

The ACVETEO's authorizing legislation is codified at 38 U.S.C. 4110. It is established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, as amended.

The ACVETEO is responsible for assessing employment and training needs of Veterans and their integration into the workforce; determining the extent to which the programs and activities of the Department of Labor (DOL) are meeting such needs; assisting the Assistant Secretary of Veterans' Employment and Training (ASVET) in outreach to employers regarding training and skills of Veterans and advantages afforded employers by hiring Veterans; making recommendations to the Secretary of Labor, through the ASVET, with respect for outreach activities and the employment and training of Veterans; and carrying out such other activities necessary to making required reports and recommendations. The statute requires the ACVETEO to meet at least quarterly and to submit an annual report by December 31 of each year on the prior year's activities to the Secretary and the Committees on Veterans' Affairs of the House of Representatives and the Senate.

SUPPLEMENTARY INFORMATION: As established by statute, the membership of the ACVETEO must consist of at least 12, but no more than 16, individuals appointed by the Secretary of Labor:

- Seven individuals, one each from among representatives nominated by each of the following service organizations: the Society for Human Resource Management, the Business Roundtable, the National Association of State Workforce Agencies, the United States Chamber of Commerce, the National Federation of Independent Business, a nationally recognized labor union or organization, and the National Governors Association.
- Not more than five individuals from among representatives nominated by veterans' service organizations that have a national employment program.
- No more than five individuals who are recognized authorities in the fields of business, employment, training, rehabilitation, or labor and who are not employees of the Department of Labor.

In addition, the following, or their representatives, are ex-officio, non-voting members: Secretaries of Veterans Affairs and Defense; Director of the Office of Personnel Management; Assistant Secretary of Labor for Veterans' Employment and Training; the Assistant Secretary of Labor for Employment and Training; and the

Administrator of the Small Business Administration.

The ACVETEO is a non-discretionary advisory committee required by law and provides valuable advice to the Secretary of Labor. Therefore, the Department has determined that it is necessary and in the public interest to reestablish the committee.

FOR FURTHER INFORMATION CONTACT: The Veterans' Employment and Training Service (VETS) is responsible for providing the necessary support for the ACVETEO. The Director, Strategic Outreach and Legislative Affairs within VETS will serve as the Designated Federal Official (DFO). Individuals requesting further information should contact Nancy Hogan, Designated Federal Official, at (202) 693-4700.

Signed in Washington, DC, this 7th day of June 2011.

John McWilliam,

Deputy Assistant Secretary, Veterans' Employment and Training Service.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

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 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: D-11632, 2011-10, William W. Etherington IRA (the Plan); D-11642, 2011-11, H-E-B Brand Savings and Retirement Plan (the Plan) and H.E. Butt Grocery Company (the Company); L-11625, 2011-12, The International Union of Painters and Allied Trades Finishing Trades Institute (the Plan or the Applicants); and L-11641, 2011-13, Ford Motor Company (the Applicant)

SUPPLEMENTARY INFORMATION: 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.

William W. Etherington IRA (the IRA); Located in Park City, Utah; [Prohibited Transaction Exemption 2011-10; Exemption Application No. D-11632]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the IRA to William W. Etherington and his wife, Paula D. Etherington (the Applicants), disqualified persons with respect to the IRA,¹ of the IRA's 80% interest (the Interest) in certain residential real property (the Property); provided that:

(a) The terms and conditions of the Sale are at least as favorable to the IRA

¹ Pursuant to 29 CFR 2510.3-2(d), the IRA is not within the jurisdiction of 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.

as those obtainable in an arm's length transaction with an unrelated party;

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

(c) As consideration, the IRA receives the fair market value of the Interest as determined by a qualified, independent appraiser, in an updated appraisal on the date of Sale; and

(d) The IRA pays no real estate commissions, costs, fees, or other expenses with respect to the Sale.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption on or before April 14, 2011. During the comment period, the Department received one written comment from the Applicants, which was submitted by Mr. Etherington, the owner of the IRA. The Department received no hearing requests.

