

Bankers Trust Company (BTC), Located in New York, New York

[Prohibited Transaction Exemption 2000-10; Exemption Application No. D-10837]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) the granting to BTC (a) by Aslan Realty Partners, L.P. (the LP), and by Aslan GP, LLC (the General Partner) of security interests in the capital commitments of certain employee benefit plans (the Plans) investing in the LP, (b) by the LP of a borrower account funded by the Plans' capital contributions, and (c) by the LP and the General Partner of the right to make capital calls (Capital Calls), and provide notice thereof under the agreement under which the LP is organized and operated (the Agreement), where BTC is the representative of certain lenders (the Lenders) that will fund a so-called "credit facility" providing loans to the LP and where the Lenders are parties in interest with respect to the Plans; and (2) the execution of an agreement and estoppel (the Estoppel) under which the Plans agree to honor Capital Calls made to the Plans by BTC, provided that (i) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (ii) the decisions on behalf of each Plan to invest in the LP, and to execute such grants and agreements in favor of BTC, are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; (iii) with respect to Plans that have invested or may invest in the LP in the future, such Plans have or will have assets of not less than \$100 million and not more than 5% of the assets of any such Plan are or will be invested in the LP. For purposes of this condition (iii), in the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis (e.g., through a master trust), this \$100 million threshold will be applied to the aggregate assets of all such plans; and (iv) the general partner of the LP must be independent of BTC, the Lenders and the Plans.

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

proposed exemption published on January 5, 2000 at 65 FR 528.

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 or disqualified person from certain other provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, DC, this 24th day of February, 2000.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration**

[Application No. D-10654, et al.]

Proposed Exemptions; Fish Lake Beach, Inc. Profit Sharing Plan (the Plan)

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 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 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 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 the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 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.

Fish Lake Beach, Inc. Profit Sharing Plan (the Plan), Located in Round Lake, Illinois

[Application No. D-10654]

Proposed Exemption

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 32826, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b) (1) and (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 (the Sale) of a certain parcel of real property (the Plan Parcel) from the Plan to the trust of Emilie Keil (the Keil Trust), a party in interest with respect to the Plan, provided the following conditions are met:

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

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

(c) The Plan receives the greater of \$547,080¹ or the fair market value of the

Plan Parcel as of the date of the Sale; and

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Facts and Representations

1. Fish Lake Beach, Inc. (Fish Lake Beach) is a resort located in Volo, Illinois. Fish Lake Beach is the sponsor of the Plan, a profit sharing plan located in Round Lake, Illinois having 19 participants and \$1,659,702 in total assets as of December 31, 1998. The sole trustees of the Plan are Delmar Maassel and Yvonne Maassel (collectively, the Plan Trustees).

The applicant represents that three of the participants in the Plan, Yvonne Maassel, Delmar Maassel, and Yvonne Crow, are minority owners of Fish Lake Beach. In this regard, Yvonne Maassel, Delmar Maassel, and Yvonne Crow own approximately 16.7%, 3.7%, and 12%, respectively, of Fish Lake Beach.

2. Yvonne Maassel is also the trustee of the Emilie Keil Trust (the Keil Trust). The Keil Trust is a trust established on behalf of Emilie Keil, the mother of Yvonne Maassel, providing Yvonne Maassel with certain powers to be exercised in a fiduciary capacity with respect to the disposition of the Keil Trust's assets. The applicant represents that, as trustee of the Keil Trust, Yvonne Maassel has the power to invest the Keil Trust's assets in real property such as the Plan Parcel.

3. The Plan owns the Plan Parcel, a 20 acre parcel of unimproved real property located in Volo, Illinois. The Plan purchased the Plan Parcel from the L.B. Anderson Construction Company (the Anderson Company), an unrelated party, on March 3, 1994. The applicants represent that the Plan purchased the Plan Parcel for short-term investment purposes.

