment concerns the date the Plan was terminated. In the Summary of Facts and Representations of the proposal, Representation 2 states that the Plan was terminated on May 31, 2002. However, the applicant wishes to clarify that the Plan termination amendment was signed on March 22, 2002 and became effective on March 31, 2002.

In response to the applicant's comment, the Department notes the foregoing clarifications to the proposal.

Accordingly, after giving full consideration to the entire record, including the applicant's comment, the Department has determined to grant the requested exemption. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11212) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Arjumand A. Ansari of the Department at (202) 693–8566. (This is not a toll-free number.)

Riggs Bank N.A. (Riggs Bank), Washington, D.C.; and the PNC Financial Services Group, Inc. (PNC), Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 2005–06; Exemption Application No. D–11310]

Exemption

Section I. Riggs Bank N.A.

Riggs Bank shall not be precluded from functioning as a ''qualified