The Applicants' Comment

The Applicants' comment concerned their desire to use a different qualified, independent appraiser than Mary Mau of Second Opinion Appraisal, Inc. (the Appraiser), the individual who performed the original appraisal (the Appraisal) of the Property on February 10, 2010, in order to determine the fair market value of the Interest. Condition (c) of the proposed exemption provides that the Interest's appraised value, which is based on the underlying value of the Property, must be updated on the date of Sale.² Because the date of the Sale will have occurred in excess of one year after the Property's Appraisal, the Department is requiring the Applicants to obtain an updated appraisal (the Update) on or before the date of Sale in order to satisfy the requirements of Condition (c) of the proposal. To the extent that the Update is obtained prior to the Sale, the Appraiser must provide a confirmation (either orally or in writing) that the fair market value of the Property on the date of the Sale has not changed. If the Appraiser determines that there has been a change in the fair market value of the Property on the date of the Sale, then they must provide an additional Update (either orally or in writing) setting forth the fair market value of the Property. This will ensure that the Applicants will purchase the Interest from the IRA at fair market value. Mr. Etherington has requested that the Applicants be allowed to obtain the Update, including any confirmation

or additional Update of the Property's fair market value on the date of the Sale, using a qualified, independent appraiser other than the Appraiser.

In conversations with the Department, Mr. Etherington stated that he was dissatisfied with the responsiveness of the Appraiser and the cost of her services. In this regard, Mr. Etherington represented that, after the Appraisal was conducted, it took the Appraiser in excess of three months to submit additional representations concerning her status as a qualified independent appraiser, along with copies of supporting documentation, which had been requested by the Department. Mr. Etherington stated that, during this period, he had attempted to contact the Appraiser on numerous occasions to request that the submission of the additional information be expedited, but the Appraiser was unresponsive to his inquiries. Furthermore, the Appraiser requested an additional fee for such submission, which Mr. Etherington viewed as unreasonable because he did not believe that the Applicants should be forced to pay an extra fee for information that was requested by the Department in connection with the Appraisal.³ Finally, according to Mr. Etherington, the Appraiser has requested a \$600 fee to perform the Update and an additional fee for a verbal confirmation as to the Property's value on the date of the Sale, to be negotiated at such time.

Accordingly, the Applicants have retained Mr. Don Baxter of the Baxter Realty Group, located in Kailua, Hawaii, to perform the Update on the Property. According to Mr. Etherington, Mr. Baxter is a Certified Residential Appraiser, licensed under the State of Hawaii, and has no personal relationship with the Applicants or any interest in the Property or the Sale. In his comment, Mr. Etherington states that Mr. Baxter will charge \$575.92 for the Update and will provide a verbal confirmation of the Property's value on the date of Sale for free, if the Property's fair market value has not changed. According to Mr. Etherington, if the Property's value has changed on the date of Sale, then Mr. Baxter will provide an additional Update, at a fee to be determined at the time. Finally, in his comment letter, Mr. Etherington represents that Mr. Baxter will earn less than 1% of his annual income from the Applicants and he understands that the Update will be used for the purpose of

obtaining an exemption from the Department for the Sale.

The Department's Response

It is the Department's understanding that the Update, and any necessary verbal confirmation at the time of the Sale, will be conducted by a qualified, independent appraiser, as required under the Department's policies and exemption procedures, and in compliance with Condition (c) of the proposal. Therefore, based on Mr. Etherington's comment letter, the Department concurs with the Applicants' request to retain a new qualified, independent appraiser to perform the Update, and takes note of any corresponding changes to the proposed exemption.

After giving full consideration to the entire record, including the Applicants' written comment, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits 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 proposed exemption published in the **Federal Register** on March 15, 2011 at 76 FR 14090.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blinder of the Department at (202) 693-8553. (This is not a toll-free number.)

H-E-B Brand Savings and Retirement Plan (the Plan) and H.E. Butt Grocery Company (the Company); Located in San Antonio, Texas.; [Prohibited Transaction Exemption No. 2011-11; Application No. D-11642]

Exemption

The restrictions of section 406(a), section 406(b)(1), and section 406(b)(2) of the Act and the sanctions resulting from the application of 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of real property (the Property) by the Plan to the Company, a party in interest with respect to the Plan; provided the following conditions are satisfied:

(a) The sale of the Property is a one-time transaction for cash;

(b) The Plan will receive from the proceeds of the sale of the Property a sales price in the amount of \$2,762,566, plus an amount equal to \$432,618 (the

²Representations 27-30 of the notice of proposed exemption describe the Appraisal and the approaches considered by the Appraiser.

³Mr. Etherington stated that he was charged approximately \$600 for the Appraisal and \$300 for an additional one page written submission that was requested by the Department.

total of all real estate taxes and expenses incurred by the Plan as a result of holding the Property from the date the Plan purchased the Property through December 31, 2009), plus an additional amount equal to the total of all real estate taxes and expenses from January 1, 2010, to the date of the sale of the Property to the Company;

(c) The terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; and

(d) The Plan pays no fees, commissions, or other expenses in connection with the sale of the Property to the Company; and

(e) Prior to entering into the subject transaction, the trustees of the Plan determine that the sale of the Property is feasible, protective of, and in the interest of the Plan and its participants and beneficiaries.

