[TA–W–29,744]

Xerox Corporation a/k/a EDS Webster, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 21, 1994, applicable to all workers for Xerox Corporation engaged in employment related to the production of copiers and printers in Webster, New York. The notice was published in the **Federal Register** on October 21, 1994 (59 FR 53211).

The Department has been notified by the State Agency that Xerox Corporation was sold to EDS. Some Xerox workers were transferred to EDS for a limited period of time to train the new company's new employees.

The intent of the Department's certification is to include all workers of Xerox Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–29,744 is hereby issued as follows:

''All workers of Xerox Corporation, a/k/a EDS, Webster, New York engaged in employment related to the production of copiers and printers who became totally or partially separated from employment on or after March 29, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 28th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19658 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–30,961]

Zenith Distributing Corporation a/k/a Texlokla Division Plano, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on June 26, 1995, applicable to all workers at the subject firm. The amended notice was published in the **Federal Register**, on July 7, 1995 (60 FR 35435).

New information received from the State Agency show that some of the workers at the Zenith Distributing, Plano, Texas, had their unemployment insurance (UI) taxes paid to Texlokla Division.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–30,961 is hereby issued as follows:

''All workers of Zenith Distributing Corporation, a/k/a Texlokla Division, Plano, Texas engaged in employment related to sales and distribution of Zenith electronic products who became totally or partially separated from employment on or after April 24, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 28th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19659 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–13–M

Pension and Welfare Benefits Administration

[Application No. D–09981, et al.]

Proposed Exemptions; Boston Safe Deposit

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request 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. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 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 (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. 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.

Boston Safe Deposit and Trust Company Located in Boston, Massachusetts; Proposed Exemption

[Application No. D–9981]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of January 12, 1995, to the cash sale of certain commercial paper notes (the Notes) for $25,031,269 by the Common Trust Cash Investment Fund (the Fund) to Boston Safe Deposit and Trust Company (Boston Safe), a party in interest with respect to employee benefit plans invested in the Fund, provided that the following conditions are met:

(a) The sale was a one-time transaction for cash;

(b) The Fund received an amount which was equal to the greater of either (i) the amortized cost of the Notes, plus accrued but unpaid interest, as of the date of sale, or (ii) the fair market value of the Notes, as determined by an independent pricing service at the time of sale;

(c) The Fund did not pay any commissions or other expenses in connection with the sale;

(d) Boston Safe, as trustee of the Fund, determined that the sale of the Notes was appropriate for and in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction;

(e) Boston Safe took all appropriate actions necessary to safeguard the interests of the Fund, and the employee benefit plans invested in the Fund, in connection with the transactions; and

(f) If the exercise of any of Boston Safe's rights, claims or causes of action in connection with its ownership of the Notes results in Boston Safe recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the sum of:

(1) the purchase price paid for the Notes by Boston Safe (i.e. $25,031,269);

(2) the original issue discount on the Notes which remained unamortized as of the date Boston Safe acquired the Notes from the Fund; and

(3) the interest due on the Notes from and after the date Boston Safe purchased the Notes from the Fund, at the rate specified in the Notes, Boston Safe will refund such excess amounts promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of January 12, 1995.

Summary of Facts and Representations

1. Boston Safe is a Massachusetts trust company which provides a wide range of banking and fiduciary services to a broad array of clients, including employee benefit plans subject to the Act. The Fund is a common trust fund established and maintained by Boston Safe as trustee for the collective investment and reinvestment of assets contributed thereto by Boston Safe and its affiliates on behalf of their trust services clients, including employee benefit plans. The Fund is exempt from federal income tax pursuant to section 584 of the Code. As of December 6, 1994, the value of the Fund's portfolio (including the Notes) was approximately $935 million. As of such date, participating investors in the Fund included seventeen employee benefit plans (primarily voluntary employees' beneficiary associations).

2. The Fund purchased the Notes on August 1, 1994 for $24,988,375. The Notes were one year debentures with a par value of $25 million, issued by Orange County, California (the Issuer) on July 8, 1994 with a maturity date of July 10, 1995. The aggregate principal amount of the entire series of the Notes was $600 million. Interest on the Notes was taxable and payable monthly at a variable rate which was reset on the first day of each month. The interest rate was equal to the one-month London Interbank Offered Rate (LIBOR) set forth on the second business day prior to the reset date. The interest on the Notes was payable on the first business day of every month and at maturity. The principal of and unpaid accrued interest on the Notes were payable at maturity.

The Notes were secured by a repayment fund (the Repayment Fund) established by the Issuer at the time the Notes were issued. The assets of the Repayment Fund were invested in the Orange County Investment Pool (the Orange County Pool), an investment fund established by the Issuer for the collective investment of the assets of the Issuer and its several governmental sub-divisions.

3. The decision to invest Fund assets in the Notes was made by Boston Safe as trustee of the Fund. Prior to the investment, Boston Safe conducted an investigation of the potential investment, including an examination of the financial condition of the Issuer. Boston Safe represents that the Fund's investment in the Notes was consistent with the Fund's investment policies and objectives.[1] At the time the Fund acquired the Notes, the Notes were rated ''A–1 plus'' by Standard & Poor's Corporation and ''P–1'' by Moody's Investor Services, Inc.

4. On December 6, 1994, due to large trading losses in the Orange County Pool, the Issuer filed two voluntary petitions under Chapter 9 of the Bankruptcy Code—one on behalf of the Issuer and the other on behalf of the Orange County Pool. Responding to these events, after written notice to participating investors, Boston Safe transferred the Notes to a liquidating account (the Liquidating Account) maintained on behalf of the participating investors then having an interest in the Fund. This transfer was effective December 6, 1994. As of such date, the seventeen employee benefit plans held approximately 15% of the interests in the Liquidating Account.

Boston Safe states that placing the Notes in the Liquidating Account allowed for the continued operation of the Fund because the segregation of the Notes from the other assets in the Fund confined the potential investment losses resulting from the Notes to those investors participating in the Fund as of December 6, 1994. Boston Safe was able

[1] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Notes by the Fund violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a-1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

to continue to permit additions and withdrawals from the Fund at $1.00 per share and investments in the Fund after December 6, 1994 were not affected by the Notes.

5. Boston Safe determined that, as a result of the trading losses incurred by the Orange County Pool and the subsequent bankruptcy filing by the Issuer, the security for the Notes had become inadequate and that full repayment of the Notes was questionable. Boston Safe also determined that the purchase of the Notes by Boston Safe would be permissible under the regulations of the Office of the Comptroller of Currency relating to common trust funds. Therefore, in order to protect the Fund and the participating investors (including the employee benefit plans) having an interest in the Liquidating Account from potential investment losses, Boston Safe decided to purchase the Notes from the Fund. Notice of this resolution was given to the appropriate representative of each of the participating investors having an interest in the Liquidating Account by telephone prior to the date of the transaction.

6. The purchase of the Notes was consummated on January 12, 1995 when Boston Safe purchased the Notes from the Fund for a lump sum cash payment of $25,031,269. This sum represented the amortized cost of the Notes (i.e. $24,993,915) plus the accrued interest owing on the Notes (i.e. $37,354) as of January 12, 1995, the date of the transaction. Therefore, Boston Safe states that the amount received by the Fund for the Notes represented the book value of the Notes on the date of the sale. This amount reflected the discounts received by the Fund when it purchased the Notes at a price that was slightly less than the par value of the Notes. The amortized cost of the Notes was determined by Boston Safe using the standard accounting methods employed by the Fund.

In this regard, Boston Safe used the straight-line method of amortization in calculating the amortized cost of the Notes as of January 12, 1995, the date of sale. The amortized cost of the Notes was determined using a series of computations.

First, the discount on the Notes at purchase was calculated as the difference between the par value of the Notes (i.e., the principal amount which the Issuer is obligated to repay upon the maturity of the Notes) and the price at which the Fund originally purchased the Notes on August 1, 1994. Thus, $25,000,000 (par value) − $24,988,375 (purchase price) = $11,625 (discount).

Second, in order to accrete the discount equally over the life of the Notes, Boston Safe computed the amount of the discount to be accreted on a daily basis by dividing the discount by the number of days the Fund anticipated holding the Notes (i.e., from August 1, 1994, the date of purchase, until maturity on July 10, 1995). Thus, $11,625 (discount) divided by 342 (number of days)[2] = $33.99123 (daily accretion factor).

Third, the accreted discount on the Notes as of January 12, 1995, the date of sale, was calculated by multiplying the daily accretion factor by the number of days the Fund had actually held the Notes on such date. Thus, $33.99123 (daily accretion factor) × 163 (number of days) = $5,540 (accreted discount).

Finally, the accreted discount was then added to the purchase price paid by the Fund for the Notes, with the final figure being the amortized cost of the Notes as of January 12, 1995. Thus, $5,540 (accreted discount) + $24,988,375 (purchase price) = $24,993,915 (amortized cost).

7. Prior to the consummation of the transaction, Boston Safe obtained valuations of the Notes as of the date of the sale from two independent pricing services, Kenny S&P Evaluation Services, Inc., and Muller Data Corporation. Boston Safe states that these pricing services are the industry standards with respect to the pricing of municipal bonds. The valuations of the Notes obtained from these independent pricing services were 85.50 percent of par value and 86.40 percent of par value, respectively. On the basis of these valuations, Boston Safe determined that the purchase price paid by Boston Safe to the Fund exceeded the aggregate fair market value of the Notes as of the date of the transaction. The purchase price was paid to the Liquidating Account and then distributed to participating investors holding interests in the Liquidating Account.

Boston Safe represents that the purchase price paid for the Notes was distributed to each of the participating investors in the Liquidating Account, including the employee benefit plans, based on their respective interests in that account. Such interests were determined based solely upon the relative values, including accrued interest on the Notes, of the investors' interests in the Fund on December 6, 1994. The value of an investor's interest in the Fund on December 6, 1994 was equal to the amounts deposited by or on behalf of the investor as of such date, plus its allocable share of the income of the Fund, less any withdrawals or distributions.

8. Boston Safe, as trustee of the Fund, believed that the sale of the Notes to Boston Safe was in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction. Boston Safe states that any sale of the Notes on the open market would have produced significant losses for the Fund and for the individual employee benefit plan investors involved. Boston Safe represents that the sale of the Notes by the Fund to Boston Safe benefitted the participating investors in the Fund having an interest in the Liquidating Account by placing such investors, including the employee benefit plans, in the same economic position they would have occupied absent the insolvency of the Issuer. The participating investors in the Fund benefitted further because the purchase price paid by Boston Safe for the Notes substantially exceeded the aggregate fair market value of the Notes, as determined by the two independent pricing services from whom valuations were obtained. In addition, Boston Safe states that the transaction was a one-time sale for cash in connection with which the Fund did not bear any brokerage commissions, fees, or other expenses.

9. Boston Safe represents that it took all appropriate actions necessary to safeguard the interests of the Fund investors, including the employee benefit plans, in connection with the sale of the Notes. Boston Safe ensured that each Fund investor with interests in the Liquidating Account received the appropriate amount of cash from Boston Safe representing its respective interest in the Liquidating Account.

10. Boston Safe states that the sale of the Notes by the Fund to Boston Safe resulted in an assignment of all of the Fund's rights, claims, and causes of action against the Issuer or any third party arising in connection with or out of the issuance of the Notes or the purchase of the Notes by the Fund. Boston Safe states further that if the exercise of any of the foregoing rights, claims or causes of action results in Boston Safe recovering from the Issuer or any third party an aggregate amount that is more than the sum of: (a) the purchase price paid for the Notes by Boston Safe (i.e. $25,031,269); (b) the original issue discount on the Notes which remained unamortized as of the date Boston Safe acquired the Notes

[2] For this purpose, Boston Safe represents that it is standard practice to determine the number of days by excluding the date of purchase and the date of maturity on the Notes.

from the Fund (i.e. $6085);[3] and (c) the interest due on the Notes from and after the date Boston Safe purchased the Notes from the Fund, at the rate specified in the Notes, Boston Safe will refund such excess amounts promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

11. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) The sale of the Notes by the Fund was a one-time transaction for cash; (b) the Fund received an amount equal to the amortized cost of the Notes, plus accrued but unpaid interest, at the time of sale, which was greater than the aggregate fair market value of the Notes as determined by independent pricing services at the time of sale; (c) the Fund did not pay any commissions or other expenses with respect to the sale; (d) Boston Safe, as trustee of the Fund, determined that the sale of the Notes was in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction; (e) Boston Safe took all appropriate actions necessary to safeguard the interests of the Fund in connection with the transactions and ensured that each Fund investor having an interest in the Liquidating Account received the appropriate amount of cash representing its respective interest in the Liquidating Account; and (f) Boston Safe will promptly refund to the Fund any amounts recovered from the Issuer or any third party in connection with its exercise of any rights, claims or causes of action as a result of its ownership of the Notes, if such amounts are in excess of: (i) The purchase price paid for the Notes by Boston Safe (i.e. $25,031,269); plus (ii) the original issue discount on the Notes which remained unamortized as of the date Boston Safe acquired the Notes from the Fund (i.e. $6085); plus (iii) the interest due on the Notes from and after the date Boston Safe purchased the Notes from the Fund, at the rate specified in the Notes.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate plan fiduciaries for each employee benefit plan that was a Fund investor with an interest in the Liquidating Account at the time of the transaction. Notice to the plan fiduciaries shall be made within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. This notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Times Mirror Savings Plus Plan (the Plan) Located in Los Angeles, California; Proposed Exemption

[Application No. D–10019]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed extensions of credit (the Loans) to the Plan by the Times Mirror Company (the Employer), the sponsor of the Plan, with respect to three guaranteed investment contracts issued by Confederation Life Insurance Company of Canada (Confederation); (2) the Plan's potential repayment of the Loans; and (3) the potential purchase of the GICs from the Plan by the Employer for cash; provided the following conditions are satisfied:

(a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan could receive in arm's-length transactions with unrelated parties;

(b) No interest and/or expenses are paid by the Plan in connection with the transactions;

(c) Repayment of the Loans will be restricted to the GIC Proceeds, defined as cash proceeds obtained by the Plan from Confederation, state guaranty funds, any successor to Confederation, or any other third party making payments with respect to the obligations of Confederation under the GICs;

(d) Repayment of the Loans will be waived to the extent that the Loans exceed the GIC Proceeds; and

(e) In any sale of the GICs to the Employer, the Plan will receive a purchase price which is the higher of (1) the fair market value of the GIC less any amounts previously received by the Plan with respect to the GIC, or (2) the value of the GIC as set forth in paragraph 6 of this Proposed Exemption, with such purchase price determination to be made by the Bank of America, the Plan's Trustee (the Trustee).

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which includes a cash or deferred arrangement which is intended to qualify under sections 401(a) and 401(k) of the Code. In addition to salary deferral contributions, the Plan provides for voluntary participant contributions and Employer matching contributions from company profits. The employees eligible to participate in the Plan are employees of the Employer and seventeen subsidiaries including the Baltimore Sun Company, Matthew Bender & Company, Newsday, Inc., and the Sporting News Publishing Company. The Plan currently has approximately 17,600 participants, and Plan assets totalled $397.9 million as of December 31, 1994.

Individual participant accounts are maintained within the Plan. The Plan also holds accounts attributable to a payroll-based tax credit employee stock ownership plan on behalf of certain participants (PAYSOP Accounts), although no contributions have been made to the PAYSOP Accounts with respect to participant compensation paid after December 31, 1986. The PAYSOP Accounts are invested in Employer stock. All other accounts are invested at the direction of individual Plan participants among five investment funds, one of which is the Income Fund. The Income Fund invests in fixed income contracts, including the GICs, and short-term marketable securities. As of December 31, 1994, the Income Fund had assets of $103.4 million, and 9,473 Plan participants had a portion of their account balances invested in the Income Fund.

The Employer is the Plan administrator and named fiduciary under the Act. The Employer's authority to control and manage the Plan is delegated to the Retirement Plan Administrative Committee, the members of which are appointed by the Retirement Plan Committee, a sub-committee of the Board of Directors of the Employer. The assets of the Plan are held in Trust by the Bank of America. Investment authority is held by the

[3] This amount represents the difference between the original discount received by the Fund on the purchase of the Notes ($11,625) and the accreted discount received by the Fund for purposes of the sale of the Notes to Boston Safe at the amortized cost ($5,540). Thus, $11,625 − $5,540 = $6085.

Retirement Plan Committee which may invest Plan assets or may appoint an investment manager or managers. In any event, the Retirement Plan Committee is charged with the responsibility to monitor the investment performance of Plan assets.

2. The Employer is organized under the laws of the state of Delaware with its principal offices located in Los Angeles, California. It is publicly owned, and its shares are traded on the New York Stock Exchange. The Employer's primary business activities are newspaper publishing and the publication of professional information.

3. Among the assets of the Income Fund are the three GICs issued by Confederation. The GICs were purchased in April 1990, June 1990 and April 1991. Each of the GICs has a length of five years, and have interest rates of 9.43%, 9.21%, and 8.38% respectively. The GICs purchased in June 1990 and April 1991 permit benefit responsive withdrawals to fund benefit payments, investment fund transfers and hardship and other in-service withdrawals. The GIC purchased in April 1990 does not permit withdrawals without penalty. The terms of each GIC provide that a payment is to be made to the Plan each year consisting of the interest earned for the year less any withdrawals during the year. All interest payments due from Confederation through 1994 have been paid to the Plan. A final payment of principal and interest is due on the maturity date of each GIC. The final payment on the GIC purchased in April of 1990 was due on April 12, 1995, and the final payment on the GIC purchased in June of 1990 was due on July 1, 1995. Such payments have not been made by Confederation, nor has Confederation paid the April 1995 interest payment due on the GIC purchased in April 1991. As of August 12, 1994 the three GICs had a total book value (principal payments plus accrued interest) of $7.14 million.

4. On August 11, 1994, Canadian insurance company regulators seized the assets of Confederation. On the following day, the State of Michigan Insurance Commissioner seized the U.S. assets of Confederation and commenced legal action to place the U.S. operations of Confederation in a rehabilitation proceeding.[4] As a result of these actions, withdrawals and interest payments have been suspended, except to the extent the Plan holds a benefit-responsive contract. In the latter case, the Plan may withdraw up to 1.5% of the contract value each year for the purpose of making participant-requested withdrawals. A Special Deputy Rehabilitator (the Rehabilitator) has been appointed by the State of Michigan to oversee the rehabilitation of Confederation. The Rehabilitator will set the interest rate to be paid on Confederation contracts following the seizure by the Michigan authorities. The applicant represents that it is not possible to determine the extent to which earnings under the Rehabilitation Plan will fall short of the interest rates stated in each GIC, when interest and maturity payments will resume, and the extent to which the Plan will suffer a loss of principal. In order to relieve the uncertainty with respect to the GICs, and to prevent losses that may result from the Rehabilitation of Confederation, the Employer proposes to enter into the transactions described below.

5. The Employer proposes to make Loans to the Plan pursuant to a written agreement (the Agreement) under which the Loans will be non-interest bearing and non-recourse against the Plan and its participants and beneficiaries, except for the GIC Proceeds. In addition, the Plan will incur no expenses related to the Loans. The Loans will be made over at least the remaining terms of the GICs to fund any withdrawals, including investment fund transfers, and hardship and other in-service withdrawals, (offset by amounts paid for withdrawals by Confederation, see 4 above). In addition, the Employer will make Loans to enable the Income Fund to receive the interest payments due under the GICs. Interest through October 31, 1994, will be calculated at the rate specified in each GIC. Interest from November 1, 1994 until the date the Rehabilitator announces an interest rate for the GICs will be a Market Rate of interest described below. Interest for the period following the Rehabilitator's announcement will be at the rate set by the Rehabilitator. The Market Rate of interest for each month will be the rate reported for one year GICs in the Wall Street Journal on the last business day of the prior month. If the interest rate announced by the Rehabilitator exceeds the Market Rate, the Employer will advance the difference for the period the Market Rate was used. Further, the Employer may, at any time, lend the Plan the entire amount of principal and interest, as computed above, due under the GICs to allow the Plan to reinvest the proceeds and increase the return to Plan participants.

The Agreement also provides that repayment may only be made from the GIC Proceeds. To the extent the GIC proceeds are insufficient to repay the Loans, repayment will be waived by the Employer.

6. In addition to the Loans, the Agreement provides that Employer may purchase the GICs from the Plan. Upon the maturity date of each GIC, the Employer has the option of continuing to make the Loans to fund withdrawals and interest payments or to purchase the GICs as described herein. Within 60 days of the latest of: (a) The maturity date of the GIC; (b) the announcement of the Rehabilitation interest rate, or (c) the date of grant of this proposed exemption; the Employer may purchase each GIC from the Plan for the principal amount of each GIC plus interest at the contract rate through October 31, 1994, and the higher of the Market Rate or the Rehabilitation Rate from November 1, 1994 through the date of sale, less previous withdrawals and outstanding Loans (exclusive of Loans made to fund withdrawals) with respect to that GIC. In no event will the sales price for each GIC be less than the fair market value of the GIC less amounts previously received by the Plan with respect to the GIC.

7. The Trustee has determined that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries. Further, should the Employer decide to purchase the GICs, such purchase price will be the higher of (a) the fair market value of the GICs (less amounts previously received by the Plan), or (b) the value as computed in 6. above, as determined by the Trustee.

8. In summary, the Employer represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The transactions will enable the Plan to recover all amounts due with respect to the GICs; (b) the Loans will able the Plan to resume the ability to fund benefit payments, participant loans, hardship withdrawals and investment fund transfers within the Plan; (c) repayment of the Loans will be restricted to the GIC proceeds; (d) repayment will be waived to the extent the Loans exceed the GIC proceeds; (e) no interest or expenses will be incurred by the Plan with respect to the transactions; and (f) the Trustee has determined that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries, and in the event of a

[4] The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GICs.

sale of the GICs to the Employer, the price will be determined by the Trustee.

NOTICE TO INTERESTED PERSONS: Notice to interested persons will be provided within 30 days of the date of publication of this Notice in the **Federal Register**. Comments and requests for a hearing are due 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, (202) 219–8881. (This is not a toll-free number.)

Acushnet Company Employee Savings Plan (the Plan) Located in Fairhaven, Massachusetts; Proposed Exemption

[Application No. D–10026]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of guaranteed investment contract No. GA–5244 (the GIC) issued by Mutual Life Insurance Company of New Jersey (Mutual Benefit), to the Acushnet Company (the Employer), a Delaware corporation and a party in interest with respect to the Plan, provided the following conditions are met: (1) The sale is a one-time transaction for cash; (2) the Plan experiences no loss and incurs no expense from the sale; (3) the Plan receives as consideration for the sale the greater of either (a) the fair market value of the GIC on the date of the sale, or (b) the accumulated book value of the GIC as set forth in paragraph 3 of this Notice, with such determination to be made by the State Street Bank and Trust Company, the Plan fiduciary with respect to the GIC.

Summary of Facts and Representations

1. The Employer is a Delaware corporation with its principal offices in Fairhaven, Massachusetts. It is a wholly-owned subsidiary of American Brands, Inc. a publicly held corporation whose stock is traded on the New York Stock Exchange. The Employer is engaged in the manufacture and distribution of golf balls, golf shoes, gloves and related products.

2. The Plan is a defined contribution plan with individual accounts for Plan participants which is intended to qualify under sections 401(a) and 401(k) of the Code. Participants have the right to self direct the investment of the assets in their individual accounts. Plan assets totaled $70.6 million as of February 28, 1995. Also as of February 28, 1995, there were 2,183 Plan participants and beneficiaries who will be affected by the proposed transaction.

Prior to July 1, 1991, the Plan permitted investments in two investment funds. One of the investment funds, the Fixed Fund, was invested in several guaranteed investment contracts including the GIC issued by Mutual Benefit. The GIC was purchased effective December 1, 1990, with a maturity date of September 30, 1992, and an interest rate of 8%. The GIC was to be paid in full by Mutual Benefit on its maturity date. The GIC represented approximately 10% of the Fixed Fund's assets. Effective July 1, 1991, the Plan was amended to transfer the GIC from the Fixed Fund to a new investment fund called the Frozen Mutual Benefit GIC Fund (the Frozen GIC Fund). The sole asset of the Frozen GIC Fund is the GIC which is the subject of this proposed exemption. The Plan was also amended to prohibit: (1) Investments into the Frozen GIC Fund; (2) investment transfers from the Frozen GIC Fund into other investment funds; and (3) withdrawals from the Frozen GIC Fund for loan requests. On April 1, 1992, the Fixed Fund was discontinued and six new funds were made available to Plan participants for the investment of their individual accounts.

3. On July 16, 1991, the New Jersey Department of Insurance took control of Mutual Benefit pursuant to an order of the Superior Court of New Jersey. The court imposed a moratorium on cash withdrawals from Mutual Benefit's GICs.[5] On November 10, 1993, the New Jersey Superior Court approved a rehabilitation plan for Mutual Benefit (the Rehabilitation Plan). On April 29, 1994, the GIC was restructured and transferred to MBL Life Assurance Corporation (MBLLAC). Pursuant to the Rehabilitation Plan, principal payments with respect to the GIC will generally not be made until December 31, 1999, a lower rate of interest will be credited on the GIC for periods after December 31, 1991 than is guaranteed under the terms of the GIC and interest will be credited each year after 1994 based on MBLLAC's investment performance.

In lieu of subjecting participants of the Plan to the investment risks associated with retaining the GIC, and to permit the participants to redirect the funds invested in the Mutual Benefit GIC to safer investments without loss to the individual accounts of the participants in the Plan, the Employer proposes to purchase the GIC from the Plan.[6] In this regard, the Employer proposes to pay the Plan, in a one-time cash sale transaction, an amount that is not less than the accumulated book value of the GIC, which was $3,722,435 as of May 31, 1995. The accumulated book value is the total amount paid by the Plan for the GIC plus interest, less prior withdrawals. Interest will be calculated at the contract rate of 8% until September 30, 1992 which was the maturity date of the GIC. For the period beginning on October 1, 1992 through December 31, 1992, interest will be credited at a rate equal to 4%. For the period beginning on January 1, 1993 through December 31, 1994, interest will be credited at an annual rate equal to 3.5%. For 1995, interest will be credited at 3.55%. The rates of interest for periods after the maturity date of the GIC are the rates applicable to the GIC for those periods according to the Rehabilitation Plan. No expenses will be incurred by the Plan for the proposed transaction. In no event will the purchase price be less than the fair market value of the GIC on the date of sale.

4. The State Street Bank and Trust Company of Boston, Massachusetts, (State Street) which was the Plan trustee at the time the GIC was purchased, is the current Plan fiduciary with respect to the GIC. At the time of the consummation of the transaction, State Street as Plan fiduciary will determine the purchase price for the GIC with such price to be the higher of (a) The fair market value of the GIC, or (b) the accumulated book value of the GIC as described in 3. above.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a)

[5] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility provisions of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

[6] The applicant previously applied for an administrative exemption to permit the Employer to make interest-free loans to the Plan which would enable the Plan to make benefit distributions to Plan participants (Exemption Application D–9146). The Department responded by letter dated August 5, 1992, that such loans may be encompassed by Prohibited Transaction Class Exemption (PTCE) 80–26 (45 FR 28545, April 29, 1980), and thus to the extent the transactions satisfy the conditions of PTCE 80–26, an administrative exemption is not necessary. The applicant represents that the Employer has not implemented the interest-free loan program described in application D–9146.

of the Act because: (a) The proposed transaction is a one-time transaction for cash; (b) the proposed transaction will enable the Plan and its participants and beneficiaries to avoid any risks associated with the continued holding of the GIC; (c) the Plan will receive the higher of: (1) The fair market value of the GIC or (2) the accumulated book value of the GIC, with such determination be made by State Street; and (d) the Plan will not incur any expenses or loss from the proposed transaction.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

New Bedford Institution for Savings Employee Stock Ownership Plan (the Plan) Located in New Bedford, Massachusetts; Proposed Exemption

[Application No. D–10033]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(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 (E) of the Code, shall not apply to the past acquisition and holding by the plan of certain stock warrants (the Warrants) in connection with a merger (the Merger) of NBB Bancorp, Inc. (NBB), the parent company of the Plan's sponsor, New Bedford Institution for Savings (NBB Bank), with Fleet Financial Group, Inc. (Fleet), provided the following conditions were satisfied: (a) The Plan's acquisition and holding of the Warrants occurred in connection with the Merger pursuant to which (i) all shares of common stock of NBB (NBB Stock) were converted, at the election of the shareholder, into cash or shares of common stock of Fleet (Fleet Stock) and (ii) each shareholder received 0.28 Warrants for each share of NBB Stock; (b) the acquisition and holding of the Warrants resulted from the independent action of NBB as a corporate entity, and all holders of NBB Stock, including the Plan, were treated in the same manner with respect to the Merger; and (c) the Warrants were automatically issued to the Plan, which made no affirmative election to acquire the Warrants.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective January 27, 1995.

Summary of Facts and Representations

1. The Plan is an employee stock ownership plan which, prior to the Merger, was maintained by NBB Bank, a Massachusetts savings bank and wholly owned subsidiary of NBB, a Delaware corporation. As of September 30, 1994, the Plan had 349 participants and total assets of approximately $7 million. As of that date, the assets of the Plan consisted of NBB Stock and cash.[7] The Plan is administered by a committee (the ESOP Committee) which, prior to the Merger, was appointed by the Board of Directors of NBB Bank and is currently composed of members appointed by Fleet Bank of Massachusetts, N.A. (Fleet Bank). The trustee of the Plan is Investors Bank and Trust Company (the Trustee), a Massachusetts trust company.

2. Fleet is a Rhode Island corporation which is parent company to a number of direct and indirect wholly-owned subsidiary banks, including Fleet Bank. On May 9, 1994, Fleet entered into an Agreement and Plan of Merger with NBB (the Agreement), providing for the Merger. As part of the Merger, Fleet Bank and NBB Bank entered into a separate merger agreement providing for the merger of NBB Bank with and into Fleet Bank. As a result of the Merger, Fleet Bank became the sponsor of the Plan.[8]

3. Under the terms of the Agreement, on the effective date of the Merger, January 27, 1995 (the Effective Date), each share of NBB Stock issued and outstanding immediately prior to the Effective Date (except treasury shares, shares held by NBB, Fleet or any of their subsidiaries in a fiduciary capacity or as collateral for a debt, and certain dissenting shares) was converted, at the election of the shareholder, into either cash in the amount of $48.50 or 1.457 shares of Fleet Stock. Each shareholder also received 0.28 Warrants for each share of NBB Stock. Each Warrant confers upon its holder the right to acquire one share of Fleet Stock at a purchase price of $43.875. Warrants may be exercised at any time during the five-year period commencing on the first anniversary of the Effective Date. The Warrants are treated as separate securities under federal securities laws and are traded on the New York Stock Exchange separately from Fleet Stock. The applicant represents that the Warrants and Fleet Stock issued in connection with the Merger were issued pursuant to an appropriate registration statement filed with the U.S. Securities and Exchange Commission prior to the Effective Date.

4. The applicant represents that immediately prior to the Effective Date, the Plan held 126,061 shares of NBB Stock, all of which were allocated to participants' accounts under the Plan. The Plan's holdings represented approximately 1.3% of the total issued and outstanding shares of NBB Stock.

5. The terms of the Agreement required the termination of the Plan upon the consummation of the Merger.[9] In preparation for the termination of the Plan, and the subsequent distribution of the participants' accounts, NBB Bank amended the Plan to permit the participants to direct the Trustee to exchange the NBB Stock allocated to their Plan accounts for cash, Fleet Stock or a combination thereof in accordance with the terms of the Agreement. The applicant represents that in order to avoid a prohibited transaction under section 406(a)(2) of the Act, the Plan was also amended to direct the Trustee to sell the Warrants received by the Plan as soon as practicable.[10]

6. Prior to the Effective Date, each participant in the Plan received written information concerning his/her right to elect cash or Fleet Stock in exchange for the NBB Stock allocated to his/her account, and an election form to be returned to the ESOP Committee.[11] The

[7] The applicant represents that the NBB Stock constituted ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act, and therefore, the Plan's ownership of such stock satisfied the requirements of section 407(a) of the Act. In this proposed exemption, the Department expresses no opinion as to whether the requirements of section 407 of the Act were satisfied.

[8] The applicant represents that each shareholder of NBB Bank, including the Plan, was entitled to vote on the Merger. The right to vote the Plan's NBB Stock was passed through to the participants.

[9] The applicant represents that the Plan was terminated effective September 30, 1994. The termination was approved by the Internal Revenue Service by letter dated June 12, 1995. The Plan currently is in the process of distributing its assets to the participants and beneficiaries.

[10] In this regard, we note that although Plan provisions directed the Trustee to sell the Warrants, the Department has taken the position that a trustee may follow such plan provisions only to the extent permitted by section 404(a)(1)(D) of the Act, i.e., insofar as such plan provisions are consistent with the provisions of Titles I and IV of the Act. For example, if a conflict between the prudence standard and plan provisions occurs, section 404(a)(1)(D) requires that plan provisions give way to the statutory requirements. Thus, in this case, the Trustee was responsible for determining, among other things, whether following such provisions would result in an investment decision which would be prudent for the Plan and would produce a result which would be for the exclusive purpose of providing benefits to the Plan participants and beneficiaries.

[11] Out of over 300 Plan participants, only 14 failed to make an election. As to these participants, the ESOP Committee directed that they be treated in the same manner as non-Plan holders of NBB Stock who made no election. Accordingly, like the

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Plan acquired 51,116 shares of Fleet Stock and cash in the amount of $4,412,384 as a result of the Merger.[12] The Plan also acquired 35,295 Warrants. The applicant represents that the Warrants were automatically issued to each shareholder of NBB Stock in connection with the Merger on January 27, 1995. Thus, the Plan did not make any affirmative decision to accept the Warrants. Pursuant to the terms of the Plan as amended, the Warrants were sold by the Trustee in a blind transaction on the open market on April 7, 1995, for a price equal to $4.428 per Warrant or $156,301.50 in the aggregate. This amount was allocated among the Plan participants' accounts in the same proportion as the NBB Stock held in a participant's account immediately prior to the Effective Date bore to the total NBB Stock held by the Plan at such time.

7. In summary, the applicant represents that the subject transaction satisfied the criteria contained in section 408(a) of the Act because: (a) The Plan's acquisition and holding of the Warrants resulted from an independent action of NBB as a corporate entity; (b) all holders of NBB Stock, including the Plan, were treated in the same manner in connection with the Merger; and (c) the Warrants were automatically issued to the Plan, which made no affirmative election to acquire the Warrants.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

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

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

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

Signed at Washington, DC, this 4th day of August, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–19663 Filed 8–8–95; 8:45 am]

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[Prohibited Transaction Exemption 95–67; Exemption Application No. D–09869, et al.]

Grant of Individual Exemptions; Bankers Trust Company

AGENCY: Pension and Welfare Benefits 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).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 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 exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bankers Trust Company (Bankers Trust) Located in New York, NY; Exemption

[Prohibited Transaction Exemption 95–67; Exemption Application No. D–09869]

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of October 28, 1994, to the cash sale of certain structured notes (the Notes) for $432,131,250 by three collective investment funds for which Bankers Trust acts as trustee (the Funds) to

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non-Plan holders of ''no election'' shares, these participants received Fleet Stock in connection with the Merger pursuant to provisions in the Agreement requiring that a minimum amount of Fleet Stock be issued in connection with the Merger and establishing a procedure for allocating such Stock among the holders of NBB Stock.

[12] The applicant represents that the Fleet Stock constitutes ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act and, therefore, the Plan's ownership of Fleet Stock satisfies the requirements of section 407(a) of the Act. In this proposed exemption, the Department expresses no opinion as to whether the requirements of section 407(a) of the Act are satisfied.