

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-70,457; TA-W-70,457a]

**Core Manufacturing, Multi-Plastics,  
Inc., Division, Sipco, Inc., Division,  
Including Leased Workers of M-Ploy  
Temporaries, Inc., Saegertown, PA;  
Sipco Molding Technologies,  
Meadville, PA; Amended Certification  
Regarding Eligibility To Apply for  
Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 13, 2009, applicable to workers of Core Manufacturing, Multi-Plastics, Inc., Division and Sipco, Inc., Division, including leased workers of M-Ploy Temporaries, Inc., Saegertown, Pennsylvania. The Department's Notice was published in the **Federal Register** on January 25, 2010 (75 FR 3935).

After the certification was issued, the Department received new information that revealed that the worker group includes workers at an auxiliary facility operating in conjunction with the Saegertown, Pennsylvania facility.

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

The intent of the Department's amended certification is to include all workers of the subject firm who are adversely-impacted secondary workers.

The amended notice applicable to TA-W-70,457 is hereby issued as follows:

"All workers of Core Manufacturing, Multi-Plastics, Inc., Division and Sipco, Inc., Division, including leased workers of M-Ploy Temporaries, Inc., Saegertown, Pennsylvania (TA-W-70,457) and Sipco Molding Technologies, Meadville, Pennsylvania (TA-W-70,457A), who became totally or partially separated from employment on or after May 20, 2008, through November 13, 2011, and all workers in the group threatened with total or partial separation from employment on November 13, 2009 through November 13, 2011, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 16th day of March, 2010.

**Del Min Amy Chen,**  
*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 2010-7498 Filed 4-1-10; 8:45 am]

**BILLING CODE P****DEPARTMENT OF LABOR****Employee Benefits Security  
Administration****Prohibited Transaction Exemptions  
Grant of Individual Exemptions  
Involving: 2010-09, Ivy Asset  
Management Corporation, D-11492;  
2010-10, Deutsche Bank AG and Its  
Affiliates, D-11518; 2010-11, The  
Coca-Cola Company (TCCC), D-11555**

**AGENCY:** Employee Benefits Security  
Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Ivy Asset Management Corporation  
Located in Jericho, NY

[Prohibited Transaction Exemption No.  
2010-09; Exemption Application No:  
D-11492]

**Exemption***Section I: Transactions*

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,<sup>1</sup> shall not apply, effective December 31, 2008, to:

(a) The sale for cash of certain equity interests (the Shares) in hedge funds organized outside the United States,<sup>2</sup> which Shares are held in the Ivy Enhanced Income Fund (the Fund), a sub-fund established under the Alternative Investment-Master Group Trust (the Group Trust), to Ivy Asset Management Corporation (Ivy), a party in interest with respect to certain employee benefit plans, including a defined benefit plan (the Retirement Plan) sponsored by Ivy's parent corporation, The Bank of New York Mellon Corporation,<sup>3</sup> (collectively, the Plan(s)), and certain individual retirement accounts (the IRA(s)), where such Plans and IRAs have interests in the Fund; provided that at the time the Shares were sold, the conditions set forth, below, in section I(b)(1)-(6) of this exemption, and the general conditions, set forth below, in section II, of this exemption, were satisfied;

(b) The sale for cash of certain restricted shares (the Restricted Shares) of the D. E. Shaw Composite International Fund, Ltd. (the DE Shaw Fund), a hedge fund organized outside the United States, to Ivy Holding

<sup>1</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>2</sup> It is represented that to the extent that, prior to the effective date of the final exemption, the Fund had received distributions from the hedge funds in connection with interests in such hedge funds held by the Fund, those proceeds would have been distributed by the Fund to each holder of units in the Fund in proportion to each such holder's interest in the Fund; and accordingly, would not have been purchased by Ivy or by any affiliate of Ivy, pursuant to this exemption.

<sup>3</sup> The Bank of New York Mellon Corporation is hereinafter referred to as BNYMC.

