

Signed at Washington, DC, this 21st day of December 2005.

Ivan Strasfeld,

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

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2005-16; Exemption Application No. D-11231 et al.]

#### Grant of Individual Exemptions; Wachovia Corporation (Wachovia)

**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.

#### Wachovia Corporation (Wachovia) Located in Charlotte, NC

[Prohibited Transaction Exemption 2005-16; Exemption Application No. D-11231]

### Exemption

#### Section I. Covered Transactions

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,<sup>1</sup> shall not apply, effective January 2, 2002, to (1) the in kind transfer by the Wachovia Retirement Savings Plan (the Plan) of its shares in the Wachovia Equity Index Fund (the Index Fund), a mutual fund in which Evergreen Investment Management Company, LLC, a wholly owned subsidiary of Wachovia, the Plan sponsor, serves as the investment adviser, to the Wachovia Enhanced Stock Market Fund (the Enhanced Fund), a bank collective investment fund, also maintained by Wachovia in exchange for Enhanced Fund units;<sup>2</sup> and (2) the in kind redemption by the Enhanced Fund of the Index Fund shares received on behalf of the Plan in return for a pro rata distribution of cash and transferable securities held by the Index Fund.

#### Section II. Specific Conditions

This exemption is subject to the following conditions:

(a) Mercer Investment Consulting, Inc. (Mercer), a fiduciary, which was acting on behalf of the Plan, and which was independent of, and unrelated to, Wachovia and its subsidiaries, as defined in paragraph (e) of Section IV below, had the opportunity to review the in kind transfer and in kind redemption transactions, and received,

<sup>1</sup> 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.

<sup>2</sup> The Index Fund and the Enhanced Fund are collectively referred to herein as the Funds.

in advance of such transactions, full written disclosures concerning the Funds, which included, but were not limited to the following:

(1) A prospectus or its equivalent for each of the Funds;

(2) The management fees, as negotiated under the applicable investment management agreements, and the costs;

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

(4) Whether there were any limitations applicable to the Plan with respect to which assets of the Plan could be invested in the Enhanced Fund and the nature of such limitations.

(b) On the basis of the foregoing information, Mercer recommended,

(1) The in kind transfer of the mutual fund shares that were held on behalf of the Plan in the Index Fund, in exchange for units in the Enhanced Fund; and

(2) The in kind redemption by the Enhanced Fund of Index Fund shares received from the Plan for cash and certain transferable securities.

(3) The Plan Committee followed Mercer's recommendation by acting on such advice.

(c) Before recommending the covered transactions, Mercer determined that:

(1) The terms of the transactions were fair to the participants in the Plan, and were comparable to, and no less favorable than, the terms obtainable at arm's length between unaffiliated parties; and

(2) The transactions were in the best interest of the Plan and its participants and beneficiaries.

(d) The in kind transfer transaction was a one-time transaction for the Plan and the mutual fund shares transferred were equivalent in value to the units in the Enhanced Fund.

(e) The in kind redemption transaction was a one-time transaction and the resulting cash and transferable securities constituted a pro rata portion of the assets held on behalf of the Plan in the Index Fund prior to the transaction.

(f) In the case of the exchange by the Plan of Index Fund shares for Enhanced Fund units, the per unit value of the Enhanced Fund units that were issued to the Plan in exchange for the Plan's Index Fund shares had an aggregate value that was equal to the value of the mutual fund shares transferred to the Enhanced Fund on the date of the transfer, as determined in a single valuation performed in the same manner and at the close of business on the same day in accordance with Securities and Exchange Commission

Rule 17a-7 (Rule 17a-7) under the Investment Company Act of 1940, as amended, (using sources independent of Wachovia), and the procedures established by the Enhanced Fund pursuant to Rule 17a-7.

(g) In the in kind redemption transaction, the Enhanced Fund received a pro rata portion of the cash and transferable securities held on behalf of the Plan in the Index Fund that was equal in value to the number of mutual fund shares redeemed for such cash and transferable securities, as determined in a single valuation performed in the same manner and at the close of business on the same day in accordance with Rule 17a-7, (using sources independent of Wachovia), and the procedures established by the Enhanced Fund pursuant to Rule 17a-7.

