

Signed at Washington, DC, this 19th day of August, 2002.

Ivan L. Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002-40; Exemption Application No. D-11038]

Grant of Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 90-15, Involving the Watkins Master Trust (the Trust), Located in Atlanta, GA

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify and replace PTE 90-15.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) that amends and replaces PTE 90-15 (55 FR 12967, April 6, 1990). PTE 90-15 is an individual exemption providing relief, since September 20, 1989, for (1) the leasing of office space in a commercial office building (the Building) by the Trust to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the plans (the Plans) participating in the Trust under the provisions of a written lease (the New Lease); and (2) the possible cash purchase of the Trust's interest in the property by Wilwat.

The final exemption modifies an option to purchase provision in the New Lease by allowing Wilwat to acquire the Trust's leasehold interests in the Building, including the improvements constructed thereon, and the Trust's interest in a ground lease on May 8, 2002, instead of at any time during the final six months of the New Lease renewal term ending on December 31, 2008. In addition, the exemption replaces PTE 90-15, which expired by operation of law upon the consummation of the sale. The exemption affects participants and beneficiaries of, and fiduciaries with respect to the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202)

693-8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 18, 2002, the Department published a notice of proposed exemption in the **Federal Register** at 67 FR 41521 that would amend and replace PTE 90-15. PTE 90-15 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption was requested in an application filed on behalf of the Trust and Wilwat,* pursuant to 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, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before August 2, 2002. All comments were to be made a part of the record.

During the comment period, the Department received one written comment from a participant in the Watkins Associated Industries, Inc., Profit Sharing Plan, who objected to the exemption and requested that no changes be made to his individual account in this Plan. The Department received no requests for a public hearing.

For further information regarding the comment or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11038) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and

* The Department also has under consideration a similar exemption request (D-11036) that was filed on behalf of Watkins Associated Industries, Inc., the sponsor of the Trust and a party in interest with respect to the Plans participating in the Trust.

Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment received, the Department has decided to grant the exemption.

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 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 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 require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act, section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 90-15 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

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, August 10, 1990), the Department hereby amends and replaces PTE 90–15. Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 8, 2002, to the sale by the Watkins Master Trust (the Trust) of its leasehold interests in certain improved real property, consisting of a building (the Building), the improvements constructed thereon (the Improvements), and ground lease (the Ground Lease), to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to the Trust, in connection with an amendment to an option to purchase provision contained in a written lease between the Trust and Wilwat, as described in Prohibited Transaction Exemption 90–15 (55 FR 12967, April 6, 1990).

This exemption is subject to the following conditions:

(a) All terms and conditions of the sale were at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party;

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

(c) The fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease was determined by qualified, independent appraisers in initial and updated appraisal reports;

(d) The Trust did not pay any real estate fees, commissions, costs or other expenses in connection with the sale;

(e) The Trust received, as consideration for the sale, an amount that was no less than the greater of (1) the fair market value of the Trust's leasehold interests in the Building, the Improvements and the Ground Lease; or (2) the Trust's total investment in such property, as of the date of the sale;

(f) In the event the Trust could not obtain a release from the owner of the Ground Lease from its obligations thereunder upon the completion of the sale, Wilwat agreed to assume all liabilities under such lease and would indemnify the Trust against any liability to the owner of the Ground Lease; and

(g) The Trustee, as the independent fiduciary for the Trust with respect to the sale, determined that such transaction was in the best interest of

the Trust and was protective of the participants and beneficiaries of the Trust, and monitored such transaction on behalf of the Trust.

EFFECTIVE DATE: This exemption is effective as of May 8, 2002.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 90–15 and this final exemption, refer to the proposed exemptions and the grant notice which are cited above.

Signed at Washington, DC, this 19th day of August 2002.

Ivan L. Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–41; Application Number D–11077]

Amendment to Prohibited Transaction Exemption (PTE) 2000–58 Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al.

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of an amendment to certain of the Underwriter Exemptions.¹

¹ The term "Underwriter Exemptions" refers to the following individual Prohibited Transaction Exemptions (PTEs): PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5,

SUMMARY: This document contains a final exemption issued by the Department of Labor (the Department) which amends certain of the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (plans) of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The amendment permits the trustee of the trust to be an affiliate of the underwriter of the certificates. The amendment affects the participants and beneficiaries of the plans participating in such transactions and the fiduciaries with respect to such plans.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 22, 2002, notice (the Notice) was published in the **Federal Register** (67 FR 36028) of the pendency before the Department of a proposed exemption

1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); and PTE 2000–55 (November 13, 2000).

In addition, the Department notes that it is also granting individual exemptive relief for: Deutsche Bank A.G., New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999); and William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62.