Cayman, LTS, an affiliate of Ivy (the Affiliate) which is also organized outside of the United States, and which is a party in interest with respect to the Plans and the IRAs, where such Plans and IRAs have interests in the Fund; provided that at the time the Restricted Shares were sold to the Affiliate, the conditions set forth below, in section II(b)(1)–(6) of this exemption, and the general conditions, set forth below, in section II of this exemption, were satisfied:

(1) The sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate were each one-time transactions for cash;

(2) The purchase price paid by Ivy for the Shares and the purchase price paid by the Affiliate for the Restricted Shares was equal to the value of such shares, as reported to the Fund by investment managers of the hedge funds (the Manager(s)), who are independent of and unrelated to Ivy and any of its affiliates, as set forth on the most recent statement issued to the Fund immediately prior to the effective date of this exemption;

(3) The Fund did not incur any commissions or transaction costs with respect to the sale of the Shares to Ivy and with respect to the sale of the Restricted Shares to the Affiliate;

(4) On January 29, 2008, Ivy solicited and received from each of the Plans and IRAs which have an interest in the Fund (the Unit Holder(s)) an affirmative consent to the sale by the Fund of the Shares and of the Restricted Shares;

(5) On January 29, 2008, Ivy solicited and received from each Unit Holder in the Fund an affirmative consent to the entry into a promissory note (the Promissory Note(s)), and as of the effective date of this exemption Ivy entered into such Promissory Notes; and

(6) Pursuant to the terms of each of the Promissory Notes entered into between Ivy and each Unit Holder, in the event that Ivy receives redemption proceeds in excess of the purchase price paid by Ivy to the Fund for the Shares, and/or in the event the Affiliate receives redemption proceeds in excess of the purchase price paid by the Affiliate to the Fund for the Restricted Shares, Ivy will pay, as soon as practicable after receipt of such amounts by Ivy and/or by the Affiliate, the entirety of such excess in cash to each Unit Holder in proportion to each such Unit Holder's investment in the Fund; and Ivy will absorb the loss, if the aggregate redemption proceeds are less than the aggregate purchase price from the sale of the Shares and the sale of the Restricted Shares.

## Section II: General Conditions

(a) Ivy, as investment manager of the Fund, represents that the subject transactions are appropriate for and in the interest of the Fund, and each of the Unit Holders which have an interest in the Fund.

(b) Ivy takes all appropriate actions necessary to safeguard the interests of the Fund, and the interests of the Unit Holders in the Fund, in connection with the subject transactions;

(c) The decision by a Unit Holder as to whether to engage in the subject transactions was made, in the case of a Plan by the trustee of each such Plan, in the case of an IRA, by the IRA holder, and in the case of the Retirement Plan by the Benefits Investment Committee (the Committee), which serves as the named fiduciary of the Retirement Plan.

(d) Notwithstanding affirmative consent given by each of the Unit Holders to the sale by the Fund of the Shares and of the Restricted Shares, and notwithstanding the entry into the Promissory Notes between Ivy and each Unit Holder:

(i) The Plans and IRAs have not waived or released and do not waive or release any claims, demands, and/or causes of action which such Plans and IRAs may have against BNYMC and/or Ivy in connection with the acquisition and retention of the Shares and the acquisition and retention of the Restricted Shares; and

(ii) The Plans and IRAs have not waived or released and do not waive or release any claims, demands, and/or causes of action which such Plans and IRAs may have against BNYMC and/or Ivy in connection with the sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate;

(e) Ivy will maintain, or cause to be maintained, for a period of six (6) years from the date of any of the subject transactions such records as are necessary to enable the persons described, below, in section II(f)(1) of this exemption, to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan or to an IRA which engaged in the subject transactions, other than Ivy and the Affiliate, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by section II(f)(1) of this exemption; and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances

beyond the control of Ivy, such records are lost or destroyed prior to the end of the six-year period.

(f)(1) Except as provided, below, in section II(f)(2) of this exemption, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in section II(e) of this exemption, are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission; or

(B) Any fiduciary of any Plan or any IRA that engaged in the subject transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan or an IRA that engaged in the subject transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan or an IRA that engaged in the subject transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in section II(f)(1)(B)–(D) of this exemption, shall be authorized to examine trade secrets of Ivy, or commercial or financial information which is privileged or confidential; and

(3) Should Ivy refuse to disclose information on the basis that such information is exempt from disclosure, Ivy shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

**DATES: Effective Date:** This exemption is effective, December 31, 2008.

## Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the date of the publication of the Notice in the **Federal Register** on November 16, 2009.<sup>4</sup> All comments and requests for hearing were due by December 31, 2009.

The applicant informed the Department by letter dated December 18, 2009, that the Notice, along with a

<sup>4</sup> 74 FR 58996, November 16, 2009.

cover letter from the applicant, the supplemental statement (the Supplemental Statement), described at 29 CFR 2570.43(b)(2) of the Department's regulations, and a copy of the January 29, 2008, Notice to all Unit holders was sent on December 1, 2009, to all interested persons. However, in a telephone call on February 3, 2010, the applicant informed the Department that page 58997 was inadvertently omitted from the copy of the Notice that was sent to all interested persons. In light of the fact that notification to these interested persons was defective and in order to allow all such interested persons the benefit of the full thirty (30) day comment period, the Department required, and the applicant agreed to, an extension of the deadline within which all interested persons could comment and/or request a hearing on the proposed exemption. In this regard, in accordance with the Department's instructions, the applicant sent a cover letter on February 4, 2009, to all interested persons informing such interested persons of the omission of page 58997 from the Notice, and of the extension of the comment period until March 5, 2010. Accompanying the February 4, cover letter, was a copy of the Notice, including page 58997, a copy of the Supplemental Statement, and a copy of the January 29, 2008, Notice to all Unit holders.

During the comment period, the Department received no requests for hearing. However, the Department did receive a comment letter on March 11, 2010, from the applicant, Ivy. In the comment letter, the applicant requested two changes/clarifications to the Summary of Facts and Representations (SFR), as published in the Notice in the **Federal Register**. The applicant's requested changes/clarifications to the SFR are discussed, below, in an order that corresponds to the appearance of the relevant language in the Notice.

1. The applicant has requested a change in representation 1, as set forth in the SFR on page 58997, column 2, lines 26–27 in the Notice. In this regard, the sentence in the Notice which indicates that the applicant's principal place of business is located in Garden City, New York should be changed to reflect the fact that the applicant's principal place of business has moved to Jericho, New York.

The Department concurs with the applicant's requested change.

2. The applicant has requested a clarification of the language in the third paragraph of representation 3, as set forth in the SFR on page 58997, column 3, lines 7–13 in the Notice. In this regard, the third paragraph of

representation 3 in the Notice reads, as follows:

The Retirement Fund is the only holder of Class E units. The Retirement Fund invested \$25 million in Class E units in the Fund in 1996 and over time has received in excess of \$33,503,000 in distributions. Ivy does not receive any fees with respect to the Class E units.

In this regard, the applicant wishes to clarify that the distributions in excess of \$33,503,000 received by the Retirement Fund includes approximately \$8.5 million profit on such Retirement Fund's original investment of \$25 million.

The Department concurs with the applicant's requested clarification.

After full consideration and review of the entire record, including the written comment filed by the applicant, the Department has determined to grant the exemption, as corrected, and clarified above. Comments submitted by the applicant to the Department have been included as part of the public record of the exemption application. The complete application file (D–11492), including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Exemption published on November 16, 2009, at 74 FR 58996.

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

Deutsche Bank AG and Its Affiliates  
(together, Deutsche Bank or the Applicant)

Located in New York, New York  
[Prohibited Transaction Exemption  
2010–10; Exemption Application No.  
D–11518]

## Exemption

### *Section I. Sales of Auction Rate Securities From Plans to Deutsche Bank: Unrelated to a Settlement Agreement*

Effective February 1, 2008, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to Deutsche

Bank, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.<sup>5</sup>

### *Section II. Conditions Applicable to Transactions Described in Section I*

The transactions described in Section I of this exemption are subject to the following conditions:

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Deutsche Bank;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Deutsche Bank for its own employees (a Deutsche Bank Plan), the Unrelated Sale is made pursuant to a written offer by Deutsche Bank (the Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to the most recent rate information for the Auction Rate Security (if reliable information is available). Either the Offer or other materials available to the Plan provide the identity and par value of the Auction Rate Security. Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Deutsche Bank, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Deutsche Bank Plan) receives written notice regarding the Unrelated Sale, where such notice contains the material terms of the Unrelated Sale (including, but not limited to, the material terms described in the preceding sentence);

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in Section V(d)) of Deutsche Bank. Notwithstanding the foregoing: (1) In the case of an individual retirement account (an IRA, as described in Section V(e) below) which is beneficially owned

<sup>5</sup> For purposes of this exemption, references to section 406 of ERISA should be read, unless otherwise specified, to refer to the corresponding provisions of section 4975 of the Code.

by an employee, officer, director or partner of Deutsche Bank, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Deutsche Bank Plan or a pooled fund maintained or advised by Deutsche Bank, the decision to accept the Offer may be made by Deutsche Bank after Deutsche Bank has determined that such purchase is in the best interest of the Deutsche Bank Plan or pooled fund;<sup>6</sup>

(h) Except in the case of a Deutsche Bank Plan or a pooled fund maintained or advised by Deutsche Bank, neither Deutsche Bank nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) Deutsche Bank and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that—

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Deutsche Bank and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Deutsche Bank or its affiliates, as applicable, such records

are lost or destroyed prior to the end of the six-year period;

(l)(1) Except as provided below in paragraph (l)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraph (l)(1)(B)–(C) shall be authorized to examine trade secrets of Deutsche Bank, or commercial or financial information which is privileged or confidential; and

(3) Should Deutsche Bank refuse to disclose information on the basis that such information is exempt from disclosure, Deutsche Bank shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

### *Section III. Sales of Auction Rate Securities From Plans to Deutsche Bank: Related to a Settlement Agreement*

Effective February 1, 2008, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, to the sale by a Plan of an Auction Rate Security to Deutsche Bank, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

### *Section IV. Conditions Applicable to Transactions Described in Section III*

The transactions described in Section III of this exemption are subject to the following conditions:

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) How a Plan may determine: the Auction Rate Securities held by the Plan with Deutsche Bank, the purchase dates for the Auction Rate Securities, and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The number of shares and par value of the Auction Rate Securities available for purchase under the Offer;

(3) The background of the Offer;

(4) That participating in the Offer will not result in or constitute a waiver of any claim of the tendering Plan;

(5) The methods and timing by which Plans may accept the Offer;

(6) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer;

(7) The timing for acceptance by Deutsche Bank of tendered Auction Rate Securities;

(8) The timing of payment for Auction Rate Securities accepted by Deutsche Bank for payment;

(9) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(10) The expiration date of the Offer;

(11) The fact that Deutsche Bank may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(12) A description of the risk factors relating to the Offer as Deutsche Bank deems appropriate;

(13) How to obtain additional information concerning the Offer; and

(14) The manner in which information concerning material amendments or changes to the Offer will be communicated to affected Plans.

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met.

### *Section V. Definitions*

For purposes of this exemption:

(a) The term “affiliate” means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term “control” means: The power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term “Auction Rate Security” means a security that:

<sup>6</sup> The Department notes that the Act's general standards of fiduciary conduct also apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Deutsche Bank for the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with this type of transaction following disclosure by Deutsche Bank of all relevant information.

(1) Is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and  
(2) Has an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(d) A person is "independent" of Deutsche Bank if the person is: (1) Not Deutsche Bank or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term "Plan" means: An individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of ERISA; or an entity holding plan assets within the meaning of 29 CFR 2510.3-101, as modified by ERISA section 3(42); and

(f) The term "Settlement Agreement" means: A legal settlement involving Deutsche Bank and a U.S. state or federal authority that provides for the purchase of an Auction Rate Security by Deutsche Bank from a Plan.

**DATES:** *Effective Date:* This exemption is effective as of February 1, 2008.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N-1513, US Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on January 19, 2010, at 75 FR 3074.

**FOR FURTHER INFORMATION CONTACT:**

Warren Blinder of the Department, telephone (202) 693-8553. (This is not a toll-free number.)

The Coca-Cola Company (TCCC)  
Located in Atlanta, Georgia  
[Prohibited Transaction Exemption  
2010-11; Exemption Application No.  
D-11555]

**Exemption**

The restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Red Re Inc. (Red Re), in connection with a medical stop-loss insurance policy sold by the Prudential Insurance Company of America (Prudential), or any successor insurance company to Prudential which is unrelated to TCCC, which would pay for certain benefits under the TCCC Retiree Health Plan (the Plan), provided the following conditions are met:

(a) Red Re—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with TCCC that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state that has not been revoked or suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State) by the Insurance Commissioner of the State within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and  
(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority; and

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving Red Re, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, should the relationship with Prudential be terminated, the formula used to calculate premiums by any successor insurer will be similar to formulae used by other insurers providing comparable stop-loss coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) To the extent Red Re earns any profit due to favorable claims experience, such profit will be promptly returned to the Plan.

(g) The Plan only contracts with insurers with a rating of A or better from A.M. Best Company. The reinsurance arrangement between the insurer and

Red Re will be indemnity insurance only, *i.e.*, the insurer will not be relieved of liability to the Plan should Red Re be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(h) The Plan retains an independent fiduciary (the Independent Fiduciary), at TCCC's expense, to analyze the transactions and render an opinion that the requirements of sections (a) through (g) have been complied with. For purposes of this exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with TCCC or Red Re (this relationship hereinafter referred to as an "Affiliate");

(2) Is not an officer, director, employee of, or partner in TCCC or Red Re (or any Affiliate of either);

(3) Is not a corporation or partnership in which TCCC or Red Re has an ownership interest or is a partner;

(4) Does not have an ownership interest in TCCC or Red Re, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plan prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "Independent Fiduciary," no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from TCCC, Red Re, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 3 percent of that organization or individual's annual gross income from all sources for the prior fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from TCCC, Red Re, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such

organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 22, 2009 at 74 FR 68106.

#### Written Comments and Hearing Requests

During the comment period, the Department received approximately 30 telephone calls and three written comments in response to the notice of proposed exemption, one of which also requested a hearing. The request for a hearing was subsequently withdrawn. The telephone calls and written comments raised no substantive issues, but rather reflected the commenters' failure to fully understand the notice of proposed exemption or the effect of the proposed exemption on the commenters' health care benefits. The Department provided explanations to each of the commentators by telephone, and each was satisfied with the responses provided by the Department.

The Department has given full consideration to the entire record, including the comment letters received. Because the comments were not germane to the subject matter of the proposed exemption, the Department has determined to grant the exemption as it was proposed.

**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 describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of March, 2010.

**Ivan Strasfeld,**

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

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**BILLING CODE 4510-29-P**

#### DEPARTMENT OF LABOR

##### Employee Benefits Security Administration

**Application Nos. and Proposed Exemptions; D-11533 and D-11534; CUNA Mutual Pension Plan for Non-Represented Employees (Together, the Plans); and D-11565; Citizens Bank Wealth Management, N.A., et al.**

**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).

##### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the

exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "[moffitt.betty@dol.gov](mailto: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.

##### Notice to Interested Persons

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

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