The applicants represent that, prior to the Plan's purchase of the Plan Parcel, the Plan Parcel was a portion of a 40 acre parcel of unimproved real property owned by the Anderson Company (the Original Property). The applicants represent that the Anderson Company divided the Original Property into two parcels of roughly the same size and value, the Plan Parcel and a parcel also comprising approximately 20 acres of unimproved real property (the Maassel Parcel). The applicants represent that the Anderson Company sold each parcel (the Anderson Sales) on March 3, 1994. The Plan purchased the Plan Parcel for \$330,330 and a group of investors related to the Maassels purchased the Maassel Parcel for \$330,330. In this regard, the applicants represent that of the Maassel Parcel's purchase price of

\$330,330: Delmar Maassel and Yvonne Maassel contributed \$50,530; Yvonne Crow, a daughter of Delmar Maassel and Yvonne Maassel, contributed \$40,300; Desiree Maassel, a daughter of Delmar and Yvonne Maassel, contributed \$40,300; and Emilie Keil contributed \$199,200.

Upon completion of the Anderson Sales, the Plan Parcel lay adjacent to the Maassel Parcel and bordered the Maassel Parcel to the north and the Maassel Parcel lay adjacent to Fish Lake Beach which bordered the Maassel Parcel to the south. Additionally, after the Anderson Sales were completed the Plan Trustees and Yvonne Crow each had an ownership interest in both the Plan Parcel and the Maassel Parcel.

The applicant represents that the related investors purchased the Maassel Parcel in anticipation of the expansion of Fish Lake Beach's operations. The Plan Trustees represent that since its acquisition by the Plan, the Plan Parcel has accounted for 57.4% of the Plan's unrealized appreciation and 2.5% of the Plan's realized income, as of December 31, 1997.²

4. The Plan Trustees represent that the Plan Parcel has generated income for the Plan. The Plan Trustees represent that from 1994 to 1998, the Plan leased the Plan Parcel to Ronald Weidner, an unrelated party (the Lease). The Plan Trustees represent that Mr. Weidner used the Plan Parcel for farming purposes. As a result, the Plan Trustees represent that the Plan has received income totaling \$5,864 from the Lease.

The Plan Trustees further represent that the Plan has incurred certain holding costs associated with the Plan's ownership of the Plan Parcel. The Plan Trustees represent that the total amount of real estate taxes on the Plan Parcel was \$327.27 since the Plan's acquisition. Of this amount, the Plan Trustees represent that Plan has paid \$103.02 and Fish Lake Beach has paid \$224.25.

5. The Plan Parcel was appraised by Robert Schroeder (Mr. Schroeder), the owner of Robert P. Schroeder Appraisals. Mr. Schroeder represents that he is a certified real estate appraiser and is independent of the Plan. In his appraisal of the Plan Parcel, Mr. Schroeder compared the Plan Parcel to five similar properties (the Comparable Properties) which were the subject of recent sales. Based on his analysis of these recent sales, Mr. Schroeder estimated the value of the Plan Parcel to

¹ Appraised value of the property is \$485,000, plus a 12.5% assemblage value premium (\$62,080).

² The Department expresses no opinion as to whether the purchase and holding of the Plan Parcel by the Plan meets the requirements of section 404 of the Act.

be \$485,000 (the Appraised Value), as of September 10, 1999.

Mr. Schroeder additionally represents that the Sale should include a price above the Appraised Value because of the ownership by the Maassels and Emilie Keil of the Maassel Parcel located adjacent to the Plan Parcel (the Assemblage Value). In this regard, Mr. Schroeder determined that a premium of 12.5%, or \$62,080, should reflect the Assemblage Value.

6. Therefore, the applicant proposes the sale of the Plan Parcel to the Keil Trust for the greater of \$547,080 (\$485,000 + \$62,080) or the Plan Parcel's fair market value as of the date of the transaction (i.e., the Sale). The applicant represents that the Sale is necessary due to a liquidity problem facing the Plan in the event the proposed Sale is not granted. In this regard, the applicant represents that the Plan is facing a potential liquidity problem due to the approaching retirement of two of the Plan's participants, Delmar Maassel and Yvonne Maassel.

The applicant represents that the proposed exemption, if granted, is feasible since the Sale would be a one-time transaction for cash. The applicant additionally represents that the Sale is in the best interests of the Plan's participants and beneficiaries since the Sale will provide the Plan with liquidity which will enable the Trustees to allocate Plan assets in more suitable investments. The applicant represents further that the proposed Sale is appropriate for the Plan since the Plan will receive the current fair market value of the Plan Parcel without incurring the substantial marketing costs associated with a Sale to unrelated third-parties.

8. In summary, the applicants represent that the subject transactions satisfy the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons:

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

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

(c) The Plan receives the greater of \$547,080 or the fair market value of the Plan Parcel as of the date of the Sale; and

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara of the Department, telephone (202) 219-8883 (this is not a toll free number).

Earl R. Waddell & Sons, Inc. Profit Sharing Plan and Trust (the Plan), Located in Fort Worth, Texas

[Application No. D-10730]

Proposed Exemption

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 (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 arrangement between the Plan and Earl R. Waddell & Sons, Inc. (The Waddell Company) involving the sale (the Sale) by the Plan of 5,183.840 shares of the Waddell Holdings Stock to the Waddell Company, provided the following conditions are satisfied:

(A) The Sale price is the greater of \$280.29 per share or the Waddell Holdings Stock's current fair market value as of the date of the Sale;

(B) The current fair market value of the Waddell Holdings Stock is determined by a qualified, independent appraiser;

(C) The Plan incurs no commissions or expenses associated with the Sale;

(D) The Waddell Company pays in cash to the Plan an additional \$191,126, an amount equal to an eight percent (8%) per annum rate of return on the Waddell Holdings Stock, as converted, for each year the Plan owned the Waddell Holdings Stock (the Interest Payment); and

(E) The Plan's Trustees will not receive any portion of the Interest Payment.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan having 31 participants and \$221,000 in assets as of June 30, 1999.³ The Plan was created on July 1, 1962 by the Waddell Company, a manufacturer's representative company founded by Earl R. Waddell (Mr. Waddell) and located in Fort Worth, Texas. On April 28, 1992, the Waddell Company underwent a corporate reorganization (the Reorganization) and the Waddell

³ In this regard, the applicant represents that the Plan has 5183.840 shares of common stock of the Waddell Holdings Stock and \$187 in cash. The Waddell Holdings Stock was valued at \$42.60 as of June 30, 1999. As such the Plan has a total of \$221,000 in Plan assets [(5183.840 * 42.60) + 187 = 220,999.84].

Company became a wholly-owned subsidiary of Waddell Holdings, Inc. (Waddell Holdings), a holding company incorporated in the State of Texas. In addition to the Waddell Company, Waddell Holdings owns subsidiaries engaged in the sales of industrial cutting tools, equipment, and supplies, and in the ownership of real estate and investment property. After the Reorganization, Waddell Company became, and remains, the Plan's sponsor.

2. On December 20, 1988, the Plan purchased 5,719 shares of stock (the Original Stock) from the Waddell Company for \$280.29 per share (the Purchase).⁴ The Original Stock was common stock issued by the Waddell Company. The price of the Stock was based on an independent appraisal by Clyde Crum (Mr. Crum), a Texas-certified appraiser, for Clyde Crum Appraisal Consultants, an appraisal company independent of the Plan and the Waddell Company. In his appraisal, Mr. Crum analyzed the assets and liabilities of the Waddell Company and determined the fair market value of the Waddell Company to be \$11,354,000, as of October 31, 1988. The applicant represents that, at the time of the Plan's acquisition of the Original Stock, the Waddell Company had 40,507 shares of common stock outstanding resulting in a \$280.29 per share price for the Original Stock.

3. The applicant represents that after the Reorganization the Original Stock was exchanged for stock (the Exchange) issued by Waddell Holdings (i.e., the Waddell Holdings Stock). As a result, after the Reorganization, the Plan held 5,719 shares of the Waddell Holdings Stock. In this regard, it is represented that the Original Stock and the Waddell Holdings Stock are "qualifying employer securities," as defined in section 407(d)(5) of the Act.

On June 30, 1993, the Plan sold 535.160 shares of the Waddell Holdings Stock at \$280.29 per share to Waddell Holdings (the Prior Sale). The applicant represents that the Plan sold the Waddell Holdings Stock to enable the Plan to pay benefits to the Plan's participants. The applicant states that the Waddell Holdings was unable to obtain an appraisal at that time because a pending litigation prevented valuations of the Waddell Holdings Stock. Waddell Holdings was able to obtain an appraisal as of June 30, 1996,

⁴ The applicant represents that, at the time of the Purchase the Original Stock comprised approximately 77% of the Plan's assets. The Department expresses no opinion as to whether the acquisition of the Original Stock by the Plan meets the requirements of section 404(a)(1)(B) of the Act.

valuing the Waddell Holding Stock at \$46.50 per share. It is represented that the sale by the Plan to Waddell Holdings of the Waddell Holdings Stock satisfied the criteria of section 408(e) of the Act.⁵

After this sale, the Plan held, and continues to hold, 5,183,840 shares of the Waddell Holdings Stock.