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 15, 2011, at 76 FR 14094.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

The International Union of Painters and Allied Trades Finishing Trades Institute (the Plan or the Applicant); Located in Hanover, Maryland; [Prohibited Transaction Exemption 2011-12; Exemption Application No. L-11625]

Exemption

The restrictions of sections 406(a)(1)(A), (C) and (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the payment for lodging and meals by the Plan to the International Union of Painters and Allied Trades, AFL-CIO (the Union), a party in interest with respect to the Plan, in a residence hall (the Residence Hall) owned by the Union through its wholly-owned entity IUPAT Building Corporation LLC (the Building Corporation), provided that the following conditions are satisfied:

(a) An independent, qualified fiduciary (the I/F), acting on behalf of the Plan, determines prior to entering into the transaction that the transaction is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of the Plan;

(b) Before the Plan enters into the proposed transaction, the I/F reviews the transaction, ensures that the terms of the transaction are at least as favorable to the Plan as an arm's length

transaction with an unrelated party, and determines whether or not to approve the transaction, in accordance with the fiduciary provisions of the Act;

(c) The I/F monitors compliance with the terms and conditions of this exemption, as described herein, and ensures that such terms and conditions are at all times satisfied;

(d) The I/F monitors compliance with the terms of the written agreement (the Agreement) between the Plan and the Union, and takes any and all steps necessary to ensure that the Plan is protected, including, but not limited to, agreeing to extend the Agreement on an annual basis or exercising his authority to terminate the Agreement on 30 days' written notice;

(e) The payments by the Plan for the lodging at the Residence Hall and for the meals provided under the Agreement and under the terms of any subsequent extension of the Agreement are at no time greater than their fair market value, as determined by the I/F;

(f) The subject transaction is on terms and at all times remains on terms that are at least as favorable to the Plan as those that would have been negotiated under similar circumstances at arm's-length with an unrelated third party;

(g) The Applicant's independent auditor will perform an annual audit for the Plan to verify whether the Plan paid the proper amounts with respect to the subject transaction. In this regard, the written audit report for each year must identify, as applicable, any errors or irregularities relating to such payments, any internal control weaknesses that must be addressed under generally accepted auditing standards, and any recordkeeping matters that would impede the auditor from properly auditing such payments. To the extent there are any discrepancies as to the foregoing matters, the independent auditor will promptly communicate them to the Board of Trustees of the Plan (the Trustees), who will, in turn, promptly notify the I/F about such discrepancies.⁴

(h) The transaction is appropriate and helpful in carrying out the purposes for which the Plan is established or maintained;

(i) The Trustees maintain, or cause to be maintained within the United States for a period of six (6) years in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described, below, in paragraph (j)(1) of

this exemption to determine whether the conditions of this exemption have been met; except that—

(1) If the records necessary to enable the persons described, below, in paragraph (j)(1) of this exemption to determine whether the conditions of this exemption have been met are lost or destroyed, due to circumstances beyond the control of the Trustees, then a separate prohibited transaction will not be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than the Trustees, 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 (i) of this exemption; and

(j)(1) Except as provided, below, in paragraph (j)(2) of this exemption and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this exemption are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or any other applicable federal or state regulatory agency;

(B) Any fiduciary of the Plan, or any duly authorized representative of such fiduciary;

(C) Any contributing employer to the Plan and any employee organization whose members are covered by the Plan, or any duly authorized employee or representative of these entities; or

(D) Any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described, above, in paragraph (j)(1)(B)–(D) of this exemption are authorized to examine trade secrets or commercial or financial information that is privileged or confidential.

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 March 15, 2011 at 76 FR 14096. The Department received no comments or hearing requests with respect to the Notice.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 693-8546 (This is not a toll-free number.)

⁴ To the extent that the independent auditor raises issues with respect to the payments, the Trustees have an obligation to address them in a manner consistent with their fiduciary responsibilities pursuant to section 404 of the Act.

**Ford Motor Company (the Applicant);
Located in Detroit, MI; [Prohibited
Transaction Exemption (PTE) 2011-13;
Exemption Application No. L-11641]
Exemption**

*Section I. Covered Transactions*⁵

(a) The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a) of ERISA shall not apply to the following transactions:

(1) The acquisition by the UAW Ford Retirees Medical Benefits Plan (the Ford VEBA Plan) and its funding vehicle, the UAW Retiree Medical Benefits Trust (the VEBA Trust) of: (i) The LLC Interests; (ii) New Note A; (iii) New Note B (together with New Note A, the New Notes); and (iv) Warrants, transferred by Ford and deposited in the Ford Employer Security Sub-Account of the Ford Separate Retiree Account of the VEBA Trust.

(2) The acquisition by the Ford VEBA Plan of shares of Ford Common Stock pursuant to Ford's right to settle its payment obligations under New Note B in shares of Ford Common Stock (*i.e.*, Payment Shares), consistent with the 2009 Settlement Agreement;

(3) The acquisition by the Ford VEBA Plan of shares of Ford Common Stock pursuant to (i) The Independent Fiduciary's exercise of all or a pro rata portion of the Warrants, consistent with the 2009 Settlement Agreement and (ii) an adjustment, substitution, conversion, or other modification of Ford Common Stock in connection with a reorganization, restructuring, recapitalization, merger, or similar corporate transaction, provided that each holder of Ford Common Stock is treated in an identical manner;

(4) The holding by the Ford VEBA Plan of the aforementioned Securities in the Ford Employer Security Sub-Account of the Ford Separate Retiree Account of the VEBA Trust, consistent with the 2009 Settlement Agreement;

(5) The deferred payment of any amounts due under New Note B by Ford pursuant to the terms thereunder;

(6) The disposition of the Securities by the Independent Fiduciary; and

(7) The amendment of New Note B pursuant to the execution of the Note Agreement.

(b) The restrictions of sections 406(a)(1)(A), 406(b)(1), and 406(b)(2) of ERISA shall not apply to the sale of Ford Common Stock or Warrants held

by the Ford VEBA Plan to Ford in accordance with the Right of First Offer or a Ford self-tender under the Securityholder and Registration Rights Agreement.

(c) The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of ERISA shall not apply to:

(1) The extension of credit or transfer of assets by Ford, the Ford Retiree Health Plan, or the Ford VEBA Plan in payment of a benefit claim that was the responsibility and legal obligation, under the terms of the applicable plan documents, of one of the other parties listed in this paragraph;

(2) The reimbursement by Ford, the Ford Retiree Health Plan, or the Ford VEBA Plan, of a benefit claim that was paid by another party listed in this paragraph, which was not legally responsible for the payment of such claim, plus interest;

(3) The retention of an amount by Ford until payment to the Ford VEBA Plan resulting from an overaccrual of pre-transfer expenses attributable to the TAA or the retention of an amount by the Ford VEBA Plan until payment to Ford resulting from an underaccrual of pre-transfer expense attributable to the TAA; and

(4) The Ford VEBA Plan's payment to Ford of an amount equal to any underaccrual by Ford of pre-transfer expenses attributable to the TAA or the payment by Ford to the Ford VEBA Plan of an amount equal to any overaccrual by Ford of pre-transfer expenses attributable to the TAA.

(d) The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of ERISA shall not apply to the return to Ford of assets deposited or transferred to the Ford VEBA Plan by mistake, plus interest.

Section II. Conditions Applicable to Section I(a) and I(b)

(a) The Committee appoints a qualified Independent Fiduciary to act on behalf of the Ford VEBA Plan for all purposes related to the transfer of the Securities to the Ford VEBA Plan for the duration of the Ford VEBA Plan's holding of the Securities. Such Independent Fiduciary will have sole discretionary responsibility relating to the holding, ongoing management and disposition of the Securities, except for the voting of the Ford Common Stock. The Independent Fiduciary has determined or will determine, before taking any actions regarding the Securities, that each such action or transaction is in the interest of the Ford VEBA Plan.

(b) In the event that the same Independent Fiduciary is appointed to

represent the interests of one or more of the other plans comprising the VEBA Trust (*i.e.*, the UAW Chrysler Retiree Medical Benefits Plan and/or the UAW General Motors Company Retiree Medical Benefits Plan) with respect to employer securities deposited into the VEBA Trust, the Committee takes the following steps to identify, monitor and address any conflict of interest that may arise with respect to the Independent Fiduciary's performance of its responsibilities:

(1) The Committee appoints a "conflicts monitor" to: (i) Develop a process for identifying potential conflicts; (ii) Regularly review the Independent Fiduciary reports, investment banker reports, and public information regarding the companies, to identify the presence of factors that could lead to a conflict; and (iii) Further question the Independent Fiduciary when appropriate.

(2) The Committee adopts procedures to facilitate prompt replacement of the Independent Fiduciary if the Committee in its sole discretion determines such replacement is necessary due to a conflict of interest.

(3) The Committee requires the Independent Fiduciary to adopt a written policy regarding conflicts of interest. Such policy shall require that, as part of the Independent Fiduciary's periodic reporting to the Committee, the Independent Fiduciary includes a discussion of actual or potential conflicts identified by the Independent Fiduciary and options for avoiding or resolving the conflicts.

(c) The Independent Fiduciary authorizes the trustee of the Ford VEBA Plan to dispose of the Ford Common Stock (including any Payment Shares or any shares of Ford Common Stock acquired pursuant to exercise of the Warrants), the LLC Interests, the New Notes, or exercise the Warrants, only after the Independent Fiduciary determines, at the time of the transaction, that the transaction is feasible, in the interest of the Ford VEBA Plan, and protective of the participants and beneficiaries of the Ford VEBA Plan.

(d) The Independent Fiduciary negotiates and approves on behalf of the Ford VEBA Plan any transactions between the Ford VEBA Plan and any party in interest involving the Securities that may be necessary in connection with the subject transactions (including but not limited to the registration of the Securities contributed to the Ford VEBA Plan).

(e) Any contract between the Independent Fiduciary and an investment banker includes an

⁵ Because the Ford VEBA Plan is not qualified under section 401 of the Code, there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under Title I of the Act.

acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA plan.

(f) The Independent Fiduciary discharges its duties consistent with the terms of the Ford VEBA Plan, the Trust Agreement, the Independent Fiduciary Agreement, and any other documents governing the Securities, such as the Registration Rights Agreement.

(g) The Ford VEBA Plan incurs no fees, costs or other charges (other than described in the Trust Agreement, the 2009 Settlement Agreement, and the Securityholder and Registration Rights Agreement) as a result of the transactions exempted herein.

(h) The terms of any transaction exempted herein are no less favorable to the Ford VEBA Plan than the terms negotiated at arms' length under similar circumstances between unrelated parties.

Section III. Conditions Applicable to Section I(c)(1) and I(c)(2)

(a) The Committee and the Ford VEBA Plan's third party administrator will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the Ford VEBA Plan's independent auditor. The results of this review will be made available to Ford.

(b) Ford and the applicable third party administrator of the Ford Active Health Plan will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the plan's independent auditor. The results of this review will be made available to the Committee.

(c) Interest on any reimbursed mispayment will accrue from the date of the mispayment to the date of the reimbursement.

(d) Interest will be determined using the applicable 6 month published LIBOR rate.

(e) If there is a dispute as to the amount, timing or other feature of a reimbursement payment, the parties will enter into the Dispute Resolution Procedure found in Section 26B of the 2009 Settlement Agreement and described further in Section VII(c) herein.

Section IV. Conditions Applicable to Section I(c)(3) and I(c)(4)

(a) Ford and the Committee will cooperate in the calculation and review of the amounts of expense accruals related to the TAA, and the amount of any overaccrual shall be made subject to the review of an independent auditor selected by Ford and the amount of any

underaccrual shall be made subject to the review of the Ford VEBA Plan's independent auditor.

(b) Ford must make a claim for any underaccrual to the Committee, and the Committee must make a claim for any overaccrual to Ford, as applicable, within the Verification Time Period, as defined in Section VII(cc).

(c) Interest on any true-up payment will accrue from the date of transfer of the assets in the TAA (or the LLC containing the TAA) for the amount in respect of the overaccrual or underaccrual, as applicable, until the date of payment of such true-up amount.

(d) Interest will be determined using the published six month LIBOR rate.

(e) If there is a dispute as to the amount, timing or other feature of a true-up payment in respect of TAA expenses, the parties will enter into the Dispute Resolution Procedure found in Section 26B of the 2009 Settlement Agreement and described further in Section VII(c) herein.

Section V. Conditions Applicable to Section I(d)

(a) Ford must make a claim to the Committee regarding the specific deposit or transfer made in error or made in an amount greater than that to which the Ford VEBA Plan was entitled.

(b) The claim is made within the Verification Time Period, as defined in Section VII(cc).

(c) Interest on any mistaken deposit or transfer will accrue from the date of the mistaken deposit or transfer to the date of the repayment.

(d) Interest will be determined using the published six month LIBOR rate.

(e) If there is a dispute as to the amount, timing or other feature of a mistaken payment, the parties will enter into the Dispute Resolution Procedure found in Section 26B of the 2009 Settlement Agreement and described further in Section VII(c) herein.

Section VI. Conditions Applicable to Section I

(a) The Committee and the Independent Fiduciary maintain for a period of six years from the date (i) The Securities are transferred to the Ford VEBA Plan, and (ii) the shares of Ford Common Stock are acquired by the Ford VEBA Plan through the exercise of the Warrants or Ford's delivery of Payment Shares in settlement of its payment obligations under New Note B, the records necessary to enable the persons described in paragraph (b) below to determine whether the conditions of this exemption have been met, provided that (i) a separate prohibited transaction

will not be considered to have occurred if, due to circumstances beyond the control of the Committee and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Committee or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (b) below; and

(b) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of ERISA, the records referred to in paragraph (a) above shall be unconditionally available at their customary location during normal business hours to:

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

(2) The UAW or any duly authorized representative of the UAW;

(3) Ford or any duly authorized representative of Ford;

(4) The Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(5) The Committee or any duly authorized representative of the Committee; and

(6) Any participant or beneficiary of the Ford VEBA Plan or any duly authorized representative of such participant or beneficiary.

(c) None of the persons described above in paragraphs (b)(2), (4)–(6) shall be authorized to examine trade secrets of Ford, or commercial or financial information which is privileged or confidential, and should Ford refuse to disclose information on the basis that such information is exempt from disclosure, Ford shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section VII. Definitions

(a) The term "affiliate" means: (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, partner, or employee in any such person, or relative (as defined in section 3(15) of ERISA) of any such person; or (3) any corporation, partnership or other entity of which such 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 “Committee” means the eleven individuals consisting of six independent members and five UAW appointed members who will serve as the plan administrator and named fiduciary of the Ford VEBA Plan.

(c) The term “Dispute Resolution Procedure” means the process found in Section 26B of the 2009 Settlement Agreement to effectuate the resolution of any dispute respecting the transactions described in Sections I(c)(1), (c)(2), (c)(3), (c)(4), and (d) herein, and which reads in pertinent part: (1) The aggrieved party shall provide the party alleged to have violated the 2009 Settlement Agreement (Dispute Party) with written notice of such dispute, which shall include a description of the alleged violation and identification of the Section(s) of the 2009 Settlement Agreement allegedly violated. Such notice shall be provided so that it is received by the Dispute Party no later than 180 calendar days from the date of the alleged violation or the date on which the aggrieved party knew or should have known of the facts that give rise to the alleged violation, whichever is later, but in no event longer than 3 years from the date of the alleged violation; and (2) If the Dispute Party fails to respond within 21 calendar days from its receipt of the notice, the aggrieved party may seek recourse to the District Court; provided however, that the aggrieved party waives all claims related to a particular dispute against the Dispute Party if the aggrieved party fails to bring the dispute before the District Court within 180 calendar days from the date of sending the notice. All the time periods in Section 26 of the 2009 Settlement Agreement may be extended by agreement of the parties to the particular dispute.

(d) The term “Exchange Agreement” means the Security Exchange Agreement among Ford, the subsidiary guarantors listed in Schedule I thereto and the LLC, dated as of December 11, 2009.

(e) The term “Ford” or the “Applicant” means Ford Motor Company, located in Detroit, MI, and its affiliates.

(f) The term “Ford Active Health Plan” means the medical benefits plan maintained by Ford to provide benefits to eligible active hourly employees of Ford and its participating subsidiaries.

(g) The term “Ford Common Stock” means the shares of common stock, par value \$0.01 per share, issued by Ford.

(h) The term “Ford Credit” means Ford Motor Credit Company LLC, a Delaware limited liability company and an indirect, wholly owned subsidiary of Ford.

(i) The term “Ford Employer Security Sub-Account of the Ford Separate Retiree Account of the VEBA Trust” means the sub-account established in the Ford Separate Retiree Account of the VEBA Trust to hold Securities on behalf of the Ford VEBA Plan.

(j) The term “Ford Retiree Health Plan” means the retiree medical benefits plan maintained by Ford that provided benefits to, among others, those who will be covered by the Ford VEBA Plan.

(k) The term “IFS” means Independent Fiduciary Services, Inc., a Delaware corporation, appointed by the Committee to be the Independent Fiduciary.

(l) The term “Implementation Date” means December 31, 2009.

(m) The term “Independent Fiduciary” means a fiduciary that is (1) Independent of and unrelated to Ford, the UAW, the Committee, and their affiliates, and (2) appointed to act on behalf of the Ford VEBA Plan with respect to the holding, management and disposition of the Securities. In this regard, the fiduciary will be deemed not to be independent of and unrelated to Ford, the UAW, the Committee, and their affiliates if (1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Ford, the UAW, the Committee or their affiliates, (2) such fiduciary directly or indirectly receives any compensation or other consideration from Ford, the UAW or any Committee member in his or her individual capacity in connection with any transaction contemplated in this exemption (except that an Independent Fiduciary may receive compensation from the Committee or the Ford VEBA Plan for services provided to the Ford VEBA Plan in connection with the transactions discussed herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary’s ultimate decision), and (3) the annual gross revenue received by the fiduciary, in any fiscal year, from Ford, the UAW or a member of the Committee in his or her individual capacity, exceeds 3% of the fiduciary’s annual gross revenue from all sources (for federal income tax purposes) for its prior tax year.⁶

(n) The term “LLC” means the Ford-UAW Holdings LLC, established by Ford as a wholly owned LLC, and subsequently renamed VEBA-F

⁶ The Department notes that the preceding conditions are not exclusive, and that other circumstances may develop which cause the Independent Fiduciary to be deemed not to be independent of and unrelated to Ford, the UAW, the Committee, and their affiliates.

Holdings LLC, established to hold the assets in the TAA and certain other assets required to be contributed to the VEBA under the 2008 Settlement Agreement, as amended by the 2009 Settlement Agreement.

(o) The term “LLC Interests” means Ford’s wholly owned interest in the LLC.

(p) The term “New Note A” means the amortizing guaranteed secured note maturing on June 30, 2022, in the principal amount of \$6,705,470,000, with payments to be made in cash, in annual installments from 2009 through 2022, issued by Ford and referred to in the Exchange Agreement.

(q) The term “New Note B” means the amortizing guaranteed secured note maturing June 30, 2022, in the principal amount of \$6,511,850,000, with payments to be made in cash, Ford Common Stock, or a combination thereof, in annual installments from 2009 through 2022, unless prepaid, issued by Ford and referred to in the Exchange Agreement, and as amended by the Note Agreement, effective June 25, 2010.

(r) The term “Note Agreement” means the Agreement, dated as of June 25, 2010 by and among Ford, Ford Credit, and the VEBA Trust, acting by and through IFS, wherein the VEBA Trust will sell New Note A to Ford and Ford Credit and New Note B is amended to add provisions permitting Ford to prepay all or a portion of New Note B, in each case under the terms and conditions set forth therein.

(s) The term “Payment Shares” means any shares of Ford Common Stock issued by Ford to satisfy all or a portion of its payment obligation under New Note B, subject to the terms and conditions specified in New Note B.

(t) The term “published six month LIBOR rate” means the Official British Banker’s Association Six Month London Interbank Offered Rate (LIBOR) 11 a.m. GMT “fixing” as reported on Bloomberg page “BBAM”.

(u) The term “Securities” means (1) New Note A; (2) New Note B; (3) the Warrants; (4) the LLC Interests, (5) any Payment Shares, and (6) additional shares of Ford Common Stock acquired in accordance with the transactions described in Sections I(a)(2) and (3) of this exemption.

⁷ LIBOR is calculated by Thomson Reuters and published by the British Bankers’ Association after 11 a.m. (and generally around 11:45 a.m.) each day (London time). It is a trimmed average of inter-bank deposit rates offered by designated contributor banks, for maturities ranging from overnight to one year. The rates are a benchmark rather than a tradable rate; the actual rate at which banks will lend to one another continues to vary throughout the day.

(v) The term “Securityholder and Registration Rights Agreement” means the Securityholder and Registration Rights Agreement by and among Ford and the LLC, dated as of December 11, 2009.

(w) The term “2008 Settlement Agreement” means the settlement agreement, effective as of August 29, 2008, entered into by Ford, the UAW, and a class of retirees in the case of *Int’l Union, UAW, et al. v. Ford Motor Company*, Civil Action No. 07–14845, 2008 WL 4104329 (E.D. Mich. Aug. 29, 2008).

(x) The term “2009 Settlement Agreement” means the 2008 Settlement Agreement, as amended by an Amendment to such Settlement Agreement dated July 23, 2009, effective as of November 9, 2009, entered into by Ford, the UAW, and a class of retirees in the case of *Int’l Union, UAW, et al. v. Ford Motor Company*, Civil Action No. 07–14845, 2008 WL 4104329 (E.D. Mich. Aug. 29, 2008), *Order and Final Judgment Granted*, Civil Action No. 07–14845, Doc. #71, (E.D. Mich. Nov. 9, 2009).

(y) The term “TAA” means the temporary asset account established by Ford under the 2008 Settlement Agreement to serve as tangible evidence of the availability of Ford assets equal to Ford’s obligation to the Ford VEBA Plan.

(z) The term “Trust Agreement” means the trust agreement for the VEBA Trust.

(aa) The term “UAW” means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

(bb) The term “VEBA” means the Ford UAW Retirees Medical Benefits Plan (the Ford VEBA Plan) and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust).

(cc) The term “Verification Time Period” means: (1) With respect to each of the Securities other than the payments in respect of the New Notes, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of any such Security to the Ford VEBA Plan) and ending 90 calendar days thereafter; (2) with respect to each payment pursuant to the New Notes, the period beginning on the date of the payment and ending 90 calendar days thereafter; and (3) with respect to the TAA, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of the assets in the TAA to the Ford VEBA Plan) and ending 180 calendar days thereafter.

(dd) The term “Warrants” means warrants issued by Ford to acquire 362,391,305 shares of Ford Common Stock at a strike price of \$9.20 per share, expiring on January 1, 2013. For purposes of this definition, the term “Warrants” includes additional warrants to acquire Ford Common Stock acquired in partial or complete exchange for, or adjustment to, the warrants described in the preceding sentence, at the direction of the Independent Fiduciary or pursuant to a reorganization, restructuring or recapitalization of Ford as well as a merger or similar corporate transaction involving Ford (each, a corporate transaction), provided that, in such corporate transaction, similarly situated warrant holders, if any, will be treated the same to the extent that the terms of such warrants and/or rights of such warrant holders are the same.

Section VIII. Effective Date

This amendment to PTE 2010–08 is effective as of December 31, 2009, except with respect to Section I(a)(7), which is effective as of June 25, 2010.

Written Comments

The Department invited all interested persons to submit written comments with respect to the notice of proposed exemption on or before May 5, 2011. During the comment period, the Department received 2 telephone inquiries and 2 written comments from participants and/or beneficiaries in the Ford VEBA Plan, which generally concerned the commenters’ difficulties in understanding the notice of proposed exemption and/or raised issues outside the scope of the exemption. Furthermore, the Department received a written comment from IFS, the Independent Fiduciary and investment manager of the Ford Employer Security Sub-Account of the Ford Separate Retiree Account of the VEBA Trust, which supported the exemption and suggested two clarifications regarding the Summary of Facts and Representations (the Summary) in the notice of proposed exemption.

Following is a discussion of the aforementioned comment. Any capitalized terms herein not otherwise defined have the meanings ascribed to them in the Summary.

IFS’s Comment

IFS’s comment generally relates to (1) The number of financial advisers retained by IFS, and (2) the original prepayment terms of New Note B.

A. Number of Financial Advisers Retained by IFS

In its comment, IFS states that the Summary incorrectly implies that it retained financial advisors other than Sutter. As described on page 14076 of the proposed exemption, “[a]fter considerable negotiation, during which it consulted extensively with its legal counsel, Proskauer Rose LLP (Proskauer Rose), and its financial advisers, including Sutter Securities Incorporated (Sutter), IFS states that it entered into an agreement * * *” IFS clarifies that the only financial adviser that it engaged and consulted with was Sutter. Further, IFS notes that, in making a decision whether to enter into the Note Agreement, it did consider the views expressed by the leading investment banking firms with which it met, but none of those firms served as a financial adviser to IFS besides Sutter.

In response to these comments, the Department takes note of the foregoing clarifications and updates to the Summary.

B. Original Prepayment Terms of New Note B

IFS states that Summary does not accurately reflect the original prepayment terms of New Note B. As the Summary describes on page 14078 of the proposed exemption, “[b]y contrast, IFS was aware that the original terms of New Note B did not require any advance notice of Ford’s intent to make a prepayment, nor did they require that any prepayment must be made in cash.” According to IFS, the original terms of New Note B did in fact require that any prepayments of New Note B were to be made in cash. IFS explains that Sections 2(c) and 2(e) of New Note B permitted Ford to elect to pay annual required principal installments in specific amounts on specific annual “Payment Dates” or, in certain cases with respect to a “Deferred Payment,” on specific “Installment Payment Dates” (in each case, as defined in New Note B) in either cash or Ford Common Stock. IFS states that amounts payable under Sections 2(c) and 2(e), described above, were the only payments under New Note B that could be made other than in cash. By contrast, IFS points out, Section 2(g) of New Note B required that prepayments of New Note B on the specified Payment Dates be made in cash, unlike the principal installments under Section 2(c) or 2(e). Furthermore, IFS states that Section 2(b) of New Note B required that all other payments of New Note B be made in cash.

In response to these comments, the Department takes note of the foregoing

clarifications and updates to the Summary.

After giving full consideration to the entire record, including the written comments, the Department has decided to grant this exemption amending PTE 2010-08, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits 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 proposed amendment, published in the **Federal Register** on March 15, 2011 at 76 FR 14074.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693-8553. (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 8th day of June, 2011.

Ivan Strasfeld,

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

[FR Doc. 2011-14521 Filed 6-10-11; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

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). This notice includes the following proposed exemptions: D-11608, Russell Trust Company; and D-11659, Pacific Capital Bancorp Amended and Restated Incentive and Investment and Salary Savings Plan **DATES:** 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.

ADDRESSES: 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. 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: 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.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

SUPPLEMENTARY INFORMATION:

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).

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.