

**DEPARTMENT OF LABOR****Employee Benefits Security Administration**

[Prohibited Transaction Exemption 2007–09; Exemption Application No. D–11408]

**Grant of Individual Exemption Involving the Derose Dental Offices Inc., Profit Sharing Plan, Located in Racine, WI****AGENCY:** Employee Benefits Security Administration, Labor.**ACTION:** Grant of individual exemption.

**SUMMARY:** This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or 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.

**The DeRose Dental Offices, Inc., S.C. Profit Sharing Plan (the Plan)***Located in Racine, Wisconsin*

[Prohibited Transaction Exemption 2007–09; Exemption Application No. D–11408]

**Exemption**

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the December 29, 2006 sale by the Plan of 2,174 shares of stock (the Stock) in Wisconsin Bancshares, Inc. each to Francesca DeRose and Nicolet DeRose, parties in interest with respect to the Plan, provided the following conditions are satisfied:

(a) The sales of the Stock were one-time transactions for cash;

(b) The Plan paid no commissions or other fees in connection with the sales;

(c) The terms of the transactions were at least as favorable to the Plan as those the Plan could obtain in similar transactions with an unrelated party; and

(d) The sales price of the Stock was determined by a qualified, independent appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 22, 2007 at 72 FR 13517.

**DATES:** *Effective Date:* This exemption is effective as of December 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (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 describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of June, 2007.

**Ivan Strasfeld,**

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

[FR Doc. E7–12674 Filed 6–29–07; 8:45 am]

**BILLING CODE 4510–29–P****DEPARTMENT OF LABOR****Employee Benefits Security Administration**

[Prohibited Transaction Exemption 2007–08; Exemption Application No. D–11345]

**Grant of Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 2000–34, Involving the Fidelity Mutual Life Insurance Company (FML), Located in Radnor, PA****AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.**ACTION:** Grant of individual exemption to amend and replace PTE 2000–34.

This document contains a final exemption before the Department of Labor (the Department) that amends and replaces PTE 2000–34 (65 FR 41732, July 6, 2000), an exemption granted to FML. PTE 2000–34, relates to (1) the receipt of certain stock (Plan Stock) issued by Fidelity Insurance Group, Inc., a wholly owned subsidiary of FML, or (2) the receipt of plan credits by or on behalf of a FML mutual member (the Mutual Member), which is an employee

benefit plan (the Plan), other than the Employee Pension Plan of Fidelity Mutual Life Insurance Company, in exchange for such Mutual Member's membership interest in FML, in accordance with the terms of a plan of rehabilitation (the Third Amended Plan), approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and a rehabilitator appointed by the Pennsylvania Insurance Commissioner. These transactions are described in a notice of proposed exemption (65 FR 18359, April 7, 2000), which underlies PTE 2000-34.

The final exemption incorporates by reference many of the conditions contained in PTE 2000-34. The exemption also revises and updates certain facts and representations set forth in PTE 2000-34 to include the terms of the Fourth Amended Plan of Rehabilitation (the Fourth Amended Plan) which supersedes the Third Amended Plan upon which PTE 2000-34 is based.

**DATES: Effective Date:** This exemption is effective as of the date the grant notice is published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Ekaterina A. Uzlyan, Office of Exemptions Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8552. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On March 22, 2007, the Department published a notice of proposed exemption in the **Federal Register** at 72 FR 13519. The document contained a notice of proposed individual exemption from the prohibited transaction restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1)(A) through (D) of the Code. The proposed exemption has been requested in an application filed on behalf of FML pursuant to 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, August 10, 1990), Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before April 24, 2007. All comments were made part of the record.

During the comment period, the Department received 2 written comments that were submitted by electronic mail. One comment was submitted by FML and it is intended to clarify that FML is located in "Radnor" rather than in "Pittsburgh," Pennsylvania. In response to the comment, the Department has modified the text in the heading at the beginning of the grant notice to read "Radnor, Pennsylvania" in order to denote FML's correct location.

The second comment was submitted by the trustee of a Plan that is a Mutual Member of FML. Specifically, the commenter wished to know whether (1) FML is nearing dissolution and its assets are close to depletion; (2) FML has any knowledge of a prospective purchaser which has expressed an interest in protecting the current policyholders if the Fourth Amended Plan is granted; and (3) the "numbers" cited in the proposed exemption are factual. The commenter also sought clarification on the percentage of likelihood that the Fourth Amended Plan would be implemented and whether the commenter's own Plan would be permitted to acquire "mutual fund stock" of an insurance company.