4. The applicant proposes the sale by the Plan of the Plan's 5,183,840 shares of the Waddell Holdings Stock to the Waddell Company (i.e., the Sale) for the greater of \$1,453,000 (\$280.29 per share) or the Waddell Holdings Stock's current fair market value as determined by an independent appraisal.⁶ The applicant represents that the Waddell Holdings Stock currently comprises approximately 100% of the Plan's assets and the proposed Sale is necessary for the Plan to pay benefits to the Plan's participants and beneficiaries. The applicant represents that the proposed Sale is in the best interests of the Plan's participants and beneficiaries since the Waddell Holdings Stock currently comprises approximately 100% of the Plan's assets and the Sale will enable the Plan to diversify its assets. The applicant additionally represents that the proposed Sale is administratively feasible since the proposed Sale is a one-time transaction for cash in which the Plan will not incur any fees or expenses. Finally, the applicant represents that the proposed Sale is protective of the Plan since the Plan will receive cash equal to the greater of the Waddell Holdings Stock's current fair market value or \$1,453,000.

The applicant additionally proposes an Interest Payment in cash from the Waddell Company to the Plan. In this regard, the applicant represents that it is anticipated that the Sale will occur at a price which results in a zero rate of return to the Plan despite the Plan's ownership of the Waddell Holdings Stock for approximately 11 years. The applicant represents that, in the event this proposed transaction is granted, the

Plan will receive from the Waddell Company cash in the amount of \$191,126, a sum equal to an 8% rate of return on the Waddell Holdings Stock for each Plan year, beginning July 1, 1989. The applicant represents that the Interest Payment is due to the Sale occurring at a price which provides for a zero percent rate of return to the Plan as a result of the Plan's investment in the Waddell Holdings Stock. The applicant represents that the Interest Payment will be distributed to the account balances of all of the Plan's participants with the exception of Marsha Waddell Moller, Mark Waddell, Earl R. Waddell, Juanita Waddell, and Allen Waddell.

5. In summary, the applicant represents that the subject transactions satisfy the statutory criteria contained in section 408(a) of the Act for the following reasons:

(A) The Sale price is the greater of \$280.29 per share or the Waddell Holdings Stock's current fair market value as of the date of the Sale;

(B) The current fair market value of the Waddell Holdings Stock is determined by a qualified, independent appraiser;

(C) The Plan incurs no commissions or expenses associated with the Sale; and

(D) The Waddell Company pays in cash to the Plan an additional \$191,126, an amount equal to an eight percent (8%) per annum rate of return on the Waddell Holdings Stock, as converted, for each year the Plan owned the Waddell Holdings Stock (the Interest Payment); and

(E) The Plan's Trustees will not receive any portion of the Interest Payment.

FOR FURTHER INFORMATION CONTACT: J. Martin Jara of the Department, telephone (202) 219-8883 (this is not a toll free number).

Rhode Island Carpenters Local No. 94 Pension Fund (the Pension Plan), Rhode Island Carpenters Local No. 94 Apprenticeship Fund (the Apprenticeship Plan; Collectively, the Plans), and Rhode Island Carpenters Local No. 94 (the Union), Located in Warwick, Rhode Island

[Application Nos. D-10739 and L-10740]

Proposed Exemption

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 (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 cash sale (the Parking Lot Sale) of improved real property (the Parking Lot) by Rhode Island Carpenters Apprenticeship Fund (the Apprenticeship Plan) to the Carpenters Local No. 94 (the Union) for the greater of (a) \$173,000 or (b) the fair market value of the Parking Lot as of the date of the Parking Lot Sale; and (2) the cash sale (the Building Sale) of improved real property (the Building) by the Rhode Island Carpenters Local No. 94 Pension Fund (the Pension Plan) to the Union, for the greater of (a) \$777,000 or (b) the fair market value of the Building as of the date of the Building Sale, provided the following conditions are satisfied:

(A) the Parking Lot Sale occurs at a price not less than the fair market value of the Parking Lot, as determined by a qualified independent appraiser;

(B) the Building Sale occurs at a price not less than the fair market value of the Building, as determined by a qualified independent appraiser;

(C) The Building Sale and the Parking Lot Sale (collectively, the Sales) are one-time transactions for cash; and

(D) The Plans pay no fees or commissions in connection with the Sales.

Summary of Facts and Representations

1. The Union is a labor organization located in Warwick, Rhode Island. The Union is a sponsor of the Plans.

2. The Plans are comprised of the Apprenticeship Plan and the Pension Plan. The Apprenticeship Plan is a multi-employer apprenticeship plan which educates and trains apprentice carpenters in Rhode Island. The Apprenticeship Plan had approximately 61 apprentices and \$636,730 in assets as of December 31, 1998. The Pension Plan is a multi-employer pension plan which provides pension benefits to carpenters in Rhode Island. The Pension Plan had approximately 2,096 participants and approximately \$102,239,790 in assets as of December 31, 1998.

3. On May 22, 1974, the trustees of the Pension Plan (the Pension Plan Trustees) established a corporation, Jefferson Park Building, Inc. (Jefferson Park), for the purpose of purchasing and owning real estate in Rhode Island. On May 29, 1974, the Pension Plan Trustees caused Jefferson Park to purchase the Pension Plan Building for \$480,000 from the Springdale Enterprising Company, an unrelated third party.

⁵ The Department is expressing no opinion as to whether the Original Stock and the Waddell Holdings Stock constitute qualifying employer securities as defined in Section 407(d)(5) of the Act. Further, the Department, herein, expresses no opinion as to whether the Purchase, the Exchange, or the Prior Sale satisfied the conditions, as set forth under section 408(e) of the Act. Accordingly, the Department is not proposing relief for the aforementioned transactions.

⁶ The applicant represents that a recent independent appraisal on the Waddell Holdings Stock determined its current fair market value to be \$42.60 per share as of June 30, 1999. As a result, the applicant anticipates the Sale to occur at a price exceeding the Waddell Holdings Stock's current fair market value. In this regard, the applicant represents that the Sale does not violate the requirements set forth in section 415 of the Code.

The Pension Plan Building is located at 14 Jefferson Park Road in Warwick, Rhode Island. The Pension Plan Building consists of a 12,600 square foot, two-story office building located on a 58,172 square foot lot. The applicants represent that, since its acquisition, the Pension Plan has used a portion of the Pension Plan Building as an administrative facility. In addition, the applicants represent that the Pension Plan also has leased, and continues to lease, space in the Pension Plan Building to the Apprenticeship Plan for use in the following: workshops, training, classrooms, and offices. The applicants also represent that the Pension Plan leases space in the Pension Plan Building to the Union and other related and unrelated parties.⁷

The applicants represent that the Pension Plan Building has generated rental income for the Pension Plan. In this regard, the applicants represent that the Pension Plan has generated approximately \$80,000 per year in rental income since 1974. As a result, the applicants represent that the Pension Plan has received a total of approximately \$2,000,000 in rental income since the Pension Plan acquired the Pension Plan Building.

The applicants additionally represent that the Pension Plan has incurred certain expenses as a result of its ownership of the Pension Plan Building. These expenses include real estate taxes imposed on the Pension Plan Building. In this regard, the applicants represent that the Pension Plan has incurred an average of approximately \$20,000 per year in real estate taxes since 1974. As a result, the applicants represent that the Pension Plan has incurred approximately \$500,000 in real estate taxes since the Pension Plan acquired the Pension Plan Building.

The applicants also represent that the liability insurance on the Pension Plan Building for the last twenty-five years averaged approximately \$4,000 per year, totaling \$100,000.

The Pension Plan additionally incurred certain repair expenses associated with the Pension Plan's ownership of the Pension Plan Building. In this regard, the applicants represent

that although the Pension Plan Building has not been expanded, the Pension Plan has incurred various expenses in maintaining the Pension Plan Building's habitability. These expenses include the replacement of the Pension Plan Building's roof in 1989 in the amount of \$27,000, and the installation of a new heating system in 1988 in the amount of \$86,000. The applicants represent that other miscellaneous maintenance expenses averaged approximately \$4,000 per year.

The applicants represent that the rental income generated from the Pension Plan Building far exceeds the sum of the repair costs, real estate taxes and liability insurance.⁸

4. On October 21, 1974, the trustees of the Apprenticeship Plan (the Apprenticeship Plan Trustees) established a company, Apprenticeship Properties, for the purpose of purchasing and owning real estate located in Rhode Island. On October 24, 1974, Apprenticeship Properties purchased the Parking Lot from Jay Gar, Inc., an unrelated party, for \$43,220. The Parking Lot is a 28,812 square foot rectangular-shaped asphalt parking lot located adjacent to the Pension Plan Building.⁹ The applicants represent that the Apprenticeship Plan Trustees purchased the Parking Lot in anticipation of the Apprenticeship Plan's construction of an apprentice training facility.

Since its acquisition, the Apprenticeship Plan has incurred certain expenses (the Holding Costs) associated with its ownership of the Apprenticeship Plan Parking Lot. The Holding Costs are comprised of property taxes imposed on the Parking Lot and improvements made to the Parking Lot. In this regard, the applicants represent that the Apprenticeship Plan has incurred a total of \$52,500 in property taxes as a result of its ownership of the Parking Lot. With respect to the costs incurred by the Apprenticeship Plan for improvements made to the Parking Lot, the applicants represent that the Apprenticeship Plan has paid \$11,829. The applicants represent that the total cost to the Apprenticeship Plan associated with the Apprenticeship Plan's ownership of the Parking Lot is \$107,549, the sum of the Parking Lot's

acquisition price (\$43,220) and the total Holding Costs (\$64,329).

5. The applicants represent that in 1997 the Pension Plan Trustees determined that the Pension Plan Building was not appreciating at a satisfactory rate. The applicants represent that the Pension Plan Trustees decided to sell the Pension Plan Building and invest the proceeds in assets more suitable to the needs of the Pension Plan. The applicants represent that on August 18, 1998 the Pension Plan Trustees decided to sell the Pension Plan Building to the Union for a price equal to the Pension Plan Building's fair market value.

The applicants additionally represent that the Apprenticeship Plan Trustees determined that the Parking Lot was no longer needed for the construction of an apprentice training facility.¹⁰ The applicants represent that, due to a downturn in the industry and a decrease in apprentices in Rhode Island, the Apprenticeship Plan Trustees determined that the construction of an apprenticeship training facility should be postponed. The applicants further represent that in July 1996, the Union became part of the New England Regional Council of Carpenters and shortly thereafter the Apprenticeship Plan Trustees decided that their apprentices could receive high quality training in a cost effective manner at the modern, existing facility of the Massachusetts Carpenters Training Program in Milbury, Massachusetts.

The void filled by the existing facility, the applicants represent, prompted the Apprenticeship Plan Trustees to invest in a more liquid asset than real estate. Accordingly, the applicants further represent that on September 8, 1998, the Apprenticeship Plan Trustees decided to sell the Parking Lot to the Union for a price equal to the Parking Lot's fair market value.

6. The Pension Plan Building was appraised by three different appraisers. Each appraiser represented that he was independent of the Pension Plan and the Union and that his employment and compensation were not contingent on the appraised value of the Pension Plan Building. Each appraiser additionally represented that he was a Rhode Island-certified real estate appraiser.

The first appraisal was completed on February 3, 1998 by Mr. J. Timothy Reiter (Mr. Reiter) for Andolfo Appraisal Associates, an appraisal company independent of the Pension Plan, the

⁷ The Pension Plan Trustees represent that the leasing of the office space to the Union and Union-sponsored employee benefit plans is in accordance with Prohibited Transaction Class Exemption (PTCE) 76-1, (41 FR 12740, March 26, 1976) and PTCE 77-10 (42 FR 33918, July 1, 1997). The Department expresses no opinion herein as to whether such transaction complies with the terms and conditions of PTCEs 76-1 and 77-10. The Pension Plan Trustees additionally represent that the rents at the Pension Plan Building are based on a market survey of similar commercial properties in the Warwick, Rhode Island area.

⁸ Rental Income (\$2,000,000)—Taxes (\$500,000)+Liability Insurance (\$100,000)+Other Expenses (\$27,000+\$86,000+\$100,000)=\$1,187,000.

⁹ The applicants represent that the Pension Plan Building has sufficient parking spaces available for the Pension Plan Building's tenants and any use of the Apprenticeship Plan Parking Lot by the Pension Plan Building's tenants did not result in a benefit to the Union or any other party in interest to the Apprenticeship Plan.