(h) For purposes of the covered transactions, the fair market value of all securities received by the Enhanced Fund in the in kind redemption transaction was determined by reference to the last sale price for transactions as reported in the consolidated transaction reporting system, a recognized securities exchange, or the National Association of Securities Dealers Automated Quotation System.

(i) Within 90 days after the completion of the transactions, Mercer received confirmation of the following information:

(1) The number of Index Fund shares exchanged by the Plan and the number of Enhanced Fund units received by the Plan immediately before the in kind transfer transaction (and the related per share net asset value and the total dollar value of the shares held) as reported by the Funds; and

(2) The identity, the current market price of each transferable security received by the Enhanced Fund in the in kind redemption, and the aggregate dollar value of the securities allocated to the Plan in the Enhanced Fund pursuant to the redemption, and the net asset value of Enhanced Fund units after the redemption;

(j) Subsequent to the completion of the transactions, Mercer conducted a post-transaction review in which it verified:

(1) The number and current market price of all Enhanced Fund units transferred to the Plan in exchange for the Index Fund shares;

(2) The number and current market price of all Index Fund shares transferred by the Plan to the Enhanced Fund in exchange for Enhanced Fund units;

(3) The identity of each transferable security, the number of shares of such

security transferred, the closing price on the relevant national exchange as of the date of the transfer, and the proper valuation of the securities for the purposes of the transfer;

(4) The aggregate dollar value of the Index Fund shares that were being held by the Plan immediately before the transfer and aggregate dollar value of the Enhanced Fund units held by the Plan immediately after the transfer were valued at their daily net asset values in accordance with their normal procedures.

(5) The use, by the Index Fund and the Enhanced Fund of the same methodology to value the securities transferred by the Index Fund to the Enhanced Fund in the in kind redemption transaction.

(k) No sales commissions, fees or other costs were paid by the Plan in connection with the transactions, and no additional management fees are being charged to the Plan by Wachovia through the Enhanced Fund.

(l) Wachovia did not enter into the transactions unless Mercer concurred with such transactions.

(m) The Plan's dealings with the Index Fund, the Enhanced Fund and Wachovia were on a basis that was no less favorable to the Plan than dealings between the Enhanced Fund and other investors.

#### Section III. General Conditions

This exemption is subject to the following general conditions:

(a) Wachovia maintains, or causes to be maintained, 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 (b) of this Section III to determine whether the conditions of this exemption were met, except that:

(1) If the records necessary to enable the persons described in paragraph (b) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, 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 plan fiduciary responsible for recordkeeping, 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 have not been maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section III and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (a) of this Section III are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

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

(ii) Mercer or any other fiduciary of the Plan; or

(iii) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (ii) and (iii) of this paragraph (b)(1) of this Section III shall be authorized to examine trade secrets of Wachovia, or any commercial or financial information, which is privileged or confidential.

#### Section IV. Definitions

For the purposes of this exemption,

(a) The term "Wachovia" means Wachovia Corporation and any affiliate of Wachovia as defined below in Section IV(b).

(b) An "affiliate" of a person includes:

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

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

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

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

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

(e) As applied to Mercer, the term "independent fiduciary" means a fiduciary who is (1) independent of and unrelated to Wachovia and its affiliates, and (2) appointed to act as investment adviser to the Plan for all purposes related to, but not limited to, (i) the transfer of Index Fund shares to the Enhanced Fund in exchange for units in the Enhanced Fund, and (ii) the Enhanced Fund's redemption of the Index Fund shares received from the

Plan for cash and transferable securities. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Wachovia if (1) such fiduciary directly or indirectly controls, is controlled by or is under common control with Wachovia; (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that Mercer may receive compensation for acting as an independent fiduciary from Wachovia in connection with the transactions contemplated herein and in connection with the provision of ongoing investment advice to the Plan Committee if the amount of payment of such compensation is not contingent upon or in any way affected by Mercer's ultimate decision; and (3) the annual gross revenue received by such fiduciary from Wachovia and its affiliates during any year of its engagement, exceeds 5 percent (5%) of Mercer's annual gross revenue from all sources for its prior tax year.

(f) The term "transferable securities" means securities (1) for which market quotations are readily available (as determined under Rule 17a-7) and (2) which are not (i) securities which, if distributed, would require registration under the Securities Exchange Act of 1933 (the 1933 Act); (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Index Fund, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures, and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) which are not readily distributable; (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and (vi) securities subject to "stop transfer" instructions or similar contractual restrictions on transfer.

**DATES:** *Effective Date:* This exemption is effective January 2, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on August 12, 2005 in the **Federal Register** at 70 FR 47246.

#### **Written Comments/Technical Correction to the Notice**

The Department invited all interested persons to submit written comments and requests for a hearing with respect to the Notice within 75 days of the date of its publication in the **Federal Register** on August 12, 2005. Therefore, all comments and requests for a hearing were due by October 26, 2005.

During the comment period, the Department received no comments and no requests for a public hearing. However, upon careful review of the Notice, the Department observed that the definition of the term "transferable securities" in Section III(f) was in partial error due to the inclusion of the following reference to "Rule 144A securities:"

Notwithstanding the above, the term "transferable securities" also includes securities that are considered private placements intended for large institutional investors, pursuant to Rule 144A under the 1933 Act, which are valued by the unrelated investment managers for the Funds, or if applicable, by the independent fiduciary, which will confirm and approve all such valuations.

The Department notes that Wachovia represented in its exemption application that the securities involved in the covered transactions were all publicly-traded on a national securities exchange. Thus, in the Department's view, none of the securities would be of the type to which Rule 144A would apply. Accordingly, the Department has revised the definition of the term "transferable securities" by striking the reference to "Rule 144A securities."

After giving full consideration to the entire record, the Department has decided to grant the exemption subject to the modification described above. For further information, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11231) 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 Pension and Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

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

#### **George N. Newton, Individual Retirement Account (the IRA) Located in Waco, Texas**

[Prohibited Transaction Exemption 2005-17; Application No. D-11328]

#### **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,<sup>3</sup> shall not apply to the arrangement involving the in-kind distributions by the IRA to Mr. George N. Newton (Mr. Newton), a disqualified person with respect to the IRA, in two installments of 50 percent (50%) each, of the IRA's ownership interest in an unencumbered, improved parcel of real property (the Property) located in San Antonio, Texas, in connection with the required minimum distributions rules under the Code; provided the following conditions are satisfied:

(1) the two installments of the in-kind distributions by the IRA occur on December 30, 2005, through January 3, 2006;

(2) the terms and conditions of the transactions are at least as favorable to the IRA, as the terms of similar transactions negotiated at arm's length with unrelated third parties;

(3) the fair market value of the IRA's interest in the Property is determined by an independent, qualified appraiser, as of the date the first of the two installments of the in-kind distributions is made to Mr. Newton; and

(4) the IRA does not pay any commissions, costs, charges, fees, or other expenses in connection with the in-kind distributions.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefit Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of

<sup>3</sup> Pursuant to 29 CFR 2510.3-2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

Proposed Exemption published on November 3, 2005, at 70 FR 66854.

**FOR FURTHER INFORMATION CONTACT:** Ms. 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 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) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of October, 2005.

**Ivan Strasfeld,**

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

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-58,329]

##### Conopco, Inc., a Subsidiary of Unilever U.S., Asheboro, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 14, 2005 in response to a worker petition filed by a company official on behalf of workers at Conopco, Inc., a subsidiary of Unilever U.S., Asheboro, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of December 2005.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5-7953 Filed 12-27-05; 8:45 am]

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-58,394]

##### Georgia-Pacific Corporation, Old Town, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 22, 2005 in response to a worker petition filed by a company official on behalf of workers at Georgia-Pacific Corporation, Old Town, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of December 2005.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5-7955 Filed 12-27-05; 8:45 am]

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-58,336]

##### Kimberly-Clark Corporation Ballard Medical Products Division, Draper, UT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 14, 2005 in response to a petition filed by a company official on behalf of workers of Kimberly-Clark Corporation, Ballard Medical Products Division, Draper, Utah.

The petitioning group of workers is covered by an active certification issued on March 10, 2005 and which remains in effect (TA-W-56,494). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 9th day of December, 2005.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5-7958 Filed 12-27-05; 8:45 am]

**BILLING CODE 4510-30-P**

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

##### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment