requested that the Department make corresponding changes to the Summary of Facts and Representations (the Summary) section of the Proposal. The Department notes these revisions to Representation 8 of the Summary.

Condition (e) of the Proposal requires Citigroup to comply with certain recordkeeping requirements. However, Citigroup stated in its comment letter that only Condition (c) of the Proposal would lend itself to the maintenance of records regarding compliance with the exemption. Accordingly, Citigroup has requested that Condition (e) be revised to limit the recordkeeping requirement to ''the conditions of subsection (c) of the exemption.'' The Department does not agree with the Applicant on this point because recordkeeping would apply to the continuing validity of the exemption as a whole. Accordingly, the Department has not changed the condition.

Condition (f) of the Proposal currently provides that ''Citigroup has adopted procedures to afford ample protection of the interests of the participants and beneficiaries of employee benefit plans.'' The Applicant stated that it is unsure what the word ''ample'' is intended to mean and requested in its comment letter that the Department delete this word from Condition (f). The Department has done so. The Applicant also requested that the deletion of the word ''ample'' be made from Representation 8 of the Summary. The Department so notes.

In its comment letter, the Applicant had other requested changes to the Summary. The Applicant noted that the last sentence of Representation 2 indicates that CBB has no ERISA plan clients and is not expected to have any such clients in the future. According to the Applicant, although CBB does not act as a fiduciary to any ERISA plan, Citigroup cannot guarantee that an ERISA plan will never be a counterparty to any transaction entered into by CBB. As a result, the Applicant requested that the Department revise the last sentence of Representation 2 of the Proposal to state that ''* * *CBB is not expected to have any ERISA plan clients for whom it will perform any fiduciary or QPAM services or otherwise exercise discretionary control over plan assets in the future.'' In response, the Department notes this revision.

The Applicant represents that after a further review of the facts and circumstances surrounding the criminal convictions of CBB, it has determined that: (a) prior to his termination of employment, Jose de Penaranda de Franchimont was the Chief Country Officer and Chief Executive Officer of CBB, rather than its Chief Compliance Officer; and (b) the convictions were related to the use of fact sheets, in addition to marketing letters and leaflets, as well as a prospectus. The Applicant has therefore requested in its comment letter that Footnote 57 to Representation 3 be revised to replace Mr. de Penaranda de Franchimont's title as ''Chief Country Officer and Chief Executive Officer.'' The Applicant also notes the correct spelling of Mr. de Penaranda de Franchimont's name. In addition, Citigroup has requested that the third sentence of Representation 3 be revised to refer to the ''use of certain marketing letters, leaflets and fact sheets, as well as a prospectus.'' The Department notes these revisions.

Representation 5 addresses the reasons that the Proposal would be protective of the rights of participants and beneficiaries of affected plans. For purposes of clarity, the Applicant requested in its comment letter that the Department revise subsection (d) of Representation 5 to read: ''A consistent framework and requirements were developed through the policy for mandatory sales force training on products, as well as Citigroup policies.'' The Department notes this revision.

Representation 7 addresses Citigroup's compliance policies and procedures and notes that Mr. Staroukine, CBB's Belgium Country Counsel, has no involvement with ERISA plans and will not have any future dealings with ERISA plans while employed by Citigroup, CBB, or an affiliate. The Applicant stated in its comment letter that although it is correct that Mr. Staroukine does not act as a fiduciary to any ERISA plan, CBB cannot ensure that he will never have any involvement in any transaction in which an ERISA plan may be a counterparty. The Department so notes. In addition, Citigroup contended in its comment letter that Mr. Staroukine should not be prohibited from ever acting as a fiduciary to an ERISA plan in the event his conviction is overturned on appeal. Therefore the Applicant requested that the last sentence of Representation 7 of the Proposal be revised to read: ''The Applicant further represents that Mr. Staroukine, although currently serving as CBB's Belgium Country Counsel, does not act as a fiduciary to any ERISA plan, and will not act as a fiduciary to any ERISA plan while he is employed by the Applicant, CBB or an affiliate, unless the convictions are overturned on appeal. The Department notes this revision.

The Department has considered the entire record, including the comment letter filed by the Applicant, and has determined to grant the exemption as proposed, subject to the revisions described herein.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, DC, this 27th day of March 2012.

Lyssa E. Hall,

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

[FR Doc. 2012–7705 Filed 3–29–12; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11582, South Plains Financial, Inc. Employee Stock Ownership Plan (the Plan or the Applicant); and D–11668, TIB Financial Corp. Employee Stock Ownership Plan with 401(k) Provisions (the Plan).

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

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

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

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

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).[1] 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.

South Plains Financial, Inc. Employee Stock Ownership Plan (the Plan or the Applicant)

Located in Lubbock, TX [Application No. D–11582]

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 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).[2] If the exemption is granted, the restrictions of sections 406(a)(1)(A), (D) and (E), 406(a)(2), 406(b)(1) and (b)(2), 407(a)(1)(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), (D) and (E) of the Code, shall not apply, (1) effective December 17, 2008, to the acquisition and holding by the Plan of certain interests (the LLC Interests) in SPFI Investment Group, LLC (the LLC), a former wholly owned subsidiary of the Plan sponsor, South Plains Financial, Inc. (SPF), which were distributed (the Distribution) as dividends to the Plan as a shareholder of SPF; and (2) the proposed redemption (the Redemption) by the LLC of the LLC Interests held by the Plan, provided that the following conditions are met:

(a) The Plan's acquisition and holding of the LLC Interests occurred in connection with the Distribution, wherein the Plan acquired the LLC Interests automatically and without any action on its part.

(b) The Plan's acquisition of the LLC Interests resulted from an independent act of SPF as a corporate entity for business reasons which did not involve the Plan. As such, all shareholders of SPF, including the Plan, were treated in the same manner.

(c) The Plan paid no fees or commissions in connection with the acquisition and holding of the LLC Interests.

(d) Within ninety (90) days after publication of the notice granting the final exemption in the **Federal Register**, the LLC redeems the LLC Interests held by the Plan for no less than the greater of $1,036,665 or the fair market value of the LLC Interests on the date that the Redemption occurs.

(e) The Redemption is a one-time sale of the LLC Interests for cash.

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

(g) The Plan pays no commissions, costs or other expenses in connection with the Redemption.

(h) An independent fiduciary has approved the Redemption and monitors such transaction on behalf of the Plan.

Effective Date: If granted, this proposed exemption will be effective as of December 17, 2008, with respect to the acquisition and holding by the Plan of the LLC Interests. In addition, this

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

[2] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

proposed exemption will be effective as of the date the final exemption is granted with respect to the LLC's Redemption of the LLC Interests held by the Plan.

Summary of Facts and Representations

SPF

1. SPF, the Plan sponsor, is located in Lubbock, Texas. SPF is a Texas corporation and registered bank holding company which conducts its principal activities through its subsidiaries' offices located throughout Texas and eastern New Mexico. SPF's principal activities include commercial and retail banking, along with insurance, investment, trust and mortgage services. SPF is currently taxed as a Subchapter S corporation for federal income tax purposes. Subsidiaries of SPF include the following entities: City Bank, Zia Financial Corporation, City Bank New Mexico and Windmark Insurance Agency, Inc. The subsidiaries of SPF are all adopting employers of the Plan.

2. Curtis Griffith, Cory Newsom, Ricky Neal, Kevin Bass, Lonnie Hollingsworth, Larry Beseda, Bobby Neal, Jodie Riley and Danny Campbell are the current directors (the SPF Directors) of SPF. Each of the SPF Directors is a shareholder of SPF except for Danny Campbell. Curtis Griffith, Kevin Bass, Cory Newsom, Sandy Wallace and Steve Crockett are the current officers of SPF (the SPF Officers).

The Plan

3. The Plan is an individual account plan as described in section 3(34) of the Act. The Plan includes an employee stock ownership plan (the ESOP Portion) and a cash or deferred arrangement (the 401(k) Portion). The ESOP Portion of the Plan is designed to invest primarily in qualifying employer securities pursuant to section 4975(e)(7) of the Code.

Participants' individual accounts are divided into sub-accounts, which include the following: (a) A Company Stock Account, which contains the shares of qualifying employer securities allocated pursuant to the ESOP Portion of the Plan; (b) an Other Investments Account, which contains the allocations of net gain of the Plan, forfeitures and employer contributions in other than the qualifying employer securities (the LLC Interests are held in a sub-account of a participant's Other Investments Account); (c) an Elective Account, which contains a participant's pre-tax elective deferrals and Roth elective deferrals (no part of the Elective Account is invested in qualifying employer securities); and (d) a Rollover Account, which contains distributions from other qualified retirement plans (no part of the Rollover Account is invested in qualifying employer securities).

Pursuant to an amendment to the Plan effective January 1, 2011, the ''ESOP Committee'' is the administrator of the Plan (the Plan Administrator). Curtis Griffith, Cory Newsom, Steve Crockett, Rob Dean, Larry Beseda and Raymond Richardson are the current members of the ''ESOP Committee''. SPF was the Plan Administrator prior to the ''ESOP Committee''.

4. City Bank is a Texas chartered bank subsidiary of SPF and adopting employer of the Plan.[3] Its trust department serves as a directed trustee (the Trustee) with respect to: (a) The Company Stock Account; (b) the participant-directed investments of participant elective contributions in the Elective Account; (c) the participant rollover contributions in the Rollover Account; and (d) the investment of SPF stock pursuant to direction from the Plan Administrator. The Trustee is also a discretionary trustee with respect to the investment of assets which are held in the Other Investments Account and which are not participant directed (*i.e.,* participant elective contributions in the Elective Account and rollover contributions in the Rollover Account). The Trustee follows the guidelines of the Funding and Investment Policy, but acts with discretion as to the time and manner of the implementation of such policy.

5. As of December 17, 2008, the date of the Distribution described herein, the Plan had a total of 953 participants[4] and assets with an approximate aggregate fair market value of $40,162,889 (excluding the value of the LLC Interests that were acquired that day). As of the same date, about 77.15% or $30,984,190 of the Plan's assets was invested in SPF stock. Also as of the same date, an estimated 882 Plan participants held a total of 99,949 shares of SPF stock, representing an approximately 24.05% ownership interest in SPF.

Of the 99,949 SPF shares held by the Plan, 70,280 shares were allocated to Plan participant accounts and 29,669 shares were held in an unallocated suspense account as collateral for certain non-recourse loans (the ESOP Loans)[5] to the Plan. The Applicant represents that the ESOP Loans were used to acquire qualifying employer securities and that such loans satisfy the statutory exemption provided under section 408(b)(3) of the Act.[6]

6. As of December 31, 2010, the Plan had a total of 1,026 participants and assets with an approximate aggregate fair market value of $33,315,524. As of the same date, 57% or $18,990,310 of the Plan's assets was invested in SPF stock. Also as of December 31, 2010, out of the 1,026 Plan participants, an estimated 964 Plan participants held a total of 79,828 shares of the 411,454 outstanding shares of SPF (which, together with the 24,895 shares of SPF held by the Plan in a suspense account, equaled 24.29% of SPF).

The Property

7. On November 19, 1991, City Bank purchased a parcel of improved real property located at 5219 City Bank Parkway (the Property) for $2,800,000 from CSM, Inc., an unrelated party. In October 1993, SPF acquired City Bank and City Bank's assets, including the Property for $4,900,000. SPF believed that the acquisition of City Bank and its assets was a prudent investment and would increase its West Texas presence.

8. The Property is an irregularly-shaped site that consists of 9.8762 acres of land, made up of the bank site at 8.9862 acres, and excess land of 0.89 acres. The Property is improved with a 3-story, multi-tenant office building containing 116,616 square feet (gross building area). Total net rentable area for the building is computed as 85,001 square feet. The building was

[3] City Bank directors (the City Bank Directors) include the SPF Directors. City Bank officers (the City Bank Officers) include Curtis Griffith, Mike Liner, Cory Newsom, and Kevin Bass, who are both SPF Directors and City Bank Directors.

[4] The Plan's participants also included and continue to include many of the officers and directors of the entities described herein.

[5] The Applicant represents that as of December 31, 2011, the ESOP portion of the Plan had two outstanding loans. The first loan, dated September 27, 2002, was made by Lubbock National Bank in the original amount of $5,999,928. Each principal payment is $600,000 and is due in January of each year. As of December 31, 2011, there was one principal payment remaining. The interest rate is the prime interest rate published in the Wall Street Journal with a floor of 5.15% and a ceiling of not more than 9% per annum. The interest projection for 2012 was approximately $8,000. As of December 31, 2011, the balance of the first loan was $599,822.

The second loan, dated May 25, 2007, was also made by Lubbock National Bank in the original amount of $6,767,360. Each principal payment is $676,735 and is due in January of each year. As of December 31, 2011, there was one principal payment remaining. The interest rate is a variable, per diem rate equal to the prime interest rate published in the Wall Street Journal less 50 basis points. As of December 31, 2011, the balance of that loan was $4,060,416. The Applicant represents that both loans have satisfied the requirements of section 408(b)(3) of the Act.

[6] The Department expresses no opinion herein regarding whether the conditions of section 408(b)(3) of the Act have been satisfied. In this regard, the Department notes that it is providing no relief for the ESOP Loans beyond that provided in the statutory exemption.

constructed in 1983 and has undergone numerous remodels over the years. The Property has been used for City Bank's main office in Lubbock, Texas since its acquisition.

The LLC

9. On November 12, 2008, City Bank formed the LLC, which is also located at 5219 City Bank Parkway, Lubbock, Texas, as a Texas limited liability company.[7] On December 10, 2008, City Bank contributed the Property to the LLC in exchange for 100% of the member interest in the LLC. The LLC was wholly owned by City Bank from December 10, 2008 to December 16, 2008. On December 16, 2008, City Bank distributed 100% of its member interest to SPF. Accordingly, SPF became the successor member to City Bank. The LLC was then wholly owned by SPF from December 16, 2008 until SPF distributed the LLC Interests to its shareholders on December 17, 2008. (See Representation 15.) Around the time of the Distribution, the LLC had cash assets totaling $696,643.

10. Since its formation, the LLC's principal business activity has been the rental and management of commercial real estate. The managers of the LLC (the LLC Managers) are Cory Newsom and Kevin Bass. In addition, members of the LLC include the SPF Directors, the SPF Officers, the City Bank Directors, and the City Bank Officers.

The Lease

11. By lease agreement (the Lease) dated December 16, 2008, City Bank and the LLC entered into a triple net, ten-year lease whereby City Bank leased the Property from the LLC[8] in order to continue using the Property as its main office space. The Lease requires monthly rental payments of $166,460.29 ($1,997,523.48 annually) or $23.50 per square foot from January 1, 2009 through December 31, 2013. Beginning on January 1, 2014 through December 31, 2018, the monthly rental payment will be $183,106.32 ($2,197,275.84 annually) or $25.85 per square foot. The Lease is subject to eight five-year renewal periods.

City Bank currently leases 100% of the office building on the Property from the LLC, and occupies about 60% of the office building, itself. City Bank subleases the remaining space in the office building that it does not occupy to unrelated tenants.

The Loan

12. A loan (the Loan) in the amount of $15,800,000 was entered into on December 16, 2008 between the LLC as borrower and Texas Capital Bank, National Association (TCB), a national banking association and third party lender, as both lender and administrative agent with respect to the Loan. The purpose of the Loan was to provide additional capital to City Bank. The Loan was evidenced by a credit agreement (the Credit Agreement), and an accompanying promissory note, both executed on December 16, 2008. The Credit Agreement provides that one or more lenders may make the Loan in an amount up to $15,800,000.

The terms of the Loan require that the unpaid principal balance bear interest at the rate per annum equal to the lesser of (a) the maximum rate of interest which may be charged, contracted for, taken, received or reserved by a lender in accordance with applicable Texas law (or applicable United States federal law to the extent that such law permits a lender to charge, contract for, receive or reserve a greater amount of interest than under Texas law) or (b) the rate of interest per annum quoted in the ''money Rates'' section of The Wall Street Journal from time to time and designated as the ''Prime Rate''. The terms of the Loan further require that the Loan be repaid in monthly installments of principal and interest in the amount of $120,000 each, due and payable on the first day of each calendar month beginning February 1, 2009, and continuing on the first day of each month thereafter through, and including, January 2, 2014.

13. TCB, as a lender, agreed to make the Loan provided that on or before March 31, 2009, either (a) additional lenders would become parties to the Loan and finance at least $3,000,000 of the Loan or buy at least $3,000,000 in participations in the Loan, or (b) the LLC would repay to TCB the difference between $3,000,000 and the amount of the Loan financed by other lenders.[9]

14. The Loan is collateralized by the Property. Pursuant to the Credit Agreement, TCB has a first lien Deed of Trust in the Property and an Assignment of Rents Paid pursuant to the Lease. The LLC uses the monthly Lease payments it receives from City Bank to repay the Loan. The LLC members are also not liable for the Loan in their individual capacities.

The Distribution

15. By letter dated December 15, 2008 (the Notice of Distribution), SPF notified its shareholders of the intended Distribution. In the Notice of Distribution, SPF explained that the purpose of the Distribution was to increase City Bank's capital by converting the Property into working capital that City Bank could leverage to increase its lending capabilities. In addition, SPF informed its shareholders of the Loan and Lease transactions, described above, and explained how the Loan proceeds would be used to increase City Bank's operating capital and liquidity, and how the Lease proceeds would be used to service the Loan, as well as provide distributions to the LLC members in an amount that would allow them to pay the individual tax liabilities resulting from their ownership of the LLC Interests. SPF was of the view that increasing City Bank's operating capital, and thus its liquidity, would allow City Bank to continue to grow and provide City Bank with a competitive advantage over its peer banks.

16. On December 16, 2008, City Bank distributed its LLC Interests to SPF. On December 17, 2008, SPF declared a pro rata Distribution of the LLC Interests to its shareholders of record as of that date.[10] The shareholders of SPF at the time of the Distribution collectively acquired 100% of the membership interests in the LLC at a book value of

[7] The Applicant notes that the Texas Business Organizations Code, which applies to all Texas limited liability companies registered to transact business in Texas, does not require, in connection with the formation of a new limited liability company, that a person be named as an initial member in the Certificate of Formation. Accordingly, at the time that the LLC was formed, no members were listed.

[8] The Applicant represents that the Lease is not a prohibited transaction. The Applicant states, in pertinent part, that the Departments regulations (see 29 CFR 2510.3–101(a)(2)) establish a ''look-through rule'' under which underlying assets of certain entities in which a plan may invest are regarded as plan assets. However, the Applicant explains, in pertinent part, that the ''look-through rule'' does not apply if the equity investment in the entity by a benefit plan is not significant. The Applicant further explains that equity participation by benefit plan investors is significant as of any date if benefit plan investors hold 25% or more of the value of any class of equity interest. The Applicant states that by its calculation the benefit plan investors have an equity interest of 24.599% in the LLC. Therefore, the Applicant represents that the underlying assets of the LLC are not considered plan assets of such benefit plan investors and the Lease is not a prohibited transaction.

The Department expresses no opinion herein on whether the underlying assets of the LLC are plan assets pursuant to 29 CFR 2510.3–101 and, accordingly, is not proposing any relief for the Lease.

[9] TCB sold a participation interest in the Loan to Founders Bank, SSB on or before March 31, 2009.

[10] Certain SPF Directors, SPF Officers, City Bank Directors, and City Bank Officers acquired LLC Interests in either or both their individual capacities and their capacities as Plan participants as a result of the Distribution. In addition, certain Plan participants (*e.g.,* new participants) did not have SPF shares allocated to their Plan accounts.

$721,500. Neither SPF nor City Bank retained any interest in the LLC.

17. The Distribution was an independent act of SPF as a corporate entity for business reasons which did not involve the Plan.[11] All shareholders of SPF were treated in the same manner. The Plan, as a shareholder of SPF stock, acquired the LLC Interests automatically, without any action on the part of the Plan, and in proportion to its ownership interests in SPF. As a result of the pro rata Distribution of the LLC Interests, the Plan received 24.05% of the outstanding membership interests in the LLC. At the Plan participant level, an estimated 882 participants received a total of 99,949 LLC Interests of the 415,509 outstanding LLC Interests.

According to the Plan's unaudited financial statement for December 31, 2008, the LLC Interests acquired by the Plan in the Distribution were valued at that time at $721,500. The Applicant represents that the value was determined by adding the total estimated current fair market value of the Property ($18,100,000), plus cash assets in the LLC ($700,000), subtracting the outstanding Loan on the Property in the amount of $15,800,000, resulting in an amount of $3,000,000, multiplied by the Plan's ownership percentage (24.05%), which equaled $721,500. The Plan paid no fees to SPF in connection with the Distribution.

18. Pursuant to an amendment to the Plan dated December 23, 2008, the LLC Interests have been held on behalf of the Plan in a sub-account of a Plan participant's ''Other Investments Account'' known as the Special Trust Fund.

Following the Distribution, each member of the LLC, other than the Plan, executed a Right of First Refusal Agreement.[12] The Right of First Refusal Agreement requires that each member of the LLC give the LLC, any assignee of the LLC and the other members of the LLC, in that order, a right to purchase the member's LLC Interest before it can be sold for the offered price, provided that the offered price is equal to fair market value, as defined in such agreement. Aside from the Plan, certificates (the Certificates) evidencing the LLC Interests were provided upon receipt by any one of the LLC Managers of the executed right of first refusal agreement from all those shareholders of SPF receiving LLC Interests. The Certificates were issues at different times. The Plan's Certificate, dated December 17, 2008 and evidencing its ownership of LLC Interests, was received and posted to the trust accounting system at Argent Trust Company of Louisiana (Argent Trust), the Plan's independent fiduciary, on June 2, 2009.[13]

The Funding and Investment Policy

19. On March 26, 2009, the SPF Directors considered and adopted a revised Funding and Investment Policy for the Plan in order to address the Plan's ownership of assets, such as the LLC Interests. Specifically, Section III of the Funding and Investment Policy was revised to provide that the Plan could not invest in any non-publicly traded securities other than SPF stock. In revising the Funding and Investment Policy, the SPF Directors considered, among other things, the Plan's ''investment'' in the LLC, how the LLC Interests affected the Plan and its design to be invested primarily in SPF stock, the Plan's liquidity needs, and its diversification requirements. Accordingly, the SPF Directors advised Argent Trust to sell the Plan's LLC Interests.[14]

On December 17, 2010, the SPF Directors adopted a revised Funding and Investment Policy for the Plan to once more address the Plan's ownership of the LLC Interests. Specifically, Section III of the Funding and Investment Policy was revised to provide that the Plan could not invest in any non-publicly traded securities other than SPF stock, except to the extent that Argent Trust, the Plan's independent fiduciary, determined that an investment in the LLC Interests was in the best interests of the Plan. In revising the Funding and Investment Policy, the SPF Directors decided the change was in the best interests of Plan participants so that there would be no question that the decision to sell the Plan's LLC Interests was being made solely in the interests of the participants and with the requisite prudence and diligence by an independent fiduciary.

On June 7, 2011, the Funding and Investment Policy was revised again by the ESOP Committee. However, no changes were made to Section III of such policy.

The Qualified Independent Fiduciary

20. By an Appointment of Trustee Agreement (the Appointment Agreement), executed on December 26, 2008 between Argent Trust and SPF on behalf of the Plan, Argent Trust became the Plan's independent fiduciary, effective December 19, 2008, with respect to the custody, management and sale of the Plan's LLC Interests to the LLC. Argent Trust, a subsidiary of Argent Financial Group, Inc. (AFG), is a privately held trust bank regulated by the United States Office of the Comptroller of Currency. Originating as the trust department of Ruston State Bank, Argent Trust has roots dating back to 1930. In 1990, the trust department of Ruston State Bank was transferred to an independent banking charter forming The Trust Company of Louisiana (TTCL). In 1991, certain individual shareholders of TTCL purchased TTCL and formed AFG as a holding company. TTCL obtained a national banking charter and the name was changed to National Independent Trust Company, with Argent Trust as a division of that company. As of December 31, 2010, Argent Trust had assets equal to $1,086,490,000, and five offices staffed with 24 professionals. For the year ended December 31, 2010, Argent Trust generated revenue of $4,245,062.

21. Argent Trust represents that it is qualified to act as independent fiduciary for the Plan because it has a long history of serving as a fiduciary and trustee to qualified plans. In this regard, Argent Trust has historically served, and currently does serve, as trustee of several ESOPs, primarily sponsored by financial institutions. These ESOPs include plans that are leveraged, plans for both closely-held and publically traded sponsors, plans that have had to file for change of control with the Federal Reserve System and plans for

[11] The Plan states that the primary purpose of the formation of the LLC, the Lease and the Loan transactions which resulted in the Distribution to the Plan was for SPF to realize the value of the Property which City Bank had owned for many years and which had appreciated. The transactions resulted in the conversion of the value of the Property into working capital that SPF could leverage to increase the capital levels of City Bank.

[12] The Applicant states that around the time of the Distribution, its attorney, Kimberly Wilkerson, advised SPF, as the employer and Plan Administrator at that time, not to sign the Right of First Refusal Agreement on behalf of the Plan and not to ask the Trustee to sign a Right of First Refusal on behalf of the Plan. Ms. Wilkerson explains that she was concerned that the granting of the Right of First Refusal could result in a prohibited transaction if the Assignee or another LLC member was a party in interest.

[13] The Applicant states that there is no particular reason that the Certificate was not issued to Argent Trust immediately following the Plan's receipt of LLC Interests in the Distribution. The Applicant further states that the LLC Managers believed the Certificate only evidenced ownership and that the date the Certificate was issued did not affect the Plan's ownership interest.

[14] The Department expresses no opinion herein as to whether the SPF Directors violated any of the general fiduciary responsibility provisions of Part 4 of Title I of the Act when, shortly following the Plan's acquisition of the LLC Interests, the SPF Directors specifically revised the Plan's Funding and Investment Policy to require that the Plan divest itself of such interests. However, the Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries when making investment decisions on behalf of the plan.

sponsors who have converted corporate status to S–Corporations.

In the early 1990s, TTCL was the court-appointed trustee for a bank that went into receivership by the Federal Deposit Insurance Corporation (FDIC) and completed the termination process of the plan with the FDIC as the sponsor. Further, as part of its services, Argent Trust has assisted many of its client plans in responding to inquiries and investigations made by the Department.

22. Ann Marie Mills, Senior Vice President and Employee Benefits Manager for Argent Trust, is the officer assigned to represent the Segregated Trust Fund. Ms. Mills represents that she has 26 years of experience working with qualified plans and IRAs. In addition, Gary Moore, President of Argent Trust, has 30 years of trust experience, and D. Kyle McDonald, President and CEO of Argent Trust, has 26 years of trust experience.

Argent Trust confirms that it is independent of, and does not have any other business relationship with, SPF, City Bank, or the LLC. In addition, Argent Trust confirms that it derives less than one percent of its gross annual income, based on the previous year's income tax return, from SPF or its affiliates.

23. Pursuant to the Appointment Agreement, Argent Trust has the following responsibilities with respect to managing the Plan's Special Trust Fund: (a) To receive the LLC Interests on behalf of the Plan and to hold such interests until they are sold or otherwise conveyed; (b) to monitor the LLC Interests; (c) to receive any income derived from or distributions made with respect to the LLC Interests; (d) to exercise any rights of membership, including voting rights; (e) to invest the income derived from the LLC Interests as provided in the Appointment Agreement; (f) to pay any taxes or expenses assessed against the Special Trust Fund; (g) to appoint an independent appraiser to perform a valuation of the LLC Interests, with the understanding that more than one appraisal may be needed depending on the period between the filing of the application for a prohibited transaction exemption and the determination made by the Department; (h) to review and approve the independent appraisal of the LLC Interests; (i) to review the terms of any sale or other conveyance of the LLC Interests to confirm that they are consistent with an approval of the Plan's request for exemptive relief from the Department; and (j) to direct that the proceeds of any sale of the LLC Interests be transferred to the Primary Trustee, as defined in the Appointment Agreement (*i.e.,* the City Bank trust department).[15] In addition, to the extent that these functions and others listed in the Appointment Agreement would not in themselves have made Argent Trust a discretionary fiduciary with regard to the Plan's LLC Interests, Argent Trust has subsequently agreed to act as a discretionary fiduciary with respect to the Segregated Trust Fund. In that capacity, Argent Trust represents that it is its responsibility to determine if, when and on what terms the Plan's interests in the LLC may be sold, including approval of the purchaser.

24. In addition to performing its duties with respect to the management of the Plan's Special Trust Fund, as outlined in the Appointment Agreement described above, Argent Trust has reviewed the circumstances surrounding the Plan's acquisition of the LLC Interests and determined that it was in the best interests of the Plan participants to accept the Distribution of such LLC Interests. In a letter dated March 16, 2012, Argent Trust sets forth the following reasons for its opinion.

First, Argent Trust states that it was not feasible for the Applicant to obtain a prohibited transaction exemption before the Distribution was made, and believes that it is unrealistic to think that other shareholders would have abided a delay in their receipt of the LLC Interests given SPF's legal obligation to make the Distribution and its willingness to do so immediately. Argent Trust also states that both tax consequences to the shareholders and corporate governance issues for SPF would have been implicated in such a delay. Further, Argent Trust opines that such a delay could only have been undertaken if the Plan had been treated substantially less favorably than other shareholders, which would have prejudiced participants who received an immediate financial benefit from the receipt of the LLC Interests. In addition, Argent Trust opines that whatever the LLC Interests were worth, they were clearly worth something, and that the participants gave up no rights or value to acquire these interests. As such, Argent Trust believes that rejecting or even delaying acceptance of the LLC Interests would have been demonstrably prejudicial to the participants.

Second, Argent Trust states that the Plan's right to the receipt of the LLC Interests was inherent in its status as a shareholder of SPF, and to refuse acceptance of these LLC Interests would have violated such right. Further, Argent Trust represents that like other shareholders, the Plan had a legally and immediately enforceable right to receive the LLC Interests. In addition, Argent Trust represents that a rejection of the LLC Interests would have violated the Plan's right as a shareholder of SPF to receive the Distribution on the same basis as other SPF shareholders.

Third, Argent Trust represents that the Plan's receipt of the LLC Interests did not cost the Plan anything, but a rejection of the LLC Interests would have resulted in a denial of opportunity to the Plan without offsetting benefits to the Plan. Argent Trust explains that the Distribution of LLC Interests was a unilateral transfer of a valuable property right for which the Plan participants gave no consideration. As such, Argent Trust states that rejecting the LLC Interests would have clearly denied Plan participants the opportunity to gain from the value of such interests and given them nothing in exchange. In addition, Argent Trust opines that to the participants, accepting the Distribution of LLC Interests was all upside and rejecting the LLC Interests would have been all downside. Further, Argent Trusts states that traditionally, trustees have had the authority to abandon burdensome or worthless property. However, Argent Trust states that in the absence of any indication that the LLC Interests would be burdensome or were worthless, Argent Trust had a duty to accept the assets on behalf of Plan participants. Argent Trust opines that the LLC Interests clearly could not have been so perceived at the time of receipt and have not become so since then.

Accordingly, Argent Trust represents that acceptance of the LLC Interests was not only consistent with Argent Trust's fiduciary duties, it was required. In addition, Argent Trust believes that rejecting the LLC Interests would have been prejudicial to the best interests of Plan participants and contrary to Argent Trust's fiduciary duties.

25. Argent Trust, acting as the Plan's qualified, independent fiduciary, with respect to the Special Trust Fund, represents that it has exercised its discretion to determine that the Redemption by the LLC of the LLC Interests is in the best interest and protective of the rights of the Plan

[15] Argent Trust represents that as set forth in its Appointment Agreement, except for its receipt of the LLC Interests on behalf of the Plan, it did not participate in the deliberations, discussions or other steps leading up to SPF's decision to declare a dividend of the LLC Interests or any of the antecedent decisions related to the transactions involving SPF or the LLC or the Property. Argent Trust further notes that it was engaged to receive the LLC Interests on behalf of the Plan, and hold such interests until the earlier of the disposition of the LLC Interests following a decision by the Department on the issuance of a prohibited transaction exemption or Argent Trust's resignation or removal.

participants and beneficiaries. Specifically, Argent Trust opines that the proposed Redemption will allow the Plan to diversify its investments, improve its liquidity, and fulfill the Plan's primary purpose of investing in employer securities, and reduce its expenses. In addition, Argent Trust states that the Redemption will reduce the dependence of the Plan and its participants on a single enterprise and one locality.

Moreover, Argent Trust states that a final decision on whether it is in the best interests of the Plan participants to retain or sell the LLC Interests cannot be made until the Department grants exemptive relief for the Redemption. However, Argent Trust states that, based on the facts existing at that time, if it determines that an investment in the LLC Interests is not in the best interests of the Plan, disposing of the LLC Interests would be consistent with the most recent amendment to the Funding and Investment Policy.

Finally, Argent Trust represents that it will monitor the proposed Redemption through closing and delivery of funds to the Plan.

Request for Exemptive Relief

26. The Applicant states that section 406(a)(1)(E) of the Act prohibits a fiduciary from causing a plan to engage in a transaction which the fiduciary knows (or should know) constitutes the acquisition on behalf of the plan, of any employer security in violation of section 407(a). The Applicant believes that because the LLC was an affiliate of SPF for purposes of section 407(d)(7) of the Act at the time of the Distribution, the LLC Interests would constitute an ''employer security'' within the meaning of section 407(d)(1) of the Act but not a ''qualifying employer security'' under section 407(d)(5) of the Act, inasmuch as the LLC Interests did not fall within any of the covered categories. The Applicant opines that while the LLC is no longer a party in interest to the Plan, it is an entity in which the SPF officers and directors may have interests that would affect their best judgment as Plan fiduciaries.

Therefore, SPF states that exemptive relief is needed with respect to the acquisition and continued holding of the LLC Interests by the Plan to the extent there have been violations of sections 406(a), 406(b)(1) and 406(b)(2), and section 407(a) of the Act.

27. In addition, SPF represents that it is possible that the Redemption of the Plan's LLC Interests by the LLC will violate section 406(b)(1) and (b)(2) of the Act. In this regard, the Applicant notes that the LLC would no longer be considered a party in interest with respect to the Plan because City Bank and SPF have retained no interest in the LLC. However, the Applicant represents that the LLC Managers are participants in the Plan and Plan fiduciaries. Further, the Applicant states that the LLC Managers are members of the LLC in their individual capacities. Therefore, the Applicant believes that the Redemption of the Plan's LLC Interests by the LLC could affect the best judgment of these individuals as fiduciaries with respect to the Plan and it has requested exemptive relief from section 406(b)(1) and (b)(2) of the Act for this transaction.

28. Accordingly, SPF requests an administrative exemption from the Department with respect to the Plan's acquisition and holding of the LLC Interests and the proposed redemption of the Plan's LLC Interests by the LLC.

If granted, the exemption will be effective as of December 17, 2008, with respect to the acquisition and holding by the Plan of the LLC Interests. In addition, this exemption will be effective as of the date the final exemption is granted with respect to the LLC's Redemption of the Plan's LLC Interests.

The Appraisals

29. The Plan's LLC Interests have been appraised by John Seright, CPA/ABV, CFFA, and Woody Boyd, CPA/ABV, CVA (the LLC Appraisers) of Robinson Burdette Martin & Seright, L.L.P. (RBMS). RBMS is a full-service public accounting firm located in Lubbock, Texas. In a letter dated May 16, 2011, the LLC Appraisers certify that the valuation was performed on a basis of non-advocacy, that they have no present or contemplated interest in the property valued and have no personal bias with respect to the parties involved. Further, in a letter dated August 1, 2011, RMBS represents that it has derived less than 1% of its annual income from the parties in interest and related affiliates, which include SPF, City Bank, the LLC and the SPF Directors, for the years 2009 and 2010.

In connection with rendering this valuation, the LLC Appraisers considered, among other things, the following: (a) The Company Agreement of SPFI Investment Group, LLC dated December 10, 2008; (b) unaudited (''management prepared'') balance sheets and income statements; (c) restricted use real estate appraisal report; (d) economic statistics published by the government or other sources; and (e) information provided by SPF management.

30. The Property underlying the LLC Interests has been appraised by Gerald A. Teel, MAI, CRE and Michael G. Divin, Managing Partner (together, the Property Appraisers) of Blosser Appraisal (a Division of Gerald A. Teel Company, Inc.). Blosser Appraisal is located in Lubbock, Texas. Blosser Appraisal represents that it has derived less than 1% of its annual income from the parties in interest [16] with respect to the Plan and related affiliates for the years 2010 and 2011. In an independent appraisal dated April 27, 2011 (the 2011 Property Appraisal), the Property Appraisers updated a December 30, 2008 independent appraisal (the 2008 Property Appraisal) that was prepared by their firm, in which the Property's leased fee value and fair market rental value were placed at $18,100,000 and $23.50 per square foot, respectively, as of December 30, 2008. Using the Income Approach to valuation, the Property Appraisers determined that the Property had a leased fee value of $18,130,000 and a fair market rent value of $23.50 per square foot, as of April 27, 2011.

31. Taking into consideration the 2011 Property Appraisal, among the other factors listed above, in an independent appraisal dated May 16, 2011 (the 2011 LLC Appraisal), the LLC Appraisers updated a May 17, 2010 independent appraisal (the 2010 LLC Appraisal) that was prepared by their firm, in which the Plan's LLC Interests were valued at $826,868, as of March 31, 2010. Using the Cost (*i.e.,* Net Asset Value) Approach to valuation (with adjustments for lack of control and lack of marketability of the LLC Interests), the LLC Appraisers concluded that the Plan's LLC Interests, if valued on a ''Minority/Non-Managing Membership'' basis, had a fair market value of $1,036,665 as of March 31, 2011. The LLC Appraisers will update the 2011 LLC Appraisal on the date of the Redemption.

32. In addition, Joe Rainer of Argent Property Services, a separate subsidiary of AFG that provides support to Argent Trust accounts in matters of property management, among other things, has reviewed the appraisal reports prepared by the LLC Appraisers. Argent Trust represents that Mr. Rainer has 35 years of experience in this area, and that prior to joining AFG, Mr. Rainer served as Manager of Minerals and Taxes for Willamete Industries, Inc. Mr. Rainer states that the methods and procedures used in determining the fair market value of the Plan's LLC Interests are sound, accurate, and follow the

[16] Blosser Appraisal lists SPF, City Bank, the LLC and the SPF Directors as parties in interest.

accepted methods for business valuations. Mr. Rainer further states that, based on the data he reviewed, he agrees with the LLC Appraisers estimated value for the Plan's LLC Interests.

The Redemption

33. On the basis of the foregoing, within ninety (90) days after the publication of the notice granting the final exemption in the **Federal Register**, the LLC will redeem the LLC Interests held by the Plan for the greater of $1,036,655 or the fair market value of the LLC Interests on the date that the Redemption occurs. The proceeds of the Redemption will be reallocated by Employee Incentive Plans, Inc., a third party administrator, among Plan participants to their Other Investments Accounts in proportion to each such participant's ownership of LLC Interests at the time of the Redemption.[17]

34. In summary, it is represented that the transactions satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan's acquisition and holding of the LLC Interests occurred in connection with the Distribution, wherein the Plan acquired the LLC Interests automatically and without any action on its part.

(b) The Plan's acquisition of the LLC Interests resulted from an independent act of SPF as a corporate entity for business reasons which did not involve the Plan. As such, all shareholders of SPF, including the Plan, were treated in the same manner.

(c) The Plan paid no fees or commissions in connection with the acquisition and holding of the Interests.

(d) Within ninety (90) days after publication of the notice granting the final exemption in the **Federal Register**, the LLC will redeem the LLC Interests held by the Plan for no less than the greater of $1,036,665 or the fair market value of the LLC Interests on the date that the Redemption occurs.

(e) The Redemption will be a one-time sale of the LLC Interests for cash.

(f) The terms and conditions of the Redemption will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(g) The Plan will pay no commissions, costs or other expenses in connection with the Redemption.

(h) An independent fiduciary has approved the Redemption and will monitor such transaction on behalf of the Plan.

Notice to Interested Persons

The Applicant will provide notice of the proposed exemption within ten (10) days of the date of publication of the notice of proposed exemption in the **Federal Register** to all interested persons who are actively employed Plan participants by electronic mail with receipt of delivery requested, and to all other interested persons via first class mail. Such notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments regarding the proposed exemption and requests for a public hearing are due within forty (40) days of the date of publication of the notice of pendency in the **Federal Register**.

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

TIB Financial Corp. Employee Stock Ownership Plan With 401(k) Provisions (the Plan)

Located in Naples, Florida

[Application No. D–11668]

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).[18] If the exemption is granted, the restrictions of sections 406(a)(1)(A) and (E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code, shall not apply, effective December 17, 2010 through January 18, 2011, to: (1) The acquisition of certain stock rights (the Rights) by the Plan in connection with, and under the terms and conditions of, a Rights offering (the Offering) by TIB Financial Corp. (TIB or the Applicant), the Plan sponsor and a party in interest with respect to the Plan, and (2) the holding of the Rights by the Plan during the subscription period of the Offering; provided that the following conditions were met:

(a) The receipt of the Rights by the Plan occurred pursuant to Plan provisions for individually directed investments of such accounts, in connection with the Offering, and was made available by TIB on the same terms to all shareholders of record (the Shareholders) of TIB's common stock (Common Stock) as of 4:01 p.m., New York City time, on July 12, 2010 (the Record Date);

(b) The acquisition of the Rights by the Plan resulted from an independent act of TIB as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to such acquisition;

(c) All Shareholders of Common Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Common Stock held by such Shareholders;

(d) All decisions regarding the Rights held by the Plan were made by the individual Plan participants (Participants) whose accounts in the Plan received the Rights pursuant to the Offering, in accordance with the provisions under the Plan for individually-directed investment of such account; and

(e) The Plan did not pay any fees or commissions in connection with the acquisition and or holding of the Rights.

Effective Date: This proposed exemption, if granted, will be effective from December 17, 2010, through and including January 18, 2011.

Summary of Facts and Representations

Background

1. TIB is a bank holding company organized in February 1996 under the laws of the State of Florida with its principal place of business in Naples, Florida. Its operating subsidiaries consist of TIB Bank (which commenced its commercial banking operations in Islamorada, Florida in 1974) and Naples Capital Advisors, Inc. (which commenced its investment advisory services in Naples, Florida in 2007). TIB and TIB Bank have 27 full-service banking offices in Florida which are located in Monroe, Miami-Dade, Collier, Lee, and Sarasota counties. TIB Bank serves over 60,000 customers in these five counties. As of September 30, 2010, TIB Bank had approximately $1.74 billion in total assets, $1.33 billion in total deposits, $1.02 billion in total loans and $177 million in shareholders' equity. TIB's investment advisory firm, Naples Capital Advisors, Inc., is a Registered Investment Advisor under

[17] The Plan holds the LLC Interests as a pooled investment. Each Plan participant's 'share' of the pooled investment in the LLC is generally based on the ratio of SPF stock allocated to the participant's account to the total number of allocated SPF stock.

[18] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

the Investment Advisers Act of 1940 that manages assets for high net worth clients.

2. TIB sponsors the Plan for the benefit of its employees and the employees of its subsidiaries and such individuals' beneficiaries. The Plan is an employee stock ownership plan containing a 401(k) cash or deferred arrangement under section 401(a) of the Code and is designed to be an employee stock ownership plan under section 4975(e)(7) of the Code. The Plan provides for regular pre-tax employee 401(k) contributions and employer-paid matching and profit-sharing contributions. According to the Applicant, as of January 27, 2012, the Plan had 377 Participants and approximately $6,498,826 in net assets. The Plan allows its Participants to self-direct the investment of their accounts and is intended to operate in accordance with section 404(c) of the Act. Pursuant to a trust agreement (the Trust Agreement) between TIB and Reliance Trust Company, Inc. (the Trustee), dated April 16, 2002, the Trustee serves as the Plan's trustee.

3. The Plan's investment options include a wide variety of mutual funds from which Participants may choose to invest. In addition, Participants may invest amounts held in their Plan accounts in the TIB Financial Corp. Employer Stock Fund (the TIB Stock Fund). The TIB Stock Fund allows Participants to invest in shares of the same class of Common Stock that is available to all other investors. Furthermore, the Plan's terms require that the TIB Stock Fund will be offered as an investment option, but investment in that fund by Participants is entirely voluntary.

4. The Applicant explains that neither TIB nor its subsidiaries contribute Common Stock to the Plan. Instead, all employer contributions are made in cash, and Common Stock is acquired for the Plan only as a result of Participant-directed investment decisions. The Applicant explains that, upon the direction from a Participant to invest in the TIB Stock Fund, the Trustee purchases the Common Stock on the open market at the prevailing market price. The Trustee acts only as a directed trustee with respect to all Plan investments and, as such, is required to carry out Participants' directions regarding investing in the TIB Stock Fund.

The Plan's administrator, Ingham Retirement Group, has the responsibility of coordinating with the Trustee as to the administrative procedures to implement Participant investment decisions regarding Common Stock but otherwise has no authority with respect to the TIB Stock Fund. Upon the settlement of the trade implementing a Participant's direction to invest in the TIB Stock Fund, the Trustee becomes the Shareholder of record and the Participant becomes the beneficial owner. With respect to voting, the Plan provides for full pass-through voting of Common Stock to the Participants.

5. As of December 17, 2010, the date of commencement of the Offering (the Commencement Date), there were 371 active Participants and 71 terminated Participants who still had funds remaining in the Plan. The Plan's assets totaled $8,302,093, and 167 Participants held shares in the TIB Stock Fund (38 of these 167 were terminated Participants who still had funds remaining in the Plan at the time). Therefore, as of the Commencement Date, the Plan held 4,477 shares of Common Stock, or approximately 0.04% of the then outstanding shares of Common Stock, with a value of approximately $154,457 based on its closing price on the NASDAQ of $34.50, or approximately 2% of Plan assets.

The Investment Agreement

6. On June 29, 2010, TIB entered into an Investment Agreement (the Investment Agreement) with TIB Bank and North American Financial Holdings, Inc. (NAFH), an unrelated third party. According to the Applicant, at the time the Investment Agreement was entered into, TIB was facing financial challenges and potential regulatory actions as a result of the credit crisis and therefore was pursuing strategic alternatives to recapitalize its banking subsidiary. The Applicant explains that the potential regulatory action involved the delisting of TIB's common stock from the NASDAQ, since at the time, TIB's stock price had fallen below the NASDAQ's $1.00 minimum required bid price. Thus, TIB determined that a potential investment by NAFH would permit TIB to obtain needed capital and continue to operate and was therefore in the best interests of its shareholders and other constituencies.

7. On September 30, 2010, TIB completed the issuance and sale to NAFH of 7,000,000 shares of Common Stock, 70,000 shares of mandatorily convertible participating voting Series B Preferred Stock (the Preferred Stock) and a warrant to purchase up to 11,666,667 shares of Common Stock of TIB for aggregate consideration of $175 million (the Warrant). The consideration consisted of approximately $162.8 million in cash and a contribution worth approximately $12.2 million of all 37,000 outstanding shares of Series A Preferred Stock previously issued to the United States Department of the Treasury under the Troubled Asset Relief Program Capital Purchase Program (TARP) and a related warrant to purchase shares of Common Stock (the TARP Warrant), which NAFH purchased directly from the Treasury. The Series A Preferred Stock and the TARP Warrant were retired by TIB on September 30, 2010 and are no longer outstanding. The 70,000 shares of Preferred Stock received by NAFH automatically converted into an aggregate of 4,666,667 shares of Common Stock on December 1, 2010. The Warrant is exercisable, in whole or in part, and from time to time, from September 30, 2010 to March 30, 2012, at an exercise price of $15.00 per share, subject to anti-dilution adjustments.[19]

As a result of the NAFH investment, NAFH owned approximately 99% of TIB's Common Stock, and TIB became a controlled subsidiary of NAFH. Further, the operating entities below NAFH and TIB have all been merged so TIB is an intermediate holding company.

8. Furthermore, following the closing of the sale to NAFH of Common Stock and the Preferred Stock and TIB's issuance of the Warrant to NAFH, the Investment Agreement provided that TIB would commence a stock rights offering. According to the Applicant, the Offering was conducted in order to raise equity capital and provide existing Shareholders with the opportunity to increase their ownership of shares of Common Stock following the completion of the investment by NAFH.

The Offering

9. Pursuant to the terms of the Offering, which commenced on December 17, 2010, TIB distributed at no charge, nontransferable Rights to Shareholders, in the aggregate, to purchase up to 1,488,792 shares of Common Stock. Each Shareholder received ten Rights for each share of Common Stock held as of the Record Date (i.e., July 12, 2010). Of the Participants who held shares in the TIB Stock Fund as of the Record Date, 183 received rights to purchase Common Stock in the Offering. Of these 183 Participants, 49 were terminated Participants who still had funds remaining in the Plan at the time.[20]

[19] The Applicant states that, as of February 1, 2012, the Warrant had not been exercised.

[20] The Applicant notes that the difference between the number of Participants holding Common Stock in their Plan accounts as of the Record Date (183) and the Commencement Date

Continued

10. Each Right held by a Shareholder entitled the Shareholder to purchase one one-hundredth (1/100th) of a share of Common Stock at a subscription price of $15.00 per full share (the Subscription Price). In this regard, the Applicant explains that the Investment Agreement required the Subscription Price to be $0.15 per share of Common Stock, which, adjusted for a 100-to-1 reverse stock split that TIB effected after the close of business on December 15, 2010, constituted the $15.00 per share Subscription Price in the Offering. According to the Applicant, the Subscription Price was not necessarily related to TIB's book value, results of operations, cash flows, financial condition or the future market value of Common Stock, but rather was the price negotiated and established in the Investment Agreement.

11. According to the Applicant, in connection with the Offering, TIB did not charge any fees or sales commissions to issue Rights to a Shareholder or to issue shares of Common Stock to a Shareholder if the Shareholder exercised his or her Rights. The Applicant states further that there was no over-subscription privilege associated with the Offering and no party provided a backstop for the Offering. Finally, the Applicant notes that no Shareholder had the opportunity to purchase additional shares not purchased by other Shareholders pursuant to such other Shareholders' subscription privileges. A Shareholder was entitled to exercise their subscription privilege for some or all of his or her Rights, or the Shareholder could choose not to exercise any portion of their subscription privilege.

12. The Applicant states that the Offering and all Rights were originally scheduled to expire at 5 p.m., New York City time, on January 10, 2011 (the Original Shareholder Expiration Date). However, pursuant to the terms of the Offering, TIB extended the Offering until 5 p.m., New York City time, January 18, 2011 (the Shareholder Expiration Date). According to the Applicant, therefore, Shareholders were informed that they would need to complete their subscription rights election form properly and deliver it, along with the full payment amount in respect of the number of Rights they wished to exercise at the Subscription Price (the Subscription Payment), to the subscription agent, American Stock Transfer & Trust Company, LLC (the Subscription Agent) before 5 p.m. on the Shareholder Expiration Date. All required documents and payment were required to be received prior to the Shareholder Expiration Date. After 5 p.m. on the Shareholder Expiration Date, all unexercised subscription rights became null and void. Other than the extension of the Original Shareholder Expiration Date, the Applicant states that all of the Offering terms described in TIB's prospectus dated December 17, 2010 remained the same and applied during the subscription period of the Offering (including the extension thereof).

13. The Applicant states that the shares of Common Stock issued in connection with the Offering are currently listed on the NASDAQ Capital Market, and have been so listed since they were issued in connection with the Offering.[21] The Rights themselves, however, could not be sold, transferred or assigned and, consequently, were not listed for trading on any exchange. The Applicant represents that the TIB Board of Directors did not make any recommendations to the Shareholders regarding whether they should exercise their Rights but urged Shareholders to make independent decisions based on their assessment of TIB's business and the risk factors associated with a rights offering.

14. According to the Applicant, since the Plan held shares of Common Stock on the Record Date, the Plan and its Participants were required to be treated the same as the other Shareholders in the Offering. Furthermore, to comply with Florida law, TIB was required to distribute Rights to all Shareholders on a pro rata basis, and the Applicant states that it could not issue Rights to some Shareholders, but not to others. Had the Plan been denied participation in the Offering, the Applicant notes that Participants who owned Common Stock in the TIB Stock Fund as of the Record Date would not have been treated equally to Shareholders outside the Plan, and they would have been denied the opportunity to purchase additional shares at the Subscription Price.

Consequently, in the Offering, the Plan received Rights based on the number of shares of Common Stock that it held as of the Record Date, and in turn, the Rights were allocated to Participants based on the number of shares of Common Stock that were credited to Participants' Plan accounts as of the Record Date. The Plan held the Rights until they either were exercised by Participants or expired on the Shareholder Expiration Date. The Plan accounts of Participants who had invested in the TIB Stock Fund on the Record Date were allocated the same proportion of Rights and the same information regarding the Offering as other Shareholders.

Request for Exemptive Relief

15. Although the Rights satisfy the definition of ''employer securities'' under section 407(d)(1) of the Act, i.e., ''security[ies] issued by an employer of employees covered by the plan, or by an affiliate of such employer,'' the Applicant states that the Rights are not ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act. Section 407(d)(5) defines the term ''qualifying employer security'' as an employer security which is stock, a marketable obligation, or an interest in a publicly traded partnership (provided such partnership is an existing partnership as defined in the Code). Under section 407(a)(1) of the Act, a plan may not acquire or hold any ''employer security'' which is not a ''qualifying employer security.'' Moreover, section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any ''employer security in violation of section 407(a)(1) of the Act. Finally, section 406(a)(2) of the Act prohibits a fiduciary who has the authority or discretion to control or manage the assets of a plan to permit the plan to hold any ''employer security'' that violates section 407(a) of the Act. According to the Applicant, a prohibited transaction occurs either directly or indirectly as a result of the Plan holding Rights that are not ''qualifying employer securities'' and making them available to Participants.

Therefore, the Applicant requests an administrative exemption from the Department, effective December 17, 2010 until January 18, 2011, with respect to the acquisition and holding of the Rights by the Plan.

Exercise of the Rights

16. Pursuant to the terms of the Offering, each Right held by a Shareholder entitled the Shareholder to purchase one one-hundredth (1/100th) of a share of Common Stock at the Subscription Price of $15.00 per full share, which was below the public trading price of Common Stock at the close of the market on the

(167) was caused by terminated employees who either had their Plan account balances paid out or rolled over to a different plan (a New Plan) during such interim period.

[21] The Applicant notes that, as of the Commencement Date, the price of Common Stock was listed on the NASDAQ Global Select Market, but due to non-compliance with certain listing standards, NASDAQ granted TIB's request for its listing to be moved to the NASDAQ Capital Market, which occurred on January 27, 2011, several days after the January 18, 2011 closing date of the Offering.

Commencement Date.[22] The Applicant explains that, for example, if a Shareholder owned 955 pre-split shares of Common Stock on the Record Date, a Shareholder would receive 9,550 Rights and would have the right to purchase 95 shares of Common Stock (rounded down from 95.5 shares, with the total Subscription Payment being adjusted accordingly) at the Subscription Price, subject to an overall beneficial ownership limit of 4.9%.

17. As noted above, the Applicant represents that the Shareholders were permitted to exercise all, some or none of their Rights, but Shareholders could only exercise Rights in whole numbers of shares. Fractional shares of Common Stock that resulted from the exercise of the subscription privilege were eliminated by rounding down to the nearest whole share, with the total Subscription Payment being adjusted accordingly. Any excess Subscription Payments received by the Subscription Agent were returned, without interest, as soon as practicable.

18. According to the Applicant, the Rights were nontransferable, and any Rights that were not exercised by a Shareholder simply expired. Furthermore, an election to exercise a Right was irrevocable once made. The Applicant states that TIB did not charge any fees or sales commissions to issue the Rights or to issue shares to those who exercised their Rights. However, if Shareholders exercised Rights through a broker or other holder of their shares of Common Stock, the Shareholders were responsible for paying any fees that person may have charged. However, no fees or expenses were paid by the Plan.

The Applicant explains that, to exercise Rights, a Shareholder generally was required to properly complete a subscription rights election form and deliver it, along with the full Subscription Payment, to the Subscription Agent, before 5 p.m., New York City time, on the Shareholder Expiration Date of January 18, 2011. Further, Shareholders holding their shares in street name or through brokers exercised their rights through their brokers.

19. However, as explained by the Applicant, the process by which a Participant could exercise their Rights was different from that of other Shareholders.[23] The Applicant states that Participants were mailed a special notice entitled ''Instructions for Participants in the TIB Financial Corp. Employee Stock Ownership Plan with 401(k) Provisions—Important Information on the TIB Financial Corp. Rights Offering,'' (the 401(k) Participant Instructions) that, in nontechnical language, described the Offering and provided instructions to Participants who wanted to exercise the Rights that were allocated to their Plan accounts. Furthermore, the Participants were provided with a special election form to exercise their subscription rights, called the ''TIB Financial Corp. Employee Stock Ownership Plan with 401(k) Provisions Non-Transferable Subscription Rights Election Form,'' (the 401(k) Participant Election Form) and a prospectus that was provided to all Shareholders that described the Offering in more detail.

20. The Applicant explains that the 401(k) Participant Instructions and the prospectus were intended to provide Participants with the information necessary to understand the Offering. In addition, the Applicant states that the 401(k) Participant Election Form was intended to provide Participants with the information they required in order to file the election properly and to ensure that the Participant's directions with respect to the exercise of Rights were clear enough to avoid clerical or administrative problems.

21. Accordingly, if a Participant held shares of Common Stock in his or her Plan account as of the Record Date, the Participant was entitled to exercise the Rights with respect to those shares of Common Stock by electing what amount (if any) of Rights that he or she wanted to exercise by properly completing the 401(k) Participant Election Form described above. The Applicant explains that a Participant was required to return his or her properly completed 401(k) Participant Election Form to the Ingham Retirement Group by 5 p.m., New York City time on January 12, 2011 (the Participant Expiration Date). According to the Applicant, the Participant Expiration Date was six business days earlier than the Shareholder Expiration Date, because the Trustee, the Subscription Agent for the Offering and the Plan's recordkeeper, trustee, custodian and the clearing agency for the Offering required additional time to process Participants' elections to exercise their Rights, tabulate and confirm the results, liquidate the Participants' funds, confirm the orders and the availability of the funds and remit payment to purchase the shares.[24]

22. According to the Applicant, if a Participant's 401(k) Participant Election Form was not received by the Participant Expiration Date, any election to exercise the Participant's Rights held in his or her Plan account was not effective and any Rights credited to the Participant's Plan account expired. The Applicant states that, prior to the extension of the subscription period of the Offering, if a Participant elected to exercise some or all of the Rights in his or her Plan account, the Participant was also required to ensure that the total amount of the funds required for such exercise had been allocated to the Fidelity Retirement Money Market Fund (the Money Market Fund) in his or her Plan account by 4 p.m., New York City time, on January 4, 2011 and such amount remained in the Money Market Fund until liquidated into cash (which occurred on January 6, 2011). Pursuant to the extension of the subscription period of the Offering, Participants were given a second chance to exercise their Rights,[25] and the total amount of the funds required for such exercise in the extended subscription period was required to have been allocated to the Money Market Fund in a Participant's Plan account by 4 p.m., New York City time, on January 12, 2011. The Applicant states that, during the Offering, a total of thirty Participants exercised their Rights to purchase shares of Common Stock.

23. The Applicant states that Participants were instructed not to remit any payments to the Subscription Agent. Instead, Participants were

[22] On December 17, 2010, the closing trading price of Common Stock was $34.50, as listed on the NASDAQ Global Select Market.

[23] The Applicant states that each Participant who terminated employment and either had their Plan account balance paid out or rolled over to a New Plan, was sent their Rights by TIB to the address that such Participant directed their Plan distribution be sent. According to the Applicant, it did not see any impediments to allowing Participants whose accounts were rolled over or paid out during the period between the Record Date and the Commencement Date, to participate in the Offering, and TIB implemented a process to treat such Participants in the same manner as all other Shareholders (subject, if applicable, to the New Plan's administrative procedures).

[24] The Applicant states that the original expiration date for Participants was January 4, 2011 (the Original Participant Expiration Date), but the expiration date was later extended to the Participant Expiration Date, January 12, 2011, when the Offering was extended.

[25] The Applicant notes that, because the extension of the subscription period of the Offering was announced after the Original Participant Expiration Date had occurred, Participants in the Plan who had already submitted 401(k) Participant Election Forms electing to subscribe and allocated sufficient funds to the Money Market Fund were deemed to have irrevocably exercised their right to participate in the Offering as of the Original Participant Expiration Date. Upon the extension of the subscription period of the Offering, Participants who had not yet elected to participate were given a second chance to make their election to participate, up to the Participant Expiration Date, but no Participant who elected to participate upon the Original Participant Expiration Date was allowed to withdraw their participation.

required to have enough money available in their Money Market Fund accounts by the Original Participant Expiration Date and the Participant Expiration Date to satisfy the Subscription Payment for the Rights they elected to exercise. The Applicant notes that, by taking funds from Participants' Money Market Funds, the Trustee effectively allowed Participants to choose which of their Plan investments they wanted to use to pay for their shares. In this regard, the Applicant explains, only the Participants' Money Market Fund accounts would be liquidated, rather than a pro-rata portion of each of the funds in which Participants were invested.[26] The Applicant explains further that, because Participants were initially not likely to have sufficient funds in their Money Market Fund accounts, the 401(k) Participant Instructions provided detailed instructions about how the Participant could transfer money into the Money Market Fund from the other investment funds held in the Participant's Plan account. Thus, Participants were not forced to liquidate a portion of every fund in which they wished to remain invested at their current levels, but could select the portion(s) of particular funds to liquidate (with the exception of their Money Market Funds, which was used to pay for the exercise of the Rights).

24. Accordingly, the Applicant explains, as soon as practicable after each of the Original Participant Expiration Time and the Participant Expiration Time, the Money Market Fund accounts of the Participants exercising rights[27] were liquidated to generate funds sufficient to cover the Participants' Subscription Payments for their Rights.[28] The Applicant notes that, if a Participant did not have enough money in their Money Market Fund, the Trustee (as instructed by TIB) did not exercise that Participant's Rights. Once the Trustee was finished liquidating funds after the Participant Expiration Time, it lifted the freeze on the Money Market Fund.

25. The Applicant states further that the Offering provided that no Rights held by the Plan would have been exercised if the per share closing price of Common Stock on Friday, January 14, 2011 (one business day before the Shareholder Expiration Date)[29] of $19.51, as reported by the NASDAQ (the Closing Price), was not greater than or equal to the Subscription Price.[30] In this regard, pursuant to the Letter Agreement, dated December 23, 2010 between TIB and the Trustee, TIB was required to notify the Trustee in writing (the Final Instruction) (i) of the elections of Participants, (ii) whether the Closing Price on January 14, 2011 was equal to or exceeded $15.00 per share and (iii) of TIB's direction that the Trustee either: (a) Exercise that number of Rights held by the Trustee pursuant to the Trust Agreement on behalf of the Plan, and to purchase that number of shares of Common Stock, set forth in the Final Instruction; or (b) not exercise any Rights pursuant to the Rights Offering on behalf of the Plan or Participants.

26. If the Trustee exercised the Participants' Rights, the Trustee was required to direct the custodian for the Plan to remit the Participants' money, obtained from the liquidation of the Money Market Fund accounts of the applicable exercising Participants, to the Subscription Agent. The Subscription Agent then exercised the Rights held by the Plan, issued the shares of Common Stock to the Plan, and the Trustee credited the Participants' TIB Stock Fund with the acquired shares.

The Merits of the Transaction

27. The Applicant states that the requested exemption is administratively feasible, because there was no need or reason for the Department to have monitored or supervised the covered transactions. The Applicant explains that, under the Investment Agreement, TIB was obligated to undertake (and did undertake) the Offering to allow its Shareholders to purchase additional shares of Common Stock at the stated Subscription Price, which was below the stock's market price. Furthermore, according to the Applicant, it was not feasible for TIB to obtain an individual prohibited transaction exemption before proceeding with the Offering within the timeframe set forth in the Investment Agreement.

28. The Applicant states that the requested exemption is in the interest of the Plan and its Participants and beneficiaries because the Participants had an opportunity, provided at no cost, to purchase Common Stock if they believed the terms of a purchase were favorable. Furthermore, according to the Applicant, the investment opportunity that was provided to Participants resulted in an immediate financial gain for the Participants who elected to exercise their Rights in the Offering, as they were given the opportunity to purchase shares of Common Stock worth $19.51 per share at a price of $15.00 per share. Therefore, according to the Applicant, proceeding with the exemption transaction allowed the Participants who chose to participate in the Offering to purchase additional TIB shares below the market price, at an immediate gain of $4.51 per share.

Furthermore, the Applicant represents that TIB and the Plan entered into the covered transactions because not doing so would have violated the legal rights that Participants have as investors in Common Stock and as holders of Common Stock (through their Plan accounts) by, in effect, converting the Common Stock they held in their Plan accounts into a different, and inferior, class of Common Stock that did not have subscription rights under the Offering. Additionally, the Applicant states that, because the Plan and its Participants received the Rights at no cost, denial of the exemption would cause the Participants to lose an economic opportunity without any offsetting benefit. Further, to the extent other Shareholders exercised their Rights at below market prices, the Applicant notes that such exercise would be dilutive of the holdings of Participants.

The Applicant suggests further that denying the Plan the ability to participate in the Offering would have raised questions whether other violations of the Act had occurred, since the Participants had previously purchased their shares at full value, but as a result of being denied the ability to participate, they would have obviously overpaid for those shares. Furthermore, if TIB had excluded the Plan and its Participants from the Offering, TIB's other Shareholders would have received a benefit at a cost to the Plan and the Participants, thus receiving the benefit of not incurring the dilution of their shares when Participants participated in the Offering. Finally, according to the Applicant, omitting the Plan from the Offering would have violated the terms of the Plan and Trust Agreement which provided that distributions with respect

[26] The Applicant notes that the terms of the Offering specifically provided for this process, and such process is also consistent with the terms of the Plan provisions for individually-directed investment of the Participant account.

[27] The Applicant states that the reason behind freezing the Participants' Money Market Fund accounts was to prevent the Participants from moving money out of that fund after the Original Participant Expiration Date and Participant Expiration Date lapsed but before the Trustee could liquidate it.

[28] Funds from the liquidation of the Money Market Fund after the Original Participant Expiration Date were held in cash at an account at Fidelity Institutional, the custodian for the account.

[29] Monday, January 17, 2011 was a holiday (Birthday of Martin Luther King, Jr.).

[30] As noted above, the Subscription Price was equal to $15.00 per share.

to shares of Common Stock should be passed through to the accounts of Participants.

29. The Applicant states that the requested exemption is protective of the rights of Participants and beneficiaries because they had the opportunity, at their own discretion, to participate in the Offering on the same terms as every other Shareholder. The Applicant stresses that Participants and their beneficiaries had no obligation to exercise their Rights, and in fact could not exercise their Rights if the Subscription Price was below the Closing Price on January 14, 2011 (any Rights not exercised by the Participants simply expired). The Applicant states that the terms of the Offering were described to the Participants in clearly written communications, namely the 401(k) Participant Instructions and the 401(k) Participant Election Form, and that the decision by Participants to exercise Rights held in their Plan Accounts of the Participants in the Offering was strictly voluntary. Finally, the Applicant notes that neither TIB nor any of the Plan fiduciaries placed any pressure on Participants to exercise their Rights in the Offering or otherwise attempted to influence their decision, and the Offering was conducted in a manner which did not prejudice the Participants.

Summary

30. In summary, the Applicant represents that the covered transactions satisfied the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The receipt of the Rights by the Plan occurred pursuant to Plan provisions for individually directed investments of such accounts, in connection with the Offering, and was made available by TIB on the same terms to all Shareholders of Common Stock as of the Record Date;

(b) The acquisition of the Rights by the Plan resulted from an independent act of TIB as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to such acquisition;

(c) All Shareholders of Common Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Common Stock held by such Shareholders;

(d) All decisions regarding the Rights held by the Plan were made by the Participants whose accounts in the Plan received the Rights pursuant to the Offering, in accordance with the provisions under the Plan for individually-directed investment of such account; and

(e) The Plan did not pay any fees or commissions in connection with the acquisition and or holding of the Rights.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Participants who received Rights within 20 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such Participants. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 50 days of the publication of the notice of proposed exemption in the **Federal Register**.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions 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 27th day of March 2012.

Lyssa E. Hall,

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

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OFFICE OF MANAGEMENT AND BUDGET

Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities

ACTION: Request for Information and Notice of public workshop.

SUMMARY: The Office of Management and Budget (OMB) invites interested parties to provide input on current issues regarding Federal agencies' standards and conformity assessment related activities. Input is being sought to inform OMB's consideration of whether and how to supplement Circular A–119 (Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities). In addition, OMB is announcing a public workshop at the Department of Commerce's National Institute of Standards and Technology (NIST) on May 15, 2012. A complementary NIST workshop, ''Conformity Assessment: Approaches and Best Practices,'' will take place on April 11, 2012 to seek input from individuals on the planned update of *Guidance on Federal Conformity Assessment Activities,* issued by NIST in 2000. The NIST workshop was announced separately by NIST at *http://www.nist.gov/director/sco/ca-workshop-2012.cfm* (see also 77 FR 15719; March 16, 2012).

DATES: *Comments:* Comments are due on or before April 30, 2012.