In response to this comment, FML explains that the sale of its assets (or possibly its conversion to a stock company and the sale of its stock) is expected to occur in the near future. FML also states that its assets are not nearing depletion. In addition, FML represents that a third party has submitted a bid to purchase its assets and that the protections of its policyholders are the protections that are built into the Fourth Amended Plan, which must be implemented and approved by the Court. Moreover, FML indicates that the numbers cited in the proposal are actual numbers. With respect to the implementation of the Fourth Amended Plan, FML has declined to specify a percentage, but states that it believes this plan "is highly likely to be implemented." Finally, in response to the commenter's question about allowing the commenter's own Plan to acquire mutual fund shares, FML states it does not understand the comment and that the requested exemption has nothing to do with mutual funds.

For further information regarding the comments or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11345) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, is 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.

Accordingly, after giving full consideration to the entire record, including the written comments received, the Department has decided to grant the exemption.

**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 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 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 require, among other things, a fiduciary to discharge his or her 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;

(2) The exemption does not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E)-(F) of the Code;

(3) In accordance with section 408(a) of the Act, the Department makes the following determinations:

(a) The exemption is administratively feasible;

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

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

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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.

Accordingly, the following exemption is granted 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).

### Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of certain stock (the Investor Stock) issued by the corporation (the Stock Purchaser) which acquires Post-Conversion Fidelity Mutual Life Insurance Company (Post-Conversion FML) by stock purchase or by merger, (2) the receipt of plan credits (the Plan Credits), or (3) the receipt of cash, by or on behalf of a mutual member (the Mutual Member) of FML which is an employee benefit plan (a Plan), in exchange for such Mutual Member's membership interest (the Membership Interest) in FML, in accordance with the terms of a plan of rehabilitation of FML (the Fourth Amended Plan) approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and the Pennsylvania Insurance Commissioner (the Commissioner), who is acting as the rehabilitator of FML (the Rehabilitator).

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

### Section II. General Conditions

(a) The Fourth Amended Plan is approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and is subject to review and/or supervision by the Commissioner (both in her own capacity and in her capacity as Rehabilitator of FML). The Court determines whether the Fourth Plan—

(1) Properly conserves and equitably administers the assets of FML, in the interests of investors, the public, and others in accordance with the legislatively-stated purpose of protecting the interests of the insured, creditors, and the public; and

(2) Equitably apportions any unavoidable loss through imposed methods for rehabilitating FML. (The Court will retain exclusive jurisdiction over the implementation, interpretation, and enforcement of the Fourth Amended Plan of Reorganization.)

(b) The Fourth Amended Plan provides for either:

(1) The transfer of FML's assets to an independent purchaser (the Asset Purchaser) in exchange for cash; or

(2) The conversion of FML from a mutual life insurance company into a stock life insurance company and either (A) the transfer of the stock of Post-Conversion FML to the independent Stock Purchaser or (B) the merger of Post-Conversion FML into the independent Stock Purchaser or an affiliate of the Stock Purchaser.

(c) Each Mutual Member has an opportunity to comment on the Fourth Amended Plan at hearings held by the Court after full written disclosure of the terms of the Plan is given to such Mutual Member by FML.

(d) Participation by all Mutual Members in the Fourth Amended Plan, if approved by the Court, is mandatory, although Mutual Members may disclaim the Investor Stock, cash, and/or Plan Credits which they would otherwise receive.

(e) The decision by a Mutual Member which is a Plan to receive or disclaim Investor Stock, cash, and/or Plan Credits allocated to such Mutual Member is made by one or more independent fiduciaries of such Plan, and not by FML or any affiliate of FML. Consequently, neither FML nor any of its affiliates will exercise discretion nor render "investment advice" within the meaning of 29 CFR 2510.3-21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim Investor Stock, cash, and/or Plan Credits.

(f) Twenty percent (20%) of the net assets which are available for distribution to the Mutual Members is allocated among the Mutual Members based upon voting rights, and eighty percent (80%) of such net assets is allocated among the Mutual Members on the basis of the contribution of the Mutual Members' respective insurance or annuity contracts (the Contracts) to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (i.e., the net earnings) of FML. The actuarial formulas are approved by the Court and the Commissioner.