¹⁰ The Department expresses no opinion as to whether the retention of the Pension Plan Building and Parking Lot for such period of time by the Plans meets the requirements of 404(a) of the Act.

Apprenticeship Plan, and the Union. Mr. Reiter used both the income approach and the sales comparison approach and determined the fair market value of the Pension Plan Building to be \$777,000 as of February 3, 1998. The second appraisal was completed by Mr. Joseph Accetta (Mr. Accetta) for Joseph W. Accetta & Associates, Inc., an appraisal company independent of the Pension Plan and the Union. Mr. Accetta used the sales comparison approach and compared the Pension Plan Building to three similar properties. Based on these comparisons, Mr. Accetta determined the fair market value of the Pension Plan Building to be \$700,000 as of April 6, 1998. The third appraisal was completed by Mr. Andrew Carbone (Mr. Carbone) for Carbone & Shand Appraisal, LLC, an appraisal company independent of the Pension Plan, the Apprenticeship Plan, and the Union. Mr. Carbone used the sales comparison approach and compared the Pension Plan Building to four similar properties. Based on these comparisons, Mr. Carbone determined the fair market value of the Pension Plan Building to be \$720,000 as of April 7, 1998.

Mr. Reiter additionally appraised the Apprenticeship Plan Parking Lot. Mr. Reiter used the income approach and determined the fair market value of the Apprenticeship Plan Parking Lot to be \$173,000 as of February 3, 1998. Mr. Carbone also appraised the Apprenticeship Plan Parking Lot. Mr. Carbone used the sales comparison approach and determined the fair market value of the Apprenticeship Plan Parking Lot to be \$95,000 as of April 7, 1998.

7. The applicants proposed the sale of the Pension Plan Building from the Pension Plan to the Union (i.e., the Pension Plan Building Sale) for \$732,333, the average of the three appraisals performed on the Pension Plan Building. Additionally, the applicants propose the sale of the Apprenticeship Plan Parking Lot from the Apprenticeship Plan to the Union (i.e., the Apprenticeship Plan Parking Lot Sale) for \$134,000, the average of the two appraisals performed on the Apprenticeship Plan Parking Lot.

8. The Department requested that the applicants obtain new or updated appraisals due to the disparate range of the various appraisals originally submitted by the applicants. Accordingly, the applicants retained the services of Mr. Thomas S. Andolfo, MAI, for Andolfo Appraisal Associates, an appraisal company independent of the Plans and the Union. Mr. Andolfo, in updating the valuation, relied on the direct sales comparison approach and

determined the fair market value of the Pension Plan Building to be \$777,000 as of November 1, 1999. Mr. Andolfo also updated the appraisal of the Apprenticeship Plan Parking Lot. Mr. Andolfo, considered market sales and performed a Land Residual Analysis and determined the fair market value of the Apprenticeship Plan Parking Lot to be \$173,000 as of November 1, 1999. The applicants state that these latest figures, which represent the highest appraisal values for the Parking Lot and Building, will be used in the Sales.

9. The applicants represent that, if granted, the proposed Sales will be administratively feasible since the Sales will be one-time transactions for cash. Additionally, the applicants represent that the proposed Sales will be protective of the Plans since the Apprenticeship Plan will receive the fair market value of the Apprenticeship Plan Parking Lot and the Pension Plan will receive the fair market value of the Pension Plan Building. Finally, the applicants represent that the proposed Sales are in the best interest of the Plans since the Sales will enable the Plans to invest in assets more suitable for the needs of the participants and beneficiaries of the Plans.

10. In summary, the Applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(A) the Parking Lot Sale occurs at a price not less than the fair market value of the Parking Lot, as determined by a qualified independent appraiser;

(B) the Building Sale occurs at a price not less than the fair market value of the Building, as determined by a qualified independent appraiser;

(C) The Building Sale and the Parking Lot Sale (collectively, the Sales) are one-time transactions for cash; and

(D) The Plans pay no fees or commissions in connection with the Sales.

FOR FURTHER INFORMATION CONTACT: J. Martin Jara at the United States Department of Labor, telephone (202) 219-8883 (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 24th day of February, 2000.

Ivan Strasfeld,

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

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BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00-020)]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget