technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information**

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* 2002 Census of Publicly Funded Forensic Crime Laboratories.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CFCL–1, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal. Other: None. This information collection is a census of public crime laboratories that perform forensic analyses on criminal evidence. The information will provide statistics on laboratories' capacity to analyze forensic crime evidence, the number, types, and sources of evidence received per year, the number, types, and cost of analyses completed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 400 respondents will complete a 1 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the data collection is 400 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20004.

Dated: November 13, 2002.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 02–29203 Filed 11–15–02; 8:45 am]

**BILLING CODE 4410–18–M**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Labor Research Advisory Council; Notice of Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on December 9, 10, and 11, 2002. All of the meetings will be held in the Conference Center, of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Monday, December 9, 2002 9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9

1. Review of the new Job Openings and Labor Turnover Survey (JOLTS) data.
2. Review of the new quarterly Covered Employment and Wages (CEW, or ES–202) data release.
3. Review of past and current approaches, and discussion of possible future approaches to benchmarking State and area labor force estimates to the Current Population Survey (CPS).
4. Review of the estimated impact of Census 2000 population weights and new race/ethnicity standards on CPS estimates.
5. Topics for next meeting.

1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9

1. 2001 Census of Fatal Occupational Injuries Briefing.
2. Hispanic Workers in the United States, an Analysis of Employment Distribution, Fatal Occupational Injuries, and Non-Fatal Occupational Injuries and Illnesses (Paper prepared for the National Academy of Sciences).
3. Follow-Back Surveys.
   a. Respiratory chemical disease agents.
   b. Workplace violence.
   c. Truck Drivers.
4. Analysis of New Data on Hours at Work from 2002 Recordkeeping Change.
5. Internet data collection.
6. Other Survey of Occupational Injuries and Illnesses changes and updates
7. Upcoming publications
8. Budget update
9. Topics for next meeting

Tuesday, December 10, 2002 *9:30 a.m.—Committee on Compensation and Working Conditions—Meeting Room 9*

1. Contract expirations and work stoppages.
2. Discussion of paper on hours of work and paid time off.
3. Current data on Family and Medical Leave.
4. New data releases from the BLS compensation office.
5. New business.
6. Topics for next meeting.

*1:30 p.m.—Committee on Prices and Living Conditions—Meeting Room 9*

1. Analysis of the behavior of the new, superlative Consumer Price Index (CPI) that the Bureau first released this past August.
2. Discussion of efforts to adjust prices of telecommunications equipment for quality change in the Producer Price Index.

Wednesday, December 11, 2002 *9:30 a.m.—Committee on Productivity, Technology and Growth—Meeting Room 9*

1. Review of the assumptions underlying the aggregate economic projections
2. Revisions to major sector productivity series
3. Topics for next meeting

*Committee on Foreign Labor Statistics—Meeting Room 9*

1. International Comparisons of Hours Worked.
2. Technical cooperation activities.
3. Topics for next meeting.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202–691–5970.

Signed at Washington, DC, this 8th day of November, 2002.

**Kathleen P. Utgoff,**

*Commissioner.*

[FR Doc. 02–29104 Filed 11–15–02; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–10995, *et al.*]**

### Proposed Exemptions; A Northern Trust Company and Affiliates

**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 restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions,

unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.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 Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**A Northern Trust Company and Affiliates; Located in Chicago, Illinois**

[Application No. D–10995]

**Proposed Exemption**

*Section I—Exemption for In-Kind Redemption of Assets*

If the proposed exemption is granted, the restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply,[1] to the in-kind redemption (the Redemption) by the Northern Trust Company Thrift-Incentive Plan (the Plan) (the Applicant) of shares (the Shares) of proprietary mutual funds currently offered by or offered in the future by investment companies for which the Northern Trust Company (Northern) or an affiliate thereof provides investment advisory and other services (the Mutual Funds), provided that the following conditions are met:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than Northern and any affiliates of Northern (Northern Affiliates);

(B) The assets transferred to the Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, Transferable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the Plan receives a pro rata portion of the securities of the Mutual Fund upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of 3 p.m. Chicago time (local time for the closing of the exchanges) on the same day in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended (''1940 Act'') and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of Northern and Northern Affiliates);

(D) Northern or any affiliates thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, Northern provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to Northern, such authorization being terminable at any time prior to the date of Redemption without penalty to the Plan, and such termination being effectuated by 3 p.m. Chicago time following the date of receipt by Northern of written or electronic notice regarding such termination (unless circumstances beyond the control of Northern delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Mutual Fund to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the Plan, and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties, and that the Redemption is in the best interest of the Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the relevant Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) The identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended (''1940 Act'') and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of Northern and Northern Affiliates);

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(iii) The current market price of each security received by the Plan pursuant to the Redemption, and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing;

(K) Each of the Plan's dealings with: the Mutual Funds, the investment advisors to the Mutual Funds (the Investment Advisers), the principal underwriter for the Mutual Funds, or any affiliated person thereof, are on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares;

(L) Northern will maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Northern, the records are lost or destroyed prior to the end of the six year period, (ii) no party in interest with respect to the Plan other than Northern 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 such records are not maintained or are not available for examination as required by paragraph (M) below;

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the Plan or any duly authorized representative of such fiduciary, (iii) any participant, beneficiary, or union employee covered by the Plan or duly authorized representative of such participant, beneficiary, or union employee, (iv) any employer whose employees are covered by Plan and any employee organization whose members are covered by such Plan.

(2) None of the persons described in paragraphs (M)(1)(ii), (iii) and (iv) shall be authorized to examine trade secrets of Northern or the Mutual Funds, or commercial or financial information which is privileged or confidential; and

(3) Should Northern or the Mutual Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (2) above, Northern 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 II—Definitions*

For purposes of this proposed exemption,

(A) The term ''affiliate'' means:

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

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

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

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

(C) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Mutual Fund's prospectus and statement of additional information, and other assets belonging to the Mutual Fund, less the liabilities charged to each such Mutual Fund, by the number of outstanding shares.

(D) The term ''Independent Fiduciary'' means a fiduciary who is: (i) Independent of and unrelated to Northern and its affiliates, and (ii) appointed to act on behalf of the Plan with respect to the in-kind transfer of assets from one or more Mutual Funds to or for the benefit of the Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Northern if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Northern, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation from Northern in connection with the transactions contemplated 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 (iii) more than 2 percent (2%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by Northern and its affiliates in the fiduciary's current tax year.

(E) The term ''Transferable Securities'' shall mean securities (1) for which market quotations are readily available (as determined under in Rule 2a–4 of the 1940 Act) and (2) which are not: (i) Securities which, if distributed, would require registration under the 1933 Act: (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Mutual Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) which are not readily distributable; (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and (vi) securities subject to ''stop transfer'' instructions or similar contractual restrictions on transfer.

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

**Summary of Facts and Representations**

1. Northern Trust Corporation (Holding Company) is a bank holding company headquartered in Chicago,

Illinois and organized as a Delaware corporation. Northern, Northern Trust Investments, Inc. (NTI), and Northern Trust Global Investments-Europe (NTGI) are each direct or indirect wholly-owned subsidiaries of the Holding Company. NTI is registered under the Investment Advisers Act of 1940 (the Advisers Act).

2. Northern is the trustee of the Trust. The Plan is a defined contribution profit sharing plan and includes a section 401(k) arrangement maintained by Northern for certain current and former employees of Northern and Northern Affiliates. As of December 31, 2001, the Plan had approximately 8,817 participants and $854,420,878 in assets.

3. The Plan's Investment Committee (the Committee) determined that the Plan would benefit from the investment of the Trust's assets in certain mutual fund portfolios organized within Northern Institutional Funds (NIF), which is a Delaware business trust and an open-end diversified investment company registered under the 1940 Act. Both NTI and NTGI act as investment advisors of mutual funds offered by NIF.

4. At the time, the Committee considered the Mutual Funds to be an appropriate vehicle for diversifying the Plan's assets. In addition, the Committee determined that investment in the Mutual Funds by the Plan would allow the Plan to continue to use certain in-house investment management services which otherwise might not have been available. As a result, the Committee decided to invest the Plan's assets in the Mutual Funds in accordance with Prohibited Transaction Exemption 77–3 (PTE 77–3, 42 FR 18734 (1977)).[2]

5. One of the mutual funds in which the Plan is currently invested is the Northern Institutional Equity Index Portfolio (S&P 500 Index Portfolio). As of October 30, 2002 the Plan held approximately 18.75 percent of the shares of this Fund. The Committee now believes that the S&P 500 Fund under the Collective Trust is a more appropriate equity index option for the participants under the Plan than the S&P 500 Index Portfolio.[3] Northern estimates that once the Plan's *pro rata* share of the securities the S&P Index Portfolio are used to purchase shares in the S&P 500 fund under the Collective Trust, the Plan's interest in the S&P 500 fund under the Collective Trust will be less than 2 percent.

6. The Applicant represents that the Redemption, as proposed, is the appropriate means of effectuating this shift in investment strategy. In this regard, the Applicant represents that effecting a redemption of the Shares for cash, as provided for in PTE 77–3, followed by the reinvestment of such cash in securities similar to the securities underlying the redeemed Shares, would cause the Plan to incur certain costs, including potentially large brokerage expenses. As a result, the Committee represents that the proposed Redemption, being on an in-kind basis having no associated brokerage commission or other fees or expenses (other than customary transfer charges paid to parties other than Northern Affiliates), is a cost-effective means of implementing the investment strategy sought by Northern.[4]

7. If this proposed exemption is granted, Northern anticipates the Redemption of certain Shares offered by the S&P 500 Index Portfolio in the near future. This Mutual Fund is advised by NTI. Northern represents that it is possible that the Plan fiduciaries may at a later date determine that it is in the best interest of the Plan and its participants and beneficiaries to redeem the Plan's interest in other Mutual Funds for which Northern, NTI, NTGI or an affiliate of Northern provides investment advisory services. Consequently, in the event that this proposed exemption is granted, and to the extent that all of the terms and conditions of the exemption, as granted, are met, the relief requested herein shall apply to any such future redemption.[5]

8. The Applicant states that the proposed Redemption involves ministerial transactions to be performed in accordance with pre-established objective procedures. As a result, the Applicant represents that the proposed transactions do not permit the trustee or any affiliate of the trustee to use its influence or control to acquire particular securities from the Mutual Funds. In addition, the Applicant states that all Mutual Fund Shares are offered and sold exclusively through the use of prospectuses and materials provided pursuant to the requirements of the Securities Act of 1933 and the 1940 Act and the rules and regulations thereunder.

9. The Applicant states that, to the extent possible, the Plan will transfer Shares to a Mutual Fund in return for a proportionate share of the securities held by such Mutual Fund. According to the Applicant, the Plan will receive only cash and Transferable Securities pursuant to any Redemption. In this regard, each Transferable Security subject to a Redemption will be

[2] The Applicant has not requested exemptive relief with respect to any investment in the Mutual Funds by the Plan. The Applicant notes that the Plan may acquire or redeem shares in the Mutual Funds pursuant to PTE 77–3. In this regard, PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any of the transactions with the Mutual Funds by the Plan is covered by PTE 77–3. Also, the Applicant is not requesting any exemptive relief for the subsequent reinvestment of the Transferable Securities in a collective trust fund maintained by Northern (or one of its affiliates). In this regard, section 408(b)(8) of ERISA allows for the purchase of an interest in such a fund maintained by a party in interest which is a bank or at trust company if the requirements of section 408(b)(8) are satisfied. The Department is expressing no opinion in this proposed exemption regarding whether the reinvestment of the Transferable Securities is covered by section 408(b)(8) of ERISA.

[3] Collective investment funds have historically been valued monthly or quarterly and have not permitted daily additions or transfers. In addition, it has historically been difficult to transmit pricing information on collective investment funds to investors. Recently, the assets in the Collective Trust have been valued daily. Further, investors directing investments into the Collective Trust are able to transfer among investments on any trading day and are able to access daily pricing information using a toll-free telephone number. Because of these developments, the advantages of using a mutual fund investment option have dissipated when a comparable collective fund investment is available. Finally, the Plan will benefit financially from the change in investment because (i) unlike the S&P 500 Index portfolio under the Mutual Fund, the S&P 500 Index Fund in the Collective Trust charges no fund-level management fees and (ii) at this time, Northern does not plan to charge the Plan any account-level management fees in connection with its investment in the S&P 500 Index Fund in the Collective Trust.

[4] The Applicant represents that should there be additional in-kind transactions under this exemption involving the mutual funds advised by Northern or its affiliates, such in-kind transactions will only be effectuated where the independent fiduciary concludes that an in-kind transactions is in the best interests of the plan. Should the situation arise where the mutual fund intends to distribute securities rather than cash and the Plan intends to sell the majority of the securities once distributed, Northern will assume responsibility for any additional costs incurred as a result of this in-kind distribution and subsequent sale of securities from the mutual fund advised by Northern or its affiliates.

[5] As previously noted, the Department is expressing no opinion regarding the applicability of PTE 77–3 to the acquisition of the Shares by the Plan. In addition, the Department is expressing no opinion as to the applicability of section 404 of ERISA to the acquisition of the Shares by the Plan. In this regard, the Department directs the Applicant's attention to an advisory opinion issued to Federated Investors (Advisory Opinion 98–06A July 30, 1998), in which the Department noted that ''if the decision by a plan fiduciary to enter into a transaction is not ''solely in the interest'' of the plan's participants and beneficiaries, *e.g.*, if the decision is motivated by the intent to generate seed money that facilitates the marketing of the mutual fund, then the plan fiduciary would be liable for any loss resulting from such breach of fiduciary responsibility, even if the acquisition of mutual fund shares was exempt by reason of PTE 77–3.''

transferred in-kind to the Plan, except those permitted to be distributed in cash. However, assets that are not Transferable Securities will not be distributed, but the Plan's proportionate interest in these assets will be transferred in cash. The Applicant states that the proposed Redemption will be therefore carried out, to the extent possible, on a pro rata basis as to the number and kind of securities transferred to the Plan.[6] Notwithstanding the foregoing, cash may be paid for securities not amounting to round lots (including the amount of any fixed income security that is less than the minimum amount permitted to be traded [7]) or which would not amount to round lots if included in the distribution, fractional shares and accruals on such securities.

10. The Applicant represents that the Board of Trustees of the Mutual Funds has adopted a procedure for the distribution of in-kind redemption requests in conformance with the no action letter issued by the staff of the Securities and Exchange Commission in Signature Financial Group Inc.[8] The Applicant represents that pricing methodology included in this procedure complies with section 2a–4 of the 1940 Act.

11. With the exception noted in footnote 9, the Applicant represents that, for purposes of the Redemption, the values of the Mutual Fund securities will be determined based on the current market price of such securities as of 3:00 p.m. Chicago time on the date of the Redemption request (the Valuation Date). The value of the securities in each Mutual Fund will be determined by using the then-existing valuation procedures established by the Board of Trustees for the Mutual Fund that will comply with Rule 2a–4 of the 1940 Act. In this regard, the Applicant represents that the ''current market price'' for exchange-traded securities held by the Mutual Funds are generally determined by using the closing prices of the security on its ''primary exchange'' for that trading day.[9]

12. The Applicant represents that, not later than 30 business days after completion of a Redemption, the Mutual Funds will confirm in writing to the Independent Fiduciary the following: (i) The number of Mutual Fund shares held by the Plan immediately before the Redemption (and the related per Share net asset value and the aggregate dollar value of the shares held); (ii) the identity (and related aggregate dollar value) of each security provided to the Plan upon the Redemption as described above; (iii) the price of each such security for purposes of the Redemption: and (iv) the identity of each pricing service or market-maker consulted in determining the value of such securities. In accordance with the conditions of this proposed exemption, similar procedures will be implemented with respect to any future Redemption of Shares of the Mutual Funds by an employee benefit plan maintained by Northern for the benefit of certain of its employees or the employees of its affiliates.

13. Northern represents that Consulting Fiduciaries, Inc. (CFI), a registered investment adviser under the 1940 Act, has confirmed its independence from Northern and is qualified to serve as an independent fiduciary as that term is defined in Section II. CFI, in turn, represents that it understands and will accept the duties, responsibilities and liabilities in acting as a fiduciary under the Act for the Plan. CFI represents that, if it is appointed as the Independent Fiduciary, it will be responsible for: (i) Analyzing, from an investment perspective, the fairness and reasonableness of the methodology used with respect to the Redemption, (ii) giving its opinion as to the fairness and reasonableness of such methodology, as compared with a redemption for cash and subsequent reinvestment of such cash, based on such analysis. This determination and opinion is set forth in a written report dated April 1, 2002 (the ''Report''). Specifically, in the Report, CFI concludes that:

(a) the Redemption would likely avoid certain transaction costs otherwise incurred in a cash redemption; [10]

[6] According to NTI, the securities actually transferred from the Mutual Fund will have a relative aggregate income tax basis which is approximately equal to (within 1%) the relative aggregate income tax basis of the securities which are not being distributed in the proposed Redemption.

[7] The minimum tradeable denomination of any fixed income security is determined by the issuer or by the depository company appointed by the issuer to custody the indicia of ownership of the fixed income security. The minimum tradeable denomination is an attribute of any particular bond issue, and neither the Mutual Funds nor the Plan has any discretion to modify it. The typical minimum tradeable denomination of a fixed income security ranges from $1,000 to $100,000.

[8] In the no action letter to Signature Financial Group, Inc., the Division of Investment Management of the SEC states that it will not recommend enforcement action pursuant to section 17(a) of the Investment Company Act of 1940 for certain in-kind distributions of portfolio securities to an affiliate of a mutual fund. Funds seeking to use this ''safe harbor'' must value the securities to be distributed to an affiliate in an in-kind distribution ''in the same manner as they are valued for purposes of computing the distributing fund's net asset value.'' The Applicant represents that, the Mutual Funds having adopted procedures in accordance with the Signature Financial Letter for use in affiliate transactions, and the Applicant must follow those procedures for transactions with its in-house plans, as these in-house plans are affiliates of the Mutual Funds. The Department agreed to the use of procedures consistent with the Signature Financial Letter for determining the value of the securities in this in-kind transaction, with the limitations described herein.

The Signature Financial Letter does not address the marketability of securities distributed in-kind. The range of securities distributed pursuant to this ''safe harbor'' may therefore be broader than the range of securities covered by SEC Rule 17a–7, 17 CFR 270.17a–7. In granting past exemptive relief with respect to in-kind transactions involving mutual funds, the Department has required that the securities being distributed in-kind fell within Rule 17a–7. One of the requirements of Rule 17a–7 is that the securities are those for which ''market quotations are readily available.'' SEC Rule 17a–7(a). The Department has determined, and the Applicant agrees, that exemptive relief in this case will also be limited to in-kind distribution of securities for which market quotations are readily available. The value of any other securities will be paid to the plan in cash. Under the exemption requested by the Applicant, the Plan will receive only securities for which market quotations are readily available (as determined pursuant to the Funds' procedures described above) or cash. The Applicant represents that, although the Signature Financial Letter does not necessarily require pro rata distributions, the procedures adopted by the Mutual Funds do require pro rata distributions for the transactions contemplated herein.

[9] The pricing procedures for the S&P 500 Index in the Mutual Fund and the S&P 500 Portfolio under the Collective Trust are identical, and the same prices are used daily to calculate the net asset value for both funds. For an exchange-traded security, Northern uses the closing price of the security on its ''primary exchange'' for that trading day, requesting such information from independent third-party vendors. Non-exchange traded securities, which would be bonds not traded on an exchange or the NASDAQ National Market System, are generally valued at the most recent quoted bid price. However, the independent pricing systems may use ''evaluated prices'' if they believe such prices more accurately reflect the fair market value of these securities, taking into account such factors as prices, yields, maturities, call features, ratings, institutional size, trading in similar groups of securities and developments related to specific securities. Northern's primary pricing vendor for the securities in S&P 500 indices is Interactive Data Systems, Inc. If timely information is not received from IDSI, Northern's price determination defaults to a secondary pricing vendor, *e.g.*, J. J. Kenny Co., Inc. Northern generally receives pricing information from vendors by 3:45 p.m. Chicago time on each trading day.

[10] With respect to the Redemption involving S&P 500 Index securities, CFI has concluded that the underlying securities are expected to be identical since the two investment funds are essentially identical and the in kind approach avoids the realization of trading commissions and exposure to market fluctuation. If the Northern proposes a future Redemption, it will request that the Independent Fiduciary determine whether the distributed securities will be appropriate investments in the collective investment trust into which the Plan will be investing. The Applicant represents that if the Independent Fiduciary determines that all of the distributed securities will be appropriate investments into the collective investment trust into which the Plan will invest, no further action will be required. If the Independent Fiduciary determines that some of the distributed securities will not be appropriate investments into

(b) The Shares and cash associated with the proposed Redemption will be calculated based on the Mutual Fund's respective statements of assets and liabilities, valued in accordance with the pricing procedures established by the Board of Trustees. In this regard, CFI has reviewed a sample spreadsheet developed by Northern to calculate the exact number of Shares and the residual cash to be transferred, and believes the information provided to be conceptually and mathematically correct;

(c) All securities held by the Mutual Funds, other than the non-Transferable Securities, are qualifying securities;

(d) The proposed transactions would be in compliance with the Plan's investment guidelines;

(e) The methodology used to conduct the Redemptions would be comparable to and no less favorable than a similar in-kind redemption reached at arms' length between unaffiliated parties. The Independent Fiduciary represents that, if this proposed exemption is granted and the Redemption is thereafter undertaken, it will be responsible for updating its findings and opinions to confirm whether such findings and opinions are applicable as of the anticipated date(s) of the Redemption. In this regard, CFI states that it will review the Redemption and confirm in writing whether such Redemption was effectuated consistent with the required criteria and procedures set forth in the Report. In carrying out this duty, CFI represents that, if the proposed exemption is granted and the Redemption occurs, it will conduct a post-exemption review, which will include: (i) Reviewing the Plan's current investment policy guidelines, (ii) reviewing the Plan's investment portfolio and the Mutual Fund's assets as of the most recent common date for which such data is available, (iii) estimating whether the Excluded Assets are consistent with the types of securities so defined, and whether the amount of these securities might be material, and (iv) ascertaining whether the policies, procedures and controls established for effectuating the transfers remain unchanged. Moreover, CFI represented that it will conduct a post-transfer review to provide an additional safeguard to the Plan. In this regard, CFI will evaluate and test whether the transfer was effectuated consistent with the required criteria and procedures and confirm this in writing. Consistent with this, CFI represents that if the exemption is granted and the redemption occurs, it will update the findings and opinions as set forth in the Report so as to confirm whether they still apply as of the expected date(s) of the transfer(s). CFI will provide its opinion that the proposed Redemption methodologies are fair to the Plan and reasonable in all material respects. In addition, CFI will state that the proposed Redemption is in the interest of the participants and beneficiaries of the Plan since the anticipated costs savings is likely to be material. CFI will conclude that if the exemption is granted, and all other essential facts and circumstances of the Redemption remain materially unchanged at the time Northern seeks to effectuate the Redemption, it will issue a favorable recommendation regarding the commencement of such effectuation.

14. In summary, it is represented that the proposed Redemption satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than Northern and Northern Affiliates);

(B) The assets transferred to the Plan pursuant to the Redemption consist entirely of cash and Transferable Securities. If the proposed transaction from one of the Mutual Funds does not consist entirely of Transferable Securities, the cash distributed would include an amount equal to the Plan's value of assets that are not Transferable Securities and the Plan's value of certain Transferable Securities permitted to be distributed in cash.

(C) With certain exceptions defined below, the Plan receives a pro rata portion of the securities of the Mutual Fund upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of 3:00 p.m. Chicago time on the same day in accordance with the then-existing procedures established by the Board of Trustees of the Mutual Fund which will comply with Rule 2a–4 of the 1940 Act (using sources independent of Northern and Northern Affiliates);

(D) Northern, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act, in connection with any redemption of the Shares;

(E) Prior to a Redemption, Northern provides in writing to the Independent Fiduciary a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to Northern, such authorization being terminable at any time prior to the date of the Redemption without penalty to the Plan, and such termination being effectuated by the close of business following the date of receipt by Northern of written or electronic notice regarding such termination (unless circumstances beyond the control of Northern delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Mutual Funds to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the Plan, and comparable to and no less favorable than terms obtainable at arm's length between unaffiliated parties, and that the Redemption is in the best interest of the Plan and its participants and beneficiaries;

(H) Not later than 30 business days after the completion of a Redemption, the relevant Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) The identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with the procedures established by the Board of Trustees for the Mutual Funds,

(iii) The current market price of each security received by the Plan pursuant to the Redemption, and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, a random sampling

the collective investment trust into which the Plan will invest, these securities would then be sold by the Plan on the relevant exchange for cash, and the cash would then be invested in the relevant collective fund. In this regard, the Department notes that the fiduciaries must determine, consistent with their fiduciary duties under section 404 of ERISA, whether it is prudent to accept an in-kind redemption of shares where the in-house plan may incur transaction costs in connection with the disposition of such redeemed securities shortly after receipt.

of the pricing information supplied by Northern; and

(K) Each of the Plan's dealings with: The Mutual Funds, the Investment Advisers, the principal underwriter for the Mutual Funds, or any affiliated person thereof, is on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares.

*Notice to Interested Persons:* Every participant and beneficiary of the Plan will be notified within 30 days after publication of this proposed exemption in the **Federal Register**, including beneficiaries of deceased employees and alternate payees. The notice to employee organizations defined in section 3(4) of ERISA is not applicable, as none exist. Notice to current employees with electronic mail access will be provided in accordance with the requirements of DOL Reg. section 2520.104b–1(c). Notice to current employees without electronic mail access will be provided by interoffice delivery to their worksite. Notice to current employees on long-term disability or extended leave, terminated employees with account balances under the Plan, alternate payees and beneficiaries of deceased employees and former employees will be provided by first-class mail. The notice will contain a copy of the **Federal Register**, and will inform interested persons of their right to comment on and request a hearing with respect to the proposed exemption. All relevant persons will be notified within one month of the publication of this proposed exemption in the **Federal Register**. The notices will inform interested persons of their right to comment and/or request a hearing. Comments and requests for a hearing must be received by the Department not later than 60 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

## Michigan Conference of Teamsters Welfare Fund (the Plan); Located in Detroit, MI

[Application No. L–11058]

### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) 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 section 406(a)(1)(A) and (D) of the Act shall not apply to the cash sale, by the Plan, of certain parcels of real estate (the Property) to the Detroit Teamsters Temple Association (DTTA), a party in interest with respect to the Plan and a lessee of a portion of such Property, provided that the following conditions are satisfied:

(a) DTTA pays the fair market value as determined by a qualified, independent appraiser on the date of the transaction.

(b) The sale transaction has been reviewed and approved by an Independent Fiduciary (the Independent Fiduciary), who was appointed by the United States District Court for the Eastern District of Michigan, Southern Division (the Court) for purposes of enforcing a settlement agreement dated January 21, 1998 (the Settlement Agreement).

(c) The sale is a one-time transaction for cash.

(d) The Plan pays no fees or commissions in connection with the sale.

### Summary of Facts and Representations

1. The Plan (or the Applicant) is a multiemployer welfare plan established in 1949. It is maintained pursuant to collective bargaining agreements between the Michigan Teamsters Joint Council No. 43 (the Union) and the Motor Carriers Employers Association of Michigan and Michigan Cartagemen's Association (the Associations). The Plan is administered by a board consisting of six trustees (the Trustees), three of whom are appointed by the Union (the Union Trustees) and three of whom are appointed by the Associations (the Association Trustees).

The Plan provides health, disability and death benefits to approximately 17,590 employees of employers that contribute to the Plan, as well as the employees' estimated 30,000 beneficiaries. Most of the Plan's 17,590 participants are covered by collective bargaining agreements between their employers and a local union affiliated with the Union (the Local Union). As of March 31, 2001, the Plan had total assets of $259.9 million.

2. In the past, the Plan has been the subject of scrutiny by the Department. In this regard, after an investigation of the Plan in 1995, the Department concluded that the then-Trustees had violated their fiduciary duties to the Plan. Based on the investigation results, the Department filed an action against the Trustees and the Plan's executive director on February 29, 1996 in the United States District Court for the Eastern District of Michigan in *Reich* v. *Holmes,* Case No. 96–60051 (E.D. Mich.). In March 1996, the defendants agreed to a consent order and judgment in the action and paid $724,717 to the Plan for reimbursement of excessive administrative expenses and restoration of losses resulting from prohibited transactions during the period from April 1, 1989 through March 31, 1994, plus $125,283 in civil penalties under section 502(l) of the Act.

Several months later, in July 1996, a group of Plan participants sued the then-Trustees and others in *Jordan* v. *Michigan Conference of Teamsters Welfare Fund,* Case No. CIV 96–73113 (E.D. Mich.). In that action, the Court appointed a Special Fund Counsel to investigate the allegations in the complaint. Based on the report and recommendations of the Special Fund Counsel, the parties entered into the Settlement Agreement effective January 21, 1998, which was reviewed and approved by the Court.

3. The Settlement Agreement provided for the appointment of an Independent Fiduciary who would serve for a term of four years from the date of the Settlement Agreement (*i.e.*, until January 21, 2002), unless otherwise agreed or ordered by the Court. The Independent Fiduciary had broad authority under the Settlement Agreement to review all actions of the Trustees and all of the Plan's policies. Such Independent Fiduciary was responsible for overseeing the implementation of the terms of the Settlement Agreement and for making recommendations to the Trustees concerning the prudent operation of the Plan.

Mr. Marc Gertner, a partner with the firm of Shumaker, Loop and Kendrick, was appointed Independent Fiduciary under the Settlement Agreement. Mr. Gertner has practiced law in the multiemployer area since ERISA was enacted. He is also the editor of the *Trustee Handbook,* a guide for multiemployer plan trustees, and a speaker on fiduciary issues.

4. DTTA is a non-profit, ''membership'' corporation under Michigan law. DTTA has no stockholders, and its members are Local Unions affiliated with the Union. The Union lists DTTA as a subsidiary organization on its form ''LM–2'' filed with the Department. DTTA serves as the ''landlord'' for the Union, acquiring and renting property for use by the Union, the Local Unions and their members. DTTA is also an employer whose employees are covered by the Plan.

Robert Rayes, one of the Plan's Union Trustees, is the President of DTTA. The other Union Trustees, William Bernard and H.R. Hillard, are officers of the Local Unions affiliated with the Union.

5. Among the assets of the Plan are two parcels of unimproved, commercial land (Parcel A and Parcel B), located in Detroit, Michigan, and totaling approximately 2.05 acres. Parcel A is located at 2702–2744 Cochrane Street and consists of 24,800 square feet of land that is fully landscaped and fenced. Parcel B consists of 64,480 square feet of land located at 1538–1576 Spruce Street and 1535–1571 Perry Street. Approximately 39% of Parcel B is landscaped and fenced, while the remaining portion is an asphalt parking lot.

The Property is contiguous to other real estate owned by DTTA.[11] Since July 1999, DTTA has been leasing a portion of the Property (located at 1535, 1541 and 1547 Perry Street) from the Plan to provide parking space in connection with space leased to DTTA at 2700 Trumbull Avenue. Under a month-to-month lease agreement, DTTA pays the Plan $66.25 per month for the use of such property at 1535, 1541 and 1547 Perry Street.[12] The rent charged is intended to cover the Plan's costs for the Perry Street properties, with monthly rent representing one twelfth of the Plan's annual costs for taxes ($645), insurance ($50) and maintenance ($100) for the leased property. The lease will be terminated upon DTTA's purchase of the subject Property.

6. The Plan purchased the lots comprising the Property over a long period of time,[13] with the majority of the lots being acquired in 1964 and the final lots being purchased in 1992.[14] The total acquisition cost for the Property was $196,000 and it is represented that no financing arrangements were ever involved. Over that same period of time, the Plan made certain improvements to the Property, such as landscaping and fencing, and it incurred demolition expenses to remove unwanted structures. These improvements cost the Plan an additional $29,875. Further, the Plan expended approximately $21,435 in real estate taxes between 1996 and 2001, based on what information was available, thereby bringing its total acquisition and holding costs with respect to the Property to approximately $242,978.[15]

7. The Property is located in a section of Detroit where property values, according to Signature Associates (Signature), the Plan's real estate broker, are declining. There is abundant, vacant property and vacant or derelict buildings in the area, including Tiger Stadium. In this regard, the Casino, which opened in 2000, also is located in the general area and has purchased some vacant property for parking and other uses. Although the Casino has approached the Plan in the past about purchasing other real estate that the Plan owns on the east side of Trumbull Avenue, the Casino has not shown any interest in the Property or any other real estate on the west side of Trumbull Avenue.

8. In addition to the Property's declining value, the Applicant represents that the Plan continues to pay property taxes that are a drain on its assets, except for that portion of the Property covered by the lease with DTTA (which includes real estate taxes and other expenses associated with the leased portion). By selling the Property, the Applicant represents that the Plan will be able to convert this asset into cash and then invest the cash in a vehicle more appropriate to the Plan's investment needs. However, the Applicant states that selling the Property is a problem because, although Signature has actively marketed the Property since September 17, 2001 at an asking price of $175,000, only one potential buyer has made an inquiry and no offers have been made.[16] The only other entity that has shown any interest in buying the Property is DTTA, according to the Applicant. Therefore, the Applicant requests an administrative exemption from the Department to permit the proposed sale of such Property to DTTA.

9. DTTA proposes to purchase the Property from the Plan for cash consideration, to be payable at closing. The purchase price for the Property will reflect the fair market value of such Property, as determined by a qualified, independent appraiser, on the date of the sale. The Plan will not be required to pay any real estate fees or commissions in connection with the transaction. In addition, Mr. Rayes has and will continue to recuse himself as President of DTTA from participating in any of the Plan's decisions concerning the Property to avoid violating the self-dealing and conflict of interest prohibitions under section 406(b)(1) and (b)(2) of the Act.

10. The Property has been appraised by Mr. Laurence G. Allen, a qualified, independent appraiser and President of Allen & Associates, a real estate valuation and consulting firm located in Birmingham, Michigan. Mr. Allen is a member of the American Institute of Real Estate Appraisers and is currently licensed in Michigan as a State Certified Real Estate Appraiser.

Initially, Mr. Allen performed an appraisal of the Property in fee simple on November 15, 2000 and issued a ''restricted'' [17] appraisal report, dated December 19, 2000, for use of internal decision-making by the Trustees. Mr. Allen's appraisal was based on the Sales Comparison Approach to valuation. The scope of the appraisal included research into market trends that would affect the value of the Property.

Based on the initial appraisal report, Mr. Allen placed the fair market value of Parcel A at $1.70 per square foot on November 15, 2000. He determined that Parcel A would be worth $42,160 as if vacant, and that the improvements were worth $4,112. Thus, Mr. Allen

[11] In this regard, DTTA owns lots at 2741, 2723 and 2715 Trumbull Avenue, which are separated from the Property by an alley. In addition, DTTA owns lots at 1520 and 1546 Perry Street, which are adjacent to the Property.

[12] The Applicant represents that the lease between the Plan and DTTA for a portion of the Property is covered under Prohibited Transaction Exemptions (PTEs) 76–1 (41 FR 12740, March 26, 1976) and 77–10 (42 FR 33918, July 1, 1977). The Department, however, expresses no opinion herein on whether the leasing arrangement complies with the provisions of PTEs 76–1 and 77–10. Accordingly, the Department is not proposing any exemptive relief beyond that offered by these class exemptions.

[13] The Department is expressing no opinion herein on whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I of the Act.

[14] The Applicant represents that from the 1960s through the 1980s, the Trustees purchased abandoned lots, such as the Property, in order to create a buffer zone around the Plan's building, protect the Plan's investment in its building, and ensure the safety of Plan employees. The Applicant indicates that while the Plan does not regularly use the Property, the Trustees considered the purchases a reasonable response to the urban blight in the surrounding neighborhood. The Applicant further indicates that the more recent purchases of lots in the 1990s were made on behalf of the Plan by L. Keith Taylor, a former Plan employee. The Trustees concluded that the 1992 purchases of lots 2702, 2710, 2716, 2720, and 2727 Cochrane Street by Mr. Taylor were improper and commenced an action against him and a real estate company involved in the sales to recover amounts the Plan had paid for the lots. In 1998, the Plan settled the action, recovering approximately $4,200 plus interest from Mr. Taylor and the real estate company.

[15] Although the Plan has received rental income totaling $2,186 on that portion of the Property which is leased to DTTA, the lease payments are intended to cover the Plan's costs with respect to this property. Therefore, the Plan's net income on this portion of the Property is $0.

[16] The Property has also been entered into the CoStar database, which provides commercial real estate information to its members in the commercial real estate community.

[17] Mr. Allen considered the appraisal report to be restrictive because reliance on the report was limited to the client. Also, without other information contained in the appraiser's work file, Mr. Allen thought the report would not be understood properly.

concluded that the total fair market value of Parcel A was $46,000.

Similarly, Mr. Allen determined that Parcel B had a fair market value of $1.70 per square foot on November 15, 2000. He concluded that Parcel B was worth $109,616 as if vacant, and calculated the value of the improvements at $19,397, for a total fair market value of $129,000. Therefore, Mr. Allen placed the total appraised value of the Property, including the improvements, at $175,000 as of November 15, 2000.

In an updated appraisal report dated March 4, 2002, Mr. Allen again utilized the Sales Comparison Approach to valuation in order to calculate the value of the Property in fee simple in an ''as is'' condition.[18] The ''as is'' date of value for the appraisal was February 25, 2002, which was the date Mr. Allen states that the Property was last inspected.

Mr. Allen determined that Parcel A had a fair market value of $1.62 per square foot, or $40,176 as if vacant. With the addition of site improvements (*i.e.*, 100% landscaping and fencing around Parcel A) costing $2,863, Mr. Allen placed the total fair market value of Parcel A at $43,000 as of February 25, 2002.

With respect to Parcel B, Mr. Allen determined that the fair market value of this tract was $1.62 per square foot as of February 25, 2002. Mr. Allen concluded that Parcel B was worth $104,458 as if vacant, and calculated the value of the improvements (*i.e.*, 61% asphalt parking, 39% landscaping and partial fencing around Parcel B) at $13,565, for a total fair market value of $118,000. Thus, Mr. Allen placed the total appraised value of the Property including the improvements at $161,000 as of February 25, 2002.

Mr. Allen also concluded that the highest and best use of the Property is to provide parking for DTTA, an adjacent owner. In his analysis, Mr. Allen confirmed that the Property has special value to DTTA, and that the $161,000 appraised value takes into account a premium in the value of the Property to DTTA. Prior to the date of closing, Mr. Allen will again reevaluate the Property to determine whether or not there has been a change in the fair market value.

11. As stated above in Representation 2, the Settlement Agreement provided that Mr. Marc Gertner would continue to serve on behalf of the Plan as Independent Fiduciary until as late as January 21, 2002. However, Mr. Gertner concluded before that date that the terms of the Settlement Agreement had been implemented and that his involvement as Independent Fiduciary was no longer necessary. Accordingly, Mr. Gertner asked for and received the Court's permission to resign as Independent Fiduciary, effective October 31, 2001.

Mr. Gertner states that, prior to his resignation, he suggested to the Trustees that all unneeded, undeveloped real estate in the area of the Plan's office be listed for sale because he believed that it would be imprudent for an employee welfare plan to own land in the quantity held by the Plan. Although the Trustees authorized the sale of one parcel of real estate, Mr. Gertner states that his suggestion was met by resistance from some of the Trustees who felt that it was the wrong time to sell the remaining parcels of land comprising the Property, following the initial success of the nearby Motor City Casino (the Casino) and after the Mayor's announcement that he was working on a redevelopment plan for the general area, which included finding a developer and a new use for Tiger Stadium, as well as the rumored addition of motels and restaurants to the area. Mr. Gertner further indicates that, based on this information, he went along with the position of a majority of the Trustees to require that the Plan hold onto the Property because he did not believe it would be prudent or proper to miss out on a major upward surge in property values over the next year or two.

In the 18 months following the October 1999 decision to take the Property off the market, Mr. Gertner represents that messages were sent to the Casino stating that the Trustees were thinking of relisting the Property. In addition, Mr. Gertner indicates that he held discussions with real estate firms, lawyers, accountants and business people in the Greater Detroit area in order to determine what action to take with respect to the Property. After these discussions, Mr. Gertner determined that there was little hard, demonstrable evidence to support an expectation that the value of the Property would appreciate and, by the summer of 2001, he said he concluded that the proposed sale transaction would be in the Plan's best interests.

12. In a letter dated September 26, 2002 (the 2002 Letter), Mr. Gertner provided the Department with an updated and current opinion regarding the appropriateness of the proposed transaction. Mr. Gertner represents in the 2002 Letter that, at the August 28, 2002 meeting of the Trustees, he was redesignated as the Independent Fiduciary for the purpose of evaluating the proposed exemption transaction on behalf of the Plan. Aside from providing additional insight into fluctuating real estate values in the vicinity of the Property, as Independent Fiduciary, Mr. Gertner certifies in the 2002 Letter that it is prudent, proper and in the best interests of the Plan, its participants and their beneficiaries to effect the proposed sale of the Property as soon as possible to the highest responsible third-party offeror or, if none, to DTTA. Mr. Gertner states that he has based this conclusion on his review of the exemption application, as well as on Mr. Allen's independent appraisal of the Property. In addition, Mr. Gertner states that he held discussions with the Plan's Executive Director and the Plan's Counsel. Further, Mr. Gertner represents that he made inquiries of the listing realtor and the Detroit counsel who represented him and the Plan on real estate issues during his tenure as Independent Fiduciary. Based on this due diligence and after consideration of the matters at hand, Mr. Gertner explains that it remains his firm and unequivocal opinion that it is prudent, proper and in the best interests of the Plan participants and beneficiaries to proceed with the proposed sale transaction.

Moreover, Mr. Gertner states that the issue concerning undeveloped property, such as the Property, is how soon it can be sold and converted into investable cash at the highest obtainable price, but at all times in a prudent and proper, ERISA-compliant manner. He opines that following an apparent spurt in values, fanned by hopes of a city plan of revitalization and a rampant rumor-mill, values have trended downward, and that it appears from his due diligence, there is no reason to presume a change in this trend.

Mr. Gertner also asserts that since the Property produces minimal rental income, it is a net cash drain on the Plan due to taxes, insurance and maintenance. Because the Plan has no apparent nor imminent need or use for any of the Property, Mr. Gertner believes that the sale of such Property to a third party or to DTTA will convert a cash-draining asset into cash which can be invested by one or more of the Plan's investment managers in accordance with the Plan's investment objectives in order to produce income to provide benefits to the participants and their beneficiaries. Mr. Gertner notes that the Plan's corpus could always use additional funds and that now appears to be an opportune time for reinvestment.

[18] Although the restriction was removed from the updated appraisal, Mr. Allen noted that the appraisal report had been prepared solely for the Trustees and the Department as part of the proposed sale transaction.

13. The Applicant represents that the proposed transaction is administratively feasible since the sale will be completed at closing, and no ongoing involvement by the Department is required to safeguard the interests of the Plan's participants and beneficiaries. Furthermore, the Applicant states that the transaction is in the best interests of the Plan's participants and their beneficiaries because it will permit the Plan to convert an asset with a declining value and an annual out-of-pocket tax expense into cash proceeds that can be invested to provide a better return. The Applicant also states that this, in turn, will benefit the Plan's participants and beneficiaries by increasing the Plan's assets and enhancing the Plan's ability to provide benefits and improve benefits. Finally, the Applicant asserts that the transaction is protective of the rights of the participants and beneficiaries because the transaction will be for cash with no deferred payments, involves only a small percentage of the Plan's total assets, and has been reviewed by the Plan's Independent Fiduciary who has determined that such transaction is protective of the interests of the Plan's participants and beneficiaries.

14. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) DTTA will pay the most current appraised value as determined by a qualified, independent appraiser.

(b) The sale transaction has been reviewed and approved by an Independent Fiduciary who was appointed by the Court for purposes of enforcing the terms of the Settlement Agreement.

(c) The sale will be a one-time transaction for cash.

(d) The Plan will pay no fees or commissions in connection with the sale.

**Notice to Interested Persons**

The Trustees will provide notice of the proposed exemption to all Plan participants as interested parties, by personal delivery or by first class mail within 10 days of the date of publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption and a supplemental statement in substantially the same form as set forth in 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on the proposed exemption. Comments regarding the proposed exemption are due within 40 days of the date of publication of the notice of pendency in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

**The Profit Sharing Trust of Dr. Ferdinand G. Mainolfi (the Plan) Located in Baltimore, MD**

[Exemption Application No. D–11108]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of 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 sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code [19] shall not apply to the proposed sale of parcels of improved real property (the Property) by the Plan to Ferdinand G. Mainolfi (Dr. Mainolfi), a disqualified person with respect to the Plan; provided that: (1) The sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan will receive the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the transaction; (3) the Plan will pay no commissions, fees, or other expenses in connection with the sale; and (4) the terms of the sale will be no less favorable to the Plan than terms it would have received under similar circumstances in arm's length negotiations with unrelated third parties.

**Summary of Facts and Representations**

1. The Plan is a defined contribution profit sharing plan sponsored by Ferdinand G. Mainolfi, Inc. (the Employer). The Employer is engaged in the practice of medicine in Baltimore, Maryland. Dr. Mainolfi is the sole shareholder of the Employer, the only participant in the Plan, and serves as the trustee of the Plan. The Plan had, as of August 31, 2001, total assets of approximately $940,992.

2. The Property which is the subject of this exemption is located in the northeastern quadrant of Carroll County Maryland, less than two miles from the center of Manchester, Maryland, approximately two miles south of the Pennsylvania State Line, and three miles from the Baltimore County line. The neighborhood consists of a diversity of housing styles ranging from larger homes on farms and very large lots to older more modest houses and cottages interspersed with active agricultural operations and forest.

The Property consists of two (2) parcels which border each other. The parcels are known respectively as the Mainolfi Farm (Parcel 1) and the Benjamin Lot (Parcel 2). The Plan acquired these parcels in two transactions with sellers unrelated to Dr. Mainolfi. It is represented that the Plan purchased the Property for long term investment.

It is represented that a sharecropper, who is unrelated to Dr. Mainolfi, has been farming the tillable land on the Property, retaining the income, and paying all related expenses, in exchange for being responsible for the care and maintenance of the Property. It is represented that the Property has never been used personally by Dr. Mainolfi or any other party in interest. Dr. Mainolfi represents that he has made periodic inspections of the Property in satisfaction of his responsibility as trustee.

The Plan acquired Parcel 1 on August 10, 1971, for a purchase price of $32,000 from Mr. and Mrs. William Ensor, Jr. The Plan financed the purchase with a mortgage obtained from the sellers. Parcel 1 is comprised of 37.48 acres of land traversed by a stream. There are open spaces and large, mature shade trees throughout the parcel. A residence and outbuildings are located on an elevated section on the western edge of Parcel 1. There is proximity to a lake with facilities for boating and swimming. Parcel 1 is bounded on the east by woods, on the west by several large tracts of farmland, on the north by a floodplain, and on the south by Parcel 2.

The Plan acquired Parcel 2 on May 9, 1974, for a purchase price of $29,000 from Mr. Donald Benjamin. It is represented that the Plan financed the purchase with a mortgage from Baltimore Federal Savings and Loan. Parcel 2, consisting of 9.3119 acres, is entirely wooded, and is traversed by two streams.

3. This exemption is requested to permit the Plan to sell the Property to Dr. Mainolfi for the appraised fair market value of the Property on the date of sale. Dr. Mainolfi, acting as trustee for the Plan, wishes to sell the Property, which is illiquid.

It is represented that the proposed transaction is feasible in that it involves a one-time sale of the Property for cash. In addition, the Plan will be able to sell the Property without incurring any

[19] Pursuant to 29 CFR 2510.3–2(d), the Plan is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

further expense of searching for a buyer and without paying brokerage commissions, fees, or other expenses as a result of the sale. It is anticipated that once the Property is sold the cash proceeds will be invested so as to diversify the assets of the Plan.

In the opinion of Dr. Mainolfi, the proposed transaction is protective of the participant and beneficiaries of the Plan in that the sale price would be based on the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale.

4. An appraisal of the Property was prepared by Herbert A. Davis, GRI (Mr. Davis) and Donna D. Fried, SRA (Ms. Fried), of Appraisal Connection, Inc., in Baltimore, Maryland. It is represented that Mr. Davis and Ms. Fried are qualified to perform the appraisal of the Property. In this regard, Mr. Davis is a graduate of the Realtors Institute of Maryland and has attended courses offered by the American Institute of Real Estate Appraisers. Ms. Fried has, from 1991 to the present, been licensed by the State of Maryland as a certified residential real estate appraiser. Ms. Fried is a member of the National Association of Real Estate Appraisers, the Maryland Association of Appraisers, Inc., and the Appraisal Institute, SRA.

It is further represented that both appraisers are independent in that neither has a present or prospective interest in the Property, nor any personal interest or bias with respect to the participants in the proposed transaction. It is represented that neither the employment nor the compensation of the appraisers was conditioned upon the appraised value of the Property, nor were the appraisers required to report a predetermined value or base the appraisal on a requested minimum value for the Property.

After physically inspecting the Property, the appraisers concluded the Property is not currently suited to subdivision due to location, zoning, and expense considerations. Taking into account the sales of similar properties in the recent past and having made adjustment to the reported sale prices of these comparable properties, it was determined by the sales comparison method of appraisal that the fair market value of the Property was $400,000, as of February 5, 2002.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 4975(a) of the Code because:

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

(b) As a result of the sale, the Plan will receive the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale;

(c) The Plan will pay no commissions, fees, or other expenses as a result of the transaction;

(d) The terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties;

(e) The Plan will be able to invest the proceeds from the sale of the Property in order to diversify the assets of the Plan; and

(f) The Plan will be able to dispose of the Property which is illiquid.

**Notice to Interested Persons**

Because Dr. Mainolfi is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the **Federal Register**.

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

**General Information**

The attention of interested persons is directed to the following:

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

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

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

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

Signed at Washington, DC, this 13 day of November, 2002.

**Ivan Strasfeld,**

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

[FR Doc. 02–29197 Filed 11–15–02; 8:45 am]

BILLING CODE 4510–29–P

---

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 2002–49; Exemption Application No. L–10929 *et al.*]**

### Grant of Individual Exemptions; Twin City Iron Workers Apprenticeship and Training Fund (the Trust Fund)

**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).

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