(g) The amount and value of the Investor Stock, cash, and/or Plan Credits received by a Mutual Member reflect the aggregate consideration paid by the Stock Purchaser or Asset Purchaser, which is independent of FML.

(h) All Mutual Members that are Plans participate in the transactions on the same basis as all other Mutual Members that are not Plans, except that Mutual

Members which hold Non-Trusteed Tax-Qualified Retirement Funding Contracts receive Plan Credits in exchange for their membership interests, rather than cash and/or Investor Stock.

(i) No Mutual Member pays any brokerage commissions or fees in connection with the receipt of Investor Stock, cash, and/or Plan Credits.

(j) Mutual Members are not restricted from selling or otherwise transferring any Investor Stock which they receive. If Investor Stock comprises part of the consideration paid by the Stock Purchaser, the Stock Purchaser is required to establish a commission-free purchase or sales program which will allow Mutual Members who receive a small number of shares of Investor Stock to "round up" such shares or sell such shares free of sales commissions.

(k) The Fourth Amended Plan does not adversely affect the rights of a contractholder of the company (the Contractholder) which is a Mutual Member. In this regard,

(1) If Post-Conversion FML is acquired by the Stock Purchaser, the obligations of FML to a Contractholder are retained by Post-Conversion FML; and

(2) If FML's assets are purchased by the Asset Purchaser, FML's obligations to a Contractholder are discharged and terminated upon their endorsement and assumption by the Asset Purchaser, thereby making the Asset Purchaser liable for the obligations under the Contract.

### Section III. Definitions

For purposes of this exemption:

(a) An "affiliate" of FML, Post-Conversion FML, the Stock Purchaser, or the Asset Purchaser includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.); or

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

(b) The term "Asset Purchaser" means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase FML's assets under an assumption reinsurance agreement.

(c) The term "FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist before

FML is converted from a mutual life insurance company into a stock life insurance company.

(d) The term "Investor Stock" means the common stock of the Stock Purchaser that will be allocated to Mutual Members if Post-Conversion FML is acquired by the Stock Purchaser in exchange for consideration that includes common stock of the Stock Purchaser.

(e) The term "Mutual Member" means a Contractholder whose name appears on FML's records as an owner of an FML Contract on the Record Date of the Fourth Amended Plan.

(f) The term "Non-Trusteed Tax-Qualified Retirement Funding Contracts" means FML insurance contracts which are held in connection with retirement plans or arrangements described in section 403(a) or 408 of the Internal Revenue Code or non-trusteed retirement plans described in Section 401(a) of the Internal Revenue Code.

(g) The term "Plan" means an employee benefit plan.

(h) The term "Plan Credit" means either (1) additional paid up insurance for a traditional life policy or (2) credits to the account values for Contracts that are not traditional (such as a flexible premium policy). Under FML's Fourth Amended Plan, Plan Credits are to be allocated to Mutual Members who hold Non-Trusteed Tax-Qualified Retirement Funding Contracts, in lieu of Investor Stock and/or cash.

(i) The term "Post-Conversion FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist after FML is converted from a mutual life insurance company into a stock life insurance company.

(j) The term "Stock Purchaser" means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase the stock of Post-Conversion FML, or to acquire Post-Conversion FML by merger, under a stock purchase agreement or merger agreement.

This exemption is available to FML for as long as the terms and conditions of the exemption are satisfied with respect to each Mutual Member that is a Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 2000-34, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, June 26, 2007.

**Ivan L. Strasfeld,**

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

[FR Doc. E7-12673 Filed 6-29-07; 8:45 am]

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Proposed Exemptions and Application Numbers: D-11272, Wells Fargo & Company; D-11390, BSC Services Corp. 401(k) Profit Sharing Plan (the Plan); and D-11402 & D-11403, Owens Corning Savings Plan and Owens Corning Savings and Security (Collectively the Plans)

**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 (ERISA or 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-5700, 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: [Amoffitt.betty@dol.gov](mailto:Amoffitt.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.

#### Wells Fargo & Company (WFC)

*Located in San Francisco, California*

[Application No. D-11272]

#### Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (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