and section II(m)(1) of PTE 2009–22 that wherever a "prospectus" is required to be provided by those sections, such requirement can also be satisfied by the provision of a "summary prospectus." [3]

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 April 30, 2010 at 75 FR 22853.

For Further Information Contact: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (This is not a toll-free number.)

The Finishing Trades Institute of the Mid-Atlantic Region (the Plan)
Located in Philadelphia, Pennsylvania
[Prohibited Transaction Exemption 2010– ; Exemption Application No. L–11609].

Exemption

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act shall not apply to the proposed loan of approximately $1,081,416 (the Loan) to the Plan by the International Union of Painters and Allied Trades, District Council 21 (the Union), a party in interest with respect to the Plan, for (1) the repayment of an outstanding loan (the Original Loan) made to the Plan by Commerce Bank and currently held by TD Bank, both of which are unrelated parties; and (2) to facilitate the expansion of a training facility (the Facility) that is situated on certain real property (the Land) [4] owned by the Plan, provided that the following conditions are met:

(a) The terms and conditions of the Loan are at least as favorable to the Plan as those which the Plan could have obtained in an arm's length transaction with an unrelated party;

(b) The Plan's trustees determine in writing that the Loan is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries;

(c) A qualified, independent fiduciary that is acting on behalf of the Plan (the Qualified Independent Fiduciary) reviews the terms of the Loan and determines that the Loan is an appropriate investment for the Plan and protective of and in the best interests of the Plan and its participants and beneficiaries;

(d) In determining the fair market value of the Property that serves as collateral for the Loan, the Qualified Independent Fiduciary (1) obtains an appraisal of the Property from a qualified, independent appraiser (the Qualified Independent Appraiser); and (2) ensures that the appraisal prepared by the Qualified Independent Appraiser is consistent with sound principles of valuation;

(e) The Qualified Independent Fiduciary monitors the Loan, as well as the terms and conditions of the exemption, and takes whatever actions are necessary and appropriate to safeguard the interests of the Plan and its participants and beneficiaries under the Loan;

(f) The Loan is repaid by the Plan solely with the funds the Plan retains after paying all of its operational expenses; and

(g) The Plan does not pay any fees or other expenses in connection with the servicing or administration of the Loan.

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 July 2, 2010 at 75 FR 38561.

For Further Information Contact: Brian Shiker of the Department, telephone (202) 693–8552. (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 10th day of September, 2010.

Ivan Strasfeld,

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

[FR Doc. 2010–23058 Filed 9–15–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[D–11400; D–11585; D–11603–07]

Application Nos. and Proposed Exemptions; D–11400, Wasatch Advisors, Inc.; D–11585, Retirement Plan for Employees of the Rehabilitation Institute of Chicago (the Plan); D–11603–07, Chrysler Group LLC and Daimler AG; 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

---

[3] The Department notes that consistent with the prudence requirements of section 404, a fiduciary has a duty to consider all available relevant information regardless whether the information is actually provided to the fiduciary.

[4] Unless otherwise stated herein, the Facility and the Land are together referred to as the "Property."

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,* 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 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.

Wasatch Advisers, Inc., Located in Salt Lake City, Utah

[Exemption Application Number D–11400.]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I—Exemption and Conditions

If the proposed exemption is granted, Wasatch Advisors, Inc. (Wasatch) shall not be precluded from qualifying as a "qualified professional asset manager" (a QPAM) pursuant to Prohibited Transaction Exemption 84–14 (hereinafter, either PTE 84–14 or the QPAM Class Exemption)[2] for the period from April 19, 2006 through July 13, 2007, solely because of its failure to satisfy the shareholders' equity requirement of PTE 84–14, section V(a)(4) (the Shareholders' Equity Requirement), provided that the following conditions were met:

(a) Upon learning that it did not have adequate shareholders' equity to satisfy the Shareholders' Equity Requirement, Wasatch took all steps necessary to protect the interests of its ERISA Clients (as defined in section II(b)), including obtaining a letter of credit (the Letter of Credit);

(b) The Letter of Credit was an irrevocable standby letter of credit for $1,000,000, structured in a manner that covered any ERISA Claim (as defined in section II(a)) occurring from April 19, 2006 (the date Wasatch learned it did not satisfy the Shareholders' Equity Requirement) through July 13, 2007 (the date on which Wasatch determined it satisfied the Shareholders' Equity Requirement);

(c) The Letter of Credit was issued by Zions First National Bank, which was independent of Wasatch and regulated by Federal banking authorities;

(d) The Letter of Credit was held by Zions First National Bank for the benefit of all ERISA Clients;

(e) The Letter of Credit was payable on demand solely to an ERISA Client (or its agent) if the ERISA Client provided:

(1) A certified copy of the final order for damages against Wasatch based on an ERISA Claim from a court of competent jurisdiction with all rights of appeal having expired or having been exhausted; or a true copy of a settlement agreement between the ERISA Client and Wasatch providing for damages to the ERISA Client with respect to an ERISA Claim;

(2) In the case of a final court judgment, a certified true copy of a Sheriff's or Marshall's levy and execution on the judgment, returned unsatisfied, or such other documentation, certified by an officer of the court in which the judgment was entered, stating that the judgment remains unsatisfied following attempts to collect the judgment in accordance with local court rules; and

(3) A certificate of an authorized representative of the ERISA Client stating the amount of the judgment or settlement which remains unsatisfied;

(f) From 1996 through 2007, Joseph S. Call, a certified public accountant who is independent of Wasatch, performed a yearly audit on Wasatch, using generally acceptable accounting principles to quantify Wasatch's shareholders' equity; and

(g) From 1996 through 2007, Wasatch's reliance on Mr. Call's determinations as to the dollar amount relevant to the Shareholders' Equity Requirement was reasonable.

Section II—Definitions

(a) The term "ERISA Claim" means: a civil proceeding for monetary relief which is commenced by the filing or service of a civil complaint or similar pleading or a request for monetary relief which could have been the subject of such a complaint or pleading but for a settlement agreement, filed against Wasatch or with respect to which a settlement is reached prior to July 13, 2007, by reason of Wasatch's breach or violation of a duty described in sections 404 or 406 of ERISA;

(b) The term "ERISA Client" means any employee benefit plan covered by Title I of ERISA to which Wasatch provides or provided investment management services on or before July 13, 2007;

(c) A person will be "independent" of another person only if:

(i) For purposes of this exemption, such person is not an affiliate of that other person; and

(ii) The other person, or an affiliate thereof, is not a fiduciary that has investment management authority or

[1] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[2] 49 FR 9494 (Mar. 13, 1984), as corrected at 50 FR 41430 (Oct. 10, 1985), and amended at 70 FR 49305 (Aug. 23, 2005) and at 75 FR 38837 (Jul. 6, 2010).

renders investment advice with respect to the assets of such person;

(d) An "affiliate" of a person means:

(i) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person. For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(ii) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

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

Summary of Facts and Representations

1. The applicant is Wasatch (hereinafter, either Wasatch or the Applicant), a registered investment advisor located in Salt Lake City, Utah. Wasatch, which was founded in 1976, has more than $9 billion in assets under its management, including approximately $1.5 billion in ERISA plan assets. Wasatch employs approximately 110 people, and has been structured as a privately-held, 100% employee-owned Subchapter S corporation since 1996.

2. The Applicant represents that for several years prior to April 19, 2006, Wasatch acted as a "qualified professional asset manager," as such term is defined in section V(a)(4) of the QPAM Class Exemption. The Applicant states that, to the best of its knowledge, during that time, Wasatch complied with all relevant provisions of that class exemption.

3. The Applicant also represents that, for the period from April 19, 2006 through July 13, 2007, Wasatch failed to satisfy section V(a)(4) of the QPAM Class Exemption. In this regard, section V(a)(4) of the QPAM Class Exemption requires, among other things, that an investment advisor have in excess of $1,000,000 in shareholders' or partners' equity; and section VI(m) of the QPAM Class Exemption defines "shareholders' or partners' equity" as meaning the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to the QPAM Class Exemption, in accordance with generally accepted accounting principles.[3]

4. The Applicant describes Wasatch's failure to meet the Shareholders' Equity Requirement as a one-time event resulting from unanticipated changes in certain factors affecting: deferred compensation agreements (the Compensation Agreements) covering key Wasatch employees (the Recipients); and a stock buy-sell agreement (the Buy-Sell Agreement). The Applicant makes the following representations regarding the Compensation Agreements.

Beginning in 1996, Wasatch entered into Compensation Agreements with Recipients to pay the Recipients a multiple of net revenue for each of the sixteen quarters following a Recipient's termination of employment with Wasatch. Many of the factors involved (*i.e.,* the separation dates of the Recipients and Wasatch's revenues during the four years following these dates) were difficult to quantify prior to 2005.

5. The Applicant makes the following representation regarding the Buy-Sell Agreement. The Buy-Sell Agreement was put in place to address succession planning. The Agreement, among other things, limits stock ownership to current employees and places a specific value on the shares. As with the Compensation Agreements, the value of the stock is based on a set multiple of net revenues and is paid out over the sixteen quarters following sale of the stock (which is required upon termination.)

6. For the years 1996–2004, Wasatch did not accrue for deferred compensation liability on its balance sheets. During this period, Wasatch took the position that there were too many variables to reasonably estimate its liabilities under the Compensation Agreements and the Buy-Sell Agreements (collectively, the Agreements). In this regard, the Applicants represent that: (1) Future revenues were extremely difficult to predict historically since: (A) Client assets can flood or exit a manager very rapidly; (B) during the fifteen years from 1989–2004 Wasatch's gross revenues showed a compound annual growth rate of 35%, with a standard deviation of 44%, a low of −11% and a high of 130%; and (C) Wasatch had a relatively small number of employees and many of Wasatch's assets were new, such that it was reasonable to expect a large portion of those assets would exit the company upon the departure of key employees; (2) it was extremely difficult to predict retirement dates given that the average age of employees was 33; and (3) structural aspects of the Agreements caused the timing of payments to be quite variable.[4]

7. The Applicant represents that with respect to Wasatch's 2005 calendar year, Mr. Joseph S. Call, Wasatch's independent auditor, determined that enough of these key variables had changed such that it was: (1) Possible to reasonably estimate the liability accrued under the Compensation Agreements; and (2) necessary to accrue a discounted value for the liability on Wasatch's financial statements. This determination was described in an audit report received by Wasatch on April 19, 2006 (the Audit Report). Specifically, the Audit Report stated that: (1) Wasatch had observed a relative stabilization in its business; (2) at least one key retirement date was set; and (3) changes in the tax law for deferred compensation caused Wasatch to modify the Compensation Agreements by taking away some of the provisions for pre-payment or delay of payment. Accordingly, Wasatch's 2005 balance sheet took into account accrued liability for the Compensation Agreements, and quantified such liability as approximating $25 million, putting Wasatch in an unexpected and unplanned-for negative equity position of $13 million.

8. The Applicant states that, prior to April 19, 2006, Wasatch did not know, nor have reason to anticipate, that its financial statements for the year ending December 31, 2005 would reflect less than the minimum amount of shareholders' equity set forth in the Shareholders' Equity Requirement. In this regard, the Applicant represents that Wasatch received no prior notice (other than in the Audit Report) that certain factors relevant to the quantification of Wasatch's shareholders' equity had stabilized and/or that the amount of Wasatch's shareholders' equity was in jeopardy of dropping below the amount required by the Shareholders' Equity Requirement. The Applicant represents further that Wasatch's reliance on the financial audits performed by Mr. Call, including those covering Wasatch's fiscal years prior to 2005, was reasonable.

[3] As noted in footnote 2, the QPAM Class Exemption was amended on August 23, 2005. Among other things, the amendment increases the dollar amount set forth in section V(a)(4) of the QPAM Class Exemption from $750,000 to $1,000,000. This increase, as it applies to Wasatch, is effective December 31, 2006, which is the last day of the first fiscal year of Wasatch beginning on or after August 23, 2005. References herein to the Shareholders' Equity Requirement with respect to any date that occurs prior to December 31, 2006 thus corresponds to the lesser (*i.e.,* $750,000) dollar amount.

[4] According to the Applicant, the nature and terms of the Agreements have been fully disclosed in Wasatch's audited financial statements since 1996.

9. The Applicant represents that Wasatch, upon learning it no longer had an amount of shareholders' equity necessary to satisfy the Shareholders' Equity Requirement, took immediate steps to protect its ERISA clients. In this regard, the Applicant states that after receiving the April 19, 2006 Audit Report, Wasatch stopped paying dividends and bonuses, and began retaining cash in an effort to offset the accrued deferred compensation liability. The Applicant represents that unaudited financial statements prepared by Wasatch for the quarter ended September 30, 2006 reflected shareholders' equity in excess of $1,000,000 due to Wasatch's efforts to retain cash.

10. The Applicant represents further that Wasatch, upon learning it no longer had a sufficient amount of shareholders' equity, set in motion the process of obtaining an irrevocable letter of credit in order to protect the interests of its ERISA Clients until Wasatch was able to once again meet the Shareholders' Equity Requirement. In this regard, on October 30, 2006, Wasatch executed the Letter of Credit, which is a $1,000,000 Letter of Credit with Zions First National Bank. The Applicant represents that, following October 30, 2006, Zions First National Bank held the Letter of Credit for the benefit of all ERISA Clients. The Applicant represents that the Letter of Credit was structured in a manner that allowed it to be applicable to ERISA Claims arising on or after April 19, 2006. The Applicant states further that the Letter of Credit remained in effect through July 13, 2007, which is the date on which Wasatch determined that it met the Shareholders' Equity Requirement. The Applicant notes that the Letter of Credit could be reduced only by ERISA Claims paid on behalf of ERISA Clients, if the ERISA Client provided: A certified copy of the final order for damages against Wasatch; or (2) a true copy of a settlement agreement between the ERISA Client and Wasatch. The Applicant states that there have been no judgments or settlements made by ERISA Clients, and there are no pending ERISA Claims.

11. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria set forth in section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) Wasatch, upon learning that it did not have adequate shareholders' equity to satisfy the Shareholders' Equity Requirement, took all steps necessary to protect the interests of its ERISA Clients, including obtaining the Letter of Credit from Zions First National Bank;

(b) The Letter of Credit was structured to cover any ERISA Claim occurring from April 19, 2006 through July 13, 2007;

(c) The amount available under the Letter of Credit was at least $1,000,000 on both October 31, 2006 and July 13, 2007, the former date being the date on which Wasatch obtained the Letter of Credit from Zions First National Bank and the latter date being the date on which Wasatch determined it satisfied the Shareholders' Equity Requirement;

(d) Wasatch caused the Letter of Credit to be issued by Zions First National Bank, and Zions First National Bank held the Letter of Credit for the benefit of all ERISA Clients;

(e) The Letter of Credit was payable on demand solely to an ERISA Client (or its agent) if the ERISA Client provided:

(1) A certified copy of the final order for damages against Wasatch based on the ERISA Claim from a court of competent jurisdiction with all rights of appeal having expired or having been exhausted; or a true copy of a settlement agreement between the ERISA Client and Wasatch providing for damages to the ERISA Client with respect to the ERISA Claim;

(2) In the case of a final court judgment, a certified true copy of a Sheriff's or Marshall's levy and execution on the judgment, returned unsatisfied, or such other documentation, certified by an officer of the court in which the judgment was entered, stating that the judgment remains unsatisfied following attempts to collect the judgment in accordance with local court rules; and

(3) A certificate of an authorized representative of the ERISA Client stating the amount of the judgment or settlement which remains unsatisfied;

(f) From 1996 through 2007, Joseph S. Call, a certified public accountant who is independent of Wasatch, performed a yearly audit on Wasatch, using generally accepted accounting principles to quantify Wasatch's shareholders' equity; and

(g) Each year, from 1996 through 2007, Wasatch's reliance on Mr. Call's determinations as to the dollar amount of Wasatch's shareholders' equity was reasonable.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include ERISA plans that used Wasatch as a QPAM during the period from April 19, 2006 through July 13, 2007 and that still (currently) use Wasatch as a QPAM. Wasatch will notify this class of interested persons, by mail, within fifteen (15) calendar days of publication of the Notice in the **Federal Register**; and such mailing will contain a copy of the Notice, a supplemental statement (as required pursuant to 29 CFR 2570.43(b)(2)), and a supplemental letter explaining the circumstances that gave rise for the need for a temporary exemption. Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chris Motta of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Retirement Plan for Employees of the Rehabilitation Institute of Chicago (the Plan), Located in Chicago, Illinois.

[Application No. D–11585]

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).

Section I—Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 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)(B) and 4975(c)(1)(D) of the Code,[5] shall not apply:

(1) To a series of interest-free Advances in the aggregate amount of $701,117 (the Advances or individually, an Advance), made to Hewitt Associates, LLC (Hewitt), the Pension Benefit Guaranty Corporation (PBGC), the Internal Revenue Service (the IRS), and Deloitte and Touche, LLP (Deloitte),[6] during the period from September 28, 2006, through June 2, 2009, by the Rehabilitation Institute of Chicago (RIC), for the purpose of paying ordinary operating expenses incurred on behalf of the Plan; and

(2) To the reimbursement to RIC by the Plan of such Advances made during the period from September 28, 2006, through June 2, 2009, in an aggregate amount not to exceed $701,117, where

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

[6] Hewitt, PBGC, IRS, and Deloitte are collectively referred to, herein, as the Service Providers.

each such reimbursement occurred at least sixty (60) days but no more than 365 days after the date of each such Advance; provided that the conditions as set forth in section II of this proposed exemption were satisfied.

Section II—Conditions

(1) During the period from September 28, 2006, through June 2, 2009, when RIC made each of the Advances and during the period at least sixty (60) days but no more than 365 days after the date of each such Advance, when the Plan reimbursed each such Advance, all of the requirements of Prohibited Transaction Exemption 80–26 (PTE 80–26), as amended, effective December 15, 2004,[7] were satisfied, except for the requirement in Section IV (f)(1) of PTE 80–26 that loans made on or after April 7, 2006, with a term of sixty (60) days or longer be made pursuant to a written loan agreement that contains all of the material terms of such loan;

(2) With regard to any reimbursement covered by the proposed exemption, an independent, qualified auditor certifies that such reimbursement matches each of the Advances, during the period from September 28, 2006, through June 2, 2009, made by RIC to the Service Providers on behalf of the Plan; and such reimbursements were made by the Plan to RIC during the period at least sixty (60) days but no more than 365 days after the date of each such Advance;

(3) The Advances made by RIC to the Service Providers, during the period from September 28, 2006, through June 2, 2009, were for the payment of ordinary operating expenses of the Plan which were properly incurred on behalf of the Plan;

(4) Within ninety (90) days of the publication in the **Federal Register** of the final exemption for the transactions which are the subject of this proposed exemption, RIC must refund to the Plan an amount equal to $74,555 (the Refund Amount), plus earning and interest. Such Refund Amount represents the total for certain reimbursements to RIC by the Plan in connection with payments by RIC to Monticello Associates Inc. (Monticello), Deloitte, the IRS, and the Department in the amounts, respectively of $55,500, $18,530, $375, and $150. Furthermore, RIC must refund to the Plan an additional amount attributable to lost earnings experienced by the Plan on the Refund Amount, and interest on such lost earnings, for the period from April 7, 2006, to the date upon which RIC has returned to the Plan the entire Refund Amount, the lost earnings on such Refund Amount, plus interest on such lost earnings. For the purpose of calculating the lost earnings on the Refund Amount due to the Plan, plus interest, on such lost earnings, RIC must use the Online Calculator for the Voluntary Fiduciary Correction Program[8] that appears on the Web site of the Employee Benefits Security Administration; and

(5) Within ninety (90) days of the publication in the **Federal Register** of the final exemption for the transactions which are the subject of this proposed exemption, RIC must file a Form 5330 with the IRS and pay to the IRS all applicable excise taxes, and any interest on such excise taxes deemed to be due and owing with respect to the Refund Amount.

Effective Date: This proposed exemption, if granted, will be effective, for each Advance to the Service Providers made by RIC from September 28, 2006, through June 2, 2009, and for reimbursements to RIC by the Plan of such Advances covered by this proposed exemption.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan. The estimated number of participants and beneficiaries in the Plan, as of November 3, 2009, was 2,457. The fair market value of the total assets of the Plan, as of August 31, 2009, was $52,895,253.39.

2. The administrator of the Plan is a committee (the Committee) composed of members who are appointed by the Board of Directors of RIC. The members of the Committee are employees and officers of RIC. As of March 13, 2006, and at the start of the relevant period for which relief is requested in this proposed exemption, the members of the Committee, were: (a) Wayne M. Lerner, President and Chief Executive Officer of RIC; (b) Edward B. Case (Mr. Case), Executive Vice President and Chief Financial Officer of RIC; (c) Susan H. Cerletty, Executive Vice President, Clinical, of RIC and (d) Nancy Paridy, Esq. (Ms. Paridy), Senior Vice President of RIC and General Counsel to RIC. The following individuals have been members of the Committee, since December 1, 2007: (a) Joanne C. Smith, M.D., President and Chief Executive Officer of RIC, (b) Mr. Case, and (c) Ms. Paridy. The Committee is a party in interest with respect to the Plan, as the administrator of the Plan, pursuant to section 3(14)(A) of the Act.

The persons who have investment discretion over the assets involved in the proposed transactions are the Executive Vice President, the Chief Executive Officer, and the Chief Financial Officer of RIC, the members of the investment committee, and the advisors to RIC at Monticello. As persons or entities who have investment discretion over the assets of the Plan, each is a fiduciary with respect to the Plan, pursuant to section 3(21)(A) of the Act. As fiduciaries of the Plan, each is also a party in interest with respect to such Plan, pursuant to section 3(14)(A) of the Act.

Northern Trust Company, as the trustee for the Plan, is a fiduciary with respect to such Plan, pursuant to section 3(21)(A) of the Act. Further, as trustee for the Plan, Northern Trust Company is a party in interest with respect to such Plan, pursuant to section 3(14)(A) of the Act.

3. RIC, the sponsor of the Plan, is an Illinois not-for-profit corporation. RIC is a provider of rehabilitative medicine and services to severely injured and handicapped individuals. As an employer any of whose employees are covered by the Plan, RIC is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act.

4. The applicant has requested a retroactive administrative exemption for Advances and for the reimbursement of such Advances to RIC by the Plan. Such transactions constitute the lending of money or other extension of credit between the Plan and RIC in violation of section 406(a)(1)(B) of the Act, and constitute the transfer to, or use by or for the benefit of RIC of the assets of the Plan in violation of 406(a)(1)(D) of the Act. The subject transactions also raise conflict of interest issues by fiduciaries of the Plan for which relief from the prohibitions of 406(b)(2) of the Act is needed.

Specifically, the applicants have requested retroactive relief for: (a) Advances made by RIC to the Service Providers for expenses incurred on behalf of the Plan, during the period from April 7, 2006, through August 28, 2009; and (b) for the subsequent reimbursements of such Advances to RIC by the Plan during the period at least sixty (60) days but no more than 365 days after the date of each such Advance.

Although, as stated above, the applicant requested relief for the period from April 7, 2006, through August 28, 2009, the Department has determined to propose relief for a shorter period of time than that requested by the applicant. In this regard, the Department is proposing relief only for Advances made during the period from September 28, 2006, through June 2, 2009, because

[7] 71 FR 17917, April 7, 2006.

[8] 70 FR 17516, April 6, 2005.

an audit prepared by Deloitte, as described in more detail in paragraph number 15, below, covers transactions only for the period from September 28, 2006, through June 2, 2009.

Further, the Department proposes to limit relief, during the period from September 28, 2006, through June 2, 2009, only to those Advances which were reimbursed to RIC by the Plan, at least sixty (60) days but no more than 365 days from the date of each such Advance, because: (i) PTE 80–26 would be available for loans or extensions of credit which were repaid in less than sixty (60) days, provided the conditions of PTE 80–26 were satisfied; and (ii) as discussed in paragraph number 8, below the applicant has already filed a Form 5330, paid excise tax, and refunded to the Plan certain reimbursements paid to RIC more than a year after RIC advanced payments on behalf of the Plan.

No relief from the prohibited transaction provisions of the Act is proposed, herein, during the period April 7, 2006, when the requirement for a written loan agreement, pursuant to PTE 80–26 became effective, through September 27, 2006, when RIC failed to comply with the conditions of PTE 80–26, as amended, but made payments for expenses incurred on behalf of the Plan and received reimbursements from the Plan, because an audit prepared by Deloitte, as described in more detail in paragraph number 15, below, did not cover that period. Further, no relief from the prohibited transaction provisions of the Act is proposed, herein, for payments by RIC on behalf of the Plan and subsequent reimbursement to RIC by the Plan after Deloitte had informed RIC of the amendment to PTE 80–26, on June 3, 2009.

5. It is represented that RIC did not make the Advances which are the subject of this proposed exemption as gifts to the Plan. In this regard, it is represented that a significant portion of the operating revenue of RIC comes from non-patient sources, such as donors and grants. Such sources prefer their awards to be utilized for providing patient care and other mission related programs. It is represented that including the administrative expenses of the Plan in the general administrative expenses of RIC, rather than as benefits expenses, would make RIC appear less efficient to such non-patient sources of revenue. Accordingly, it is represented that it was always the intention of RIC to have the administrative expenses of the Plan paid for from the assets of the Plan, rather than from RIC's assets. In this regard, it is represented that from the inception of the Plan, the Plan documents and the accompanying trust documents have provided that administrative expenses of the Plan would be paid out of the assets of the Plan. Specifically, section 3.3 of the trust states that the trustee may pay out of the trust the administrative expenses of the Plan, including any accounting, actuarial, investment and legal expenses and premiums, any taxes of any and all kinds that may be levied or assessed under existing or future laws upon the trust or the income thereof, and any other amounts payable pursuant to Title IV of the Act, as the plan administrator shall direct.

It is represented that RIC has employed an administrative and accounting procedure which has been in place for a long time and which has been consistently followed with respect to the payments made by RIC to certain service providers of various expenses incurred on behalf of the Plan. In this regard, the procedure involves RIC paying for such expenses directly to such service providers on behalf of the Plan and then posting the amount of such payments as receivables from the Plan in the accounting records of RIC. It is represented that RIC would generally make the payments incurred on behalf of the Plan for up to an entire Plan year. Further, it is represented that the reimbursements to RIC by the Plan were made in lump sums generally on an annual basis.

6. It is represented that RIC intended the accounting procedure, described in paragraph number 5, above, to comply with PTE 80–26.[9] PTE 80–26 is a class exemption that, among other transactions, permits parties in interest with respect to an employee benefit plan to make certain interest free loans or other extensions of credit to such plan and permits such parties in interest to receive repayment of such loans or other extensions of credit. The relief provided by PTE 80–26 is subject to the conditions that the proceeds of such loans or extensions of credit are unsecured, are not, directly or indirectly, made by an employee benefit plan, and are used only for the payment of ordinary operating expenses of a plan, including the payment of benefits in accordance with the terms of such plan and periodic premiums under an insurance or annuity contract or are used for a purpose incidental to the ordinary operation of such plan.

Pursuant to an amendment of PTE 80–26, effective as of December 15, 2004, any loan or extension of credit the proceeds of which are used for the payment of ordinary operating expenses that are entered into on or after April 7, 2006, and that have a term of sixty (60) days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan or extension of credit. Any loan or extension of credit made for a purpose incidental to the ordinary operation of a plan that has a term of sixty (60) days or longer must also be made pursuant to a written loan agreement that contains all of the material terms of such loan or extension of credit.

7. After the December 15, 2004, amendment to PTE 80–26 and after April 6, 2006, the effective date of the requirement for a written loan agreement for certain loans, RIC continued to make payments to service providers on behalf of the Plan and to seek reimbursements of such payments from the Plan, pursuant to the accounting procedure which is described in paragraph number 4, above. In this regard, on and after April 7, 2006, it is represented that any payments made on behalf of the Plan by RIC to service providers with a term of sixty (60) days or longer were not made pursuant to written loan agreements that contained all of the material terms of such loan or extension of credit.

On or about June 2, 2009, during the course of audits for the Plan Years ending August 31, 2007, and August 31, 2008, Deloitte, the auditor of the Plan, brought to the attention of RIC the amendment to PTE 80–26, effective December 15, 2004. It is represented by the applicant that after the amendment to PTE 80–26, the accounting procedure employed by RIC no longer met the requirements of PTE 80–26, with respect to the payments by RIC on behalf of the Plan to service providers (and subsequent reimbursements to RIC by the Plan of such payments).

8. Upon consultation with its legal counsel, Greenberg Traurig, LLP, RIC determined that the subject transactions are similar to the terms of a revolving note which typically must be paid down on at least an annual basis. It is represented that RIC evaluated payments made by RIC on behalf of the Plan to certain service providers and the subsequent receipt of reimbursements by RIC from the Plan and determined that any such payments made on behalf

[9] The Department is offering no view, herein, as to RIC's reliance on PTE 80–26 for payments RIC made on behalf of the Plan or to reimbursements of such payments to RIC by the Plan. Further, the Department is not opining as to whether RIC satisfied the conditions of PTE 80–26 in connection with such payments made by RIC on behalf of the Plan, or in connection with the reimbursement of such payments to RIC by the Plan. Further, the Department, herein, is not providing relief for any payments made by RIC on behalf of the Plan or any reimbursements of such amounts to RIC by the Plan beyond that which is proposed herein.

of the Plan by RIC which were reimbursed within sixty (60) days complied with PTE 80–26. In this regard, the applicant represents that there were no reimbursements made on the sixtieth (60th) day following the date of any such payments.[10]

RIC determined that the receipt by RIC from the Plan of reimbursements more than a year after the date of such payments were not exempted by PTE 80–26 and that the amount of such payments reimbursed to RIC by the Plan should be returned by RIC to the Plan. The total amount RIC returned to the Plan on August 28, 2009, is represented to have been $110,711, plus lost earnings in the amount of $766.96 for a total of $111,477.96. In addition, Form 5330 was completed by RIC, filed on September 2, 2009, by RIC with a check in the amount of $115.04 to the IRS, as payment of excise taxes due. It is represented that the excise taxes were calculated on the $766.96 of interest on the amount of $110,711 returned to the Plan by RIC.

9. It is represented that the total amount of the payments made by RIC on behalf of the Plan after April 7, 2006, which were reimbursed to RIC by the Plan sixty (60) days or more after the date of each such payment is $886,383. After RIC returned $110,711 to the Plan on August 28, 2009, as described in paragraph number 8, above, in connection with the filing by RIC of Form 5330, the amount for which relief is requested is $775,672 (*i.e.,* $886,383 minus $110,711).

Notwithstanding the applicant's request for relief for certain payments made by RIC on behalf of the Plan and certain reimbursements received by RIC from the Plan in the amount of $775,672, the Department is proposing relief for $701,117. In this regard, of the $775,672 for which the applicant requested relief, the Department has disallowed, for various reasons discussed in the paragraphs immediately below, payments made by RIC on behalf of the Plan and reimbursement received by RIC from the Plan totaling $74,555. Accordingly, RIC has agreed to refund to the Plan an amount equal to $74,555 with interest calculated using the Department's online calculator. Further, within ninety (90) days of the publication in the **Federal Register** of the final exemption for the transactions which are proposed, herein, RIC will file Form 5330 with the IRS and pay any excise taxes, deemed to be due and owing on such Refund Amount.

Specifically, the Department is not proposing relief for certain payments made by RIC to Monticello, an investment advisor/manager to RIC and to the Plan, in the amount of $55,500 that was reimbursed to RIC by the Plan. In this regard, rather than the actual cost of services provided to the Plan by Monticello, the amount of payments made by RIC to Monticello represented an estimated 15 percent (15%) allocation of the cost for the investment management consulting services provided by Monticello both to the Plan and to RIC.

Further, the Department is not proposing relief for a certain payment made by RIC to the Department in the amount of $150 that was reimbursed to RIC by the Plan. In this regard, the applicant did not provide documentation that such amount was a Plan expense.

In addition the Department is not proposing relief for payments made by RIC to the IRS that was reimbursed to RIC by the Plan in the amount of $375 for fees for a Voluntary Correction Program filing which has been deemed a "settlor function," as set forth on January 18, 2001, in Advisory Opinion 2001–01A (AO 2001–01).[11]

Finally, the Department is not proposing relief for certain payments made by RIC to Deloitte, an accountant for the Plan and for RIC, in the amount of $18,530 that was reimbursed to RIC by the Plan. The $18,530 amount consists of overrun charges of $14,530 and out-of-pocket expenses of $4,000 which were paid to Deloitte by RIC and then subsequently reimbursed to RIC by the Plan. The Department is not proposing relief for the $14,530 paid by RIC on behalf of the Plan and subsequently reimbursed to RIC by the Plan, because, RIC does not have a specific invoice to document this amount was a Plan audit expense. Further, the Department is not proposing relief for an additional $4,000 in out-of-pocket expenses paid to Deloitte by RIC on behalf of the Plan and subsequently reimbursed to RIC by the Plan. In this regard, RIC has failed to sufficiently document that the $4,000 amount represented the correct allocation of out-of-pocket expenses to the Plan.

10. The Department has determined to provide relief, herein, for Advances made by RIC on behalf of the Plan, during the period from September 28, 2006, through June 2, 2009, and which were reimbursed to RIC by the Plan, at least sixty (60) days but no more than 365 days from the date of each such Advance to the following Service Providers in the following amounts:

(a) For Advances to Hewitt by RIC and for reimbursements of such Advances by the Plan to RIC in an amount totaling $478,857;

(b) For Advances to IRS by RIC and for reimbursements of such Advances by the Plan to RIC in amounts totaling $700, provided that such Advances were not expenses associated with settlor functions, as set forth in AO 2001–01;

(c) For Advances for the payment of premiums to the PBGC by RIC and to reimbursements of such Advances by the Plan to RIC in amounts totaling $139,060, where the payment of PBGC premiums by a plan is permitted under Title IV of the Act;[12] and

(d) For Advances to Deloitte by RIC and to reimbursements by the Plan to RIC in amounts totaling $82,500.

11. It is represented that the total amount of Advances which were made on behalf of the Plan by RIC to the Service Providers during the period from September 28, 2006, through June 2, 2009, and which were reimbursed to RIC by the Plan at least sixty (60) days but not more than 365 days after the date of each such Advance is $701,117.

12. The applicant represents that the transactions which are the subject of this proposed exemption were in the interest of the Plan, because the Advances made by RIC to the Service Providers on behalf of the Plan, permitted the Plan to keep in the trust, until such time as the Advances were

[10] The Department, herein, is expressing no views on the conclusions reached regarding the application of PTE 80–26 to these amounts.

[11] In AO 2001–01, the Department expressed its view that in the context of tax-qualification activities, that "the formation of a plan as a tax-qualified plan is a settlor activity for which a plan may not pay. Where a plan is intended to be a tax-qualified plan, however, implementation of this settlor decision may require plan fiduciaries to undertake activities relating to maintaining the plan's tax-qualified status for which a plan may pay reasonable expenses (*i.e.,* expenses reasonable in light of the services rendered). Implementation activities might include drafting plan amendments required by changes in the tax law, nondiscrimination testing, and requesting IRS determination letters. If, on the other hand, maintaining the plan's tax-qualified status involves analysis of options for amending the plan from which the plan sponsor makes a choice, the expenses incurred in analyzing the options would be settlor expenses."

[12] Section 4007(a) of Title IV of the Act provides, in part, that the "designated payor" of each plan shall pay premiums imposed by the PBGC when they are due. Section 4007(e)(1)(A) of Title IV of the Act defines the term, "designated payor," to mean either the "contributing sponsor" or the plan administrator, in the case of a single-employer plan. Section 29 CFR 2610.26(a) of the PBGC regulations clarifies that both the plan administrator and the contributing sponsor of a single employer plan are liable for premiums. With respect to ongoing plans, the PBGC has interpreted these provisions to permit the payment of premiums from plan assets.

reimbursed to RIC by the Plan, such amounts as would otherwise have been payable to such Service Providers. In addition, it is represented that the Plan retained any earnings and interest made from the amounts that remained invested in the trust for a longer period of time than were the Plan to have paid off expenses directly to the Service Providers as each such expense became due. Further, it is represented that there is no cost to the Plan, because RIC did not charge interest or fees to the Plan in connection with the transactions which are the subject of this proposed exemption.

13. The applicant represents that the proposed exemption is feasible. In this regard, relief is requested for a finite number of Advances that occurred for the period from September 28, 2006, through June 2, 2009.

14. The applicant represents that the proposed exemption provides sufficient safeguards for the protection of the Plan and its participants and beneficiaries. In this regard, it is represented that all of the requirements of PTE 80–26, as amended, effective December 15, 2004, were satisfied for the period from September 28, 2006, through June 2, 2009, except for the requirement, as set forth in Section IV (f)(1) of PTE 80–26, as amended. In this regard, Section IV (f)(1) of PTE 80–26 requires that loans made on or after April 7, 2006, with a term of sixty (60) days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan.

In addition, Deloitte, an independent, qualified auditor: (a) Obtained a schedule prepared by Plan management (the Schedule) of Plan expenses, for the period September 28, 2006, through June 2, 2009, which were paid by RIC on behalf of the Plan; (b) tested the arithmetic accuracy of the Schedule and noted no errors; (c) reconciled each amount on the Schedule to a corresponding amount posted on RIC's miscellaneous receivables ledger and noted no differences; and (d) for all Plan reimbursements to RIC listed on the Schedule, reconciled the amount and date to a copy of the wire transfer to RIC's bank statement and noted no differences.

15. It is represented that on September 1, 2009, RIC entered into an interest-free written revolving loan agreement for a principal amount of $1 million or such lesser amount as shall be advanced from time to time. Such principal amount must be paid in full at least annually by the month of August, or as soon as administratively practicable thereafter. The principal may be prepaid in whole or in part at any time without penalty. All payments are applied to reduce the principal amount in the order of the earliest to the latest of the payments advanced by RIC. RIC has not sought relief for such future transactions in reliance on the belief that this revolving loan agreement between the RIC and the Plan satisfies the requirements of PTE 80–26.[13]

16. In summary, the applicant represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) During the period from September 28, 2006, through June 2, 2009, when RIC made each of the Advances and during the period of at least sixty (60) days but no more than 365 days after the date of each such Advance, when RIC received each of the reimbursements, all of the requirements of PTE 80–26, as amended, effective December 15, 2004, were satisfied, except for the requirement, as set forth in Section IV (f)(1) of PTE 80–26;

(b) With regard to any reimbursement covered by the proposed exemption, Deloitte, an independent, qualified auditor certifies that such reimbursement matches each of the Advances, during the period from September 28, 2006, through June 2, 2009, made by RIC to the Service Providers on behalf of the Plan; and such reimbursements were made by the Plan to RIC during the period at least sixty (60) days but no more than 365 days after the date of each such Advance;

(c) The Advances made by RIC to the Service Providers, during the period from September 28, 2006, through June 2, 2009, were for the payment of ordinary operating expenses of the Plan which were properly incurred on behalf of the Plan;

(d) Within ninety (90) days of the publication in the **Federal Register** of the final exemption for the transactions which are the subject of this proposed exemption, RIC will refund to the Plan an amount equal to $74,555. Such Refund Amount represents the total for certain reimbursements to RIC by the Plan in connection with payments by RIC to Monticello, Deloitte, IRS, and the Department in amounts, respectively of $55,500, $18,530, $375, and $150. Furthermore, RIC will refund to the Plan an additional amount attributable to lost earnings experienced by the Plan on the Refund Amount, and interest on such lost earnings, for the period from April 7, 2006, to the date upon which RIC has returned to the Plan the entire Refund Amount, the lost earnings on such Refund Amount, plus interest on such lost earnings. For the purpose of calculating the lost earnings on the Refund Amount due to the Plan, plus interest, on such lost earnings, RIC will use the Online Calculator for the Voluntary Fiduciary Correction Program that appears on the Web site of the Employee Benefits Security Administration; and

(e) Within ninety (90) days of the publication in the **Federal Register** of the final exemption for the transactions which are the subject of this proposed exemption, RIC must file a Form 5330 with the IRS and pay to the IRS all applicable excise taxes, and any interest on such excise taxes deemed to be due and owing with respect to the Refund Amount.

[13] The Department is offering no view herein, as to whether the entry into a revolving loan agreement between RIC and the Plan is covered by the relief available under PTE 80–26, as amended, nor is the Department opining as to whether the entry into such a revolving loan agreement satisfies the conditions of PTE 80–26, as amended. Further, the Department is not providing, herein, any relief with respect to the entry between RIC and the Plan into any revolving loan agreement.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include participants and beneficiaries of the Plan and retirees receiving benefits.

It is represented that each of these classes of interested persons will be notified of the publication of the Notice by first class mail, within fourteen (14) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment and to request a hearing.

All written comments and/or requests for a hearing must be received by the Department from interested persons within 44 days of the publication of this proposed exemption in the **Federal Register.**

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

Chrysler Group LLC and Daimler AG, Located in Auburn Hills, Michigan and Stuttgart, Germany, Respectively

Exemption Application Number D–11603–07.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[14]

Section I—Chrysler Group Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(b)(1) and (2) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (E) of the Code, shall not apply to the contribution (the Contribution) of notes issued by Daimler AG (the Daimler Notes) by Chrysler Group LLC (Chrysler Group) to certain employee benefit plans sponsored by the Chrysler Group (the Plans), provided that the conditions set forth in section III have been met.

Section II—Daimler AG Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (B) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (B) of the Code, shall not apply to the issuance by Daimler of the Daimler Notes for purposes of the Contributions pursuant to an agreement that was previously entered into while Daimler was a party-in-interest to the Plans, provided that the condition set forth in section IV is met.

Section III—Conditions Applicable to Section I

(a) The terms of each Contribution are consistent with the terms set forth in a settlement agreement (the Settlement Agreement), effective as of June 5, 2009, between/among CG Investment Group, LLC, CG Investor, LLC, Chrysler Holding LLC, CARCO Intermediate HOLDCO I LLC, Chrysler LLC, Daimler AG, Daimler North America Finance Corporation, Daimler Investments US Corporation, and the Pension Benefit Guaranty Corporation (the PBGC). Notwithstanding the above, and also for purposes of condition (c) below, the terms of the Contributions shall not be viewed as being inconsistent with the terms of the Settlement Agreement solely because the Contributions take into account the March 1, 2010 merger (the Merger) of the Global Engineering Manufacturing Alliance UAW Pension Plan into the Pension Agreement between Chrysler Group LLC and the UAW, which occurred after the effective date of the Settlement Agreement;

(b) The fair market value of each Daimler Note will be determined as of the date of the Contributions, by a qualified independent appraiser;

(c) The fair market value of each Daimler Note contributed to a Plan will represent an amount that equates to the amount contemplated for such Plan under the Settlement Agreement;

(d) Each Daimler Note will represent not more than 20% of the total fair market value of the Plan that receives such Note at the time of its Contribution;

(e) Each Plan may immediately sell the Daimler Note it receives pursuant to a Contribution, except that neither Chrysler Group nor any of its affiliates or subsidiaries may be a party to such sale. Notwithstanding the above, restrictions may be imposed on a Plan's ability to sell its Daimler Note if such restrictions are required under State or Federal securities laws or otherwise required by the terms of such Daimler Note;

(f) The Plans do not waive any rights or claims in connection with the Contributions;

(g) The Plans do not pay any fees, costs, or other charges in connection with the Contributions; and

(h) Chrysler Group shall provide the PBGC with written evidence that Chrysler Group: (1) Contributed the Daimler Notes to the Plans; and (2) gave the Plans' trustee instructions regarding the allocation of the Daimler Notes. Such written evidence must be provided within five business days after the receipt by Chrysler Group of such Notes.

Section IV—Conditions Applicable to Section II

(a) Daimler's entering into the Daimler Notes is not part of an arrangement, agreement, or understanding designed to benefit Daimler.

Effective Date: If granted, this proposed exemption will be effective as of September 16, 2010.

Summary of Facts and Representations

1. The applicants are Chrysler Group LLC, (Chrysler Group) and Daimler AG (Daimler). Chrysler Group is the entity that acquired certain of the assets of Chrysler LLC (Chrysler LLC) on June 10, 2009 in a transaction approved by the United States Bankruptcy Court. Chrysler Group sponsors various defined benefit plans (the Plans) which cover employees of Chrysler Group and its affiliates.[15] Chrysler Group describes the Plans as: (1) The Chrysler Group LLC Pension Plan, with 38,635 participants and beneficiaries and approximately $2,712,643,000 in total assets as of April 14, 2010; (2) the JEEP Corporation-UAW Retirement Income Plan, with 8,705 participants and beneficiaries and approximately $774,824,500 in total assets as of April 14, 2010; (3) the Pension Agreement between Chrysler Group and the UAW, with 131,604 participants and beneficiaries and approximately $11,600,000,000 in total asset as of April 14, 2010; and (4) the American Motors Union Retirement Income Plan, with 10,496 participants and beneficiaries and approximately $701,639,500 in total assets as of April 14, 2010.

2. Daimler is an automotive manufacturer with its corporate headquarters located in Stuttgart, Germany. Daimler states that, at the time the arrangements described below were negotiated, agreed to, and entered into, Daimler was a "party in interest" to the Plans, as such term is defined in section 3(14) of ERISA. In this regard, during that period, Daimler had a 19.9% ownership interest in Chrysler LLC: The sponsor of the Plans.[16]

3. Chrysler Group and Daimler (collectively, the Applicants) state that, on May 13, 2007, Daimler entered into an agreement with the PBGC (the 2007 PBGC Agreement), whereby Daimler agreed to guarantee up to $1 billion of unfunded liabilities of the Plans if: (i) One or more of the Plans were terminated in an involuntary or a distress termination; and (ii) upon the occurrence of specified events, including certain "change of control" transactions. In a Binding Term Sheet dated April 27, 2009 (the Binding Term Sheet), the PBGC agreed to reduce the amount of this guarantee to $200 million and, in connection therewith, Daimler agreed to pay $600 million directly to the Plans.[17] The Binding Term Sheet provides that these payments are to be made in three equal installments of $200 million each, with the second and third installments to be made on the first and second anniversaries of the date of a final settlement agreement. The Binding Term sheet provided further that Chrysler LLC would have no right, title

[14] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[15] Hereinafter, unless expressly stated otherwise, the term "Chrysler Group" shall mean Chrysler LLC (for events that occurred prior to June 10, 2009) or Chrysler Group (for events that occur after June 9, 2009).

[16] The Applicants represent that, effective as of June 4, 2009, Daimler redeemed its interest in Chrysler LLC, and, as of that date, Daimler was no longer a party in interest to the Plans.

[17] The Applicants represent that Daimler also obtained releases for certain claims that are not relevant to the transactions described herein.

or interest in the payments, which were intended to belong exclusively and unconditionally to the Plans.

4. Chrysler Group represents that, on June 5, 2009, Chrysler LLC and various of its shareholders, Daimler and various of its affiliates, incorporated the terms of the Binding Term Sheet into a settlement agreement (the Settlement Agreement) with the Pension Benefit Guaranty Corporation (the PBGC). Chrysler Group states that the Settlement Agreement expressly supersedes the Binding Term Sheet. Under the terms of the Settlement Agreement, the PBGC agreed to release Daimler from its $1 billion guaranty and, in exchange, Daimler agreed to pay $600 million in three $200 million installments to Chrysler Group (the Installment Payments).[18] Chrysler Group represents that Daimler made the first $200 million Installment Payment to Chrysler Group, in cash, on June 15, 2009; and Chrysler Group, upon receipt of this payment, immediately contributed $200 million in cash to the Plans. Chrysler Group represents further that Daimler made a second $200 million Installment Payment to Chrysler Group, in cash, on June 7, 2010; and Chrysler Group, upon receipt of this payment, immediately contributed $200 million in cash to the Plans. Chrysler Group represents that, to date, of the $400 million in cash transferred from Chrysler Group by the Plans: (1) The JEEP Corporation-UAW Retirement Income Plan received approximately $62.8 million; (2) the Pension Agreement between Chrysler Group and the UAW received approximately $327.2 million; and (3) the American Motors Union Retirement Income Plan received approximately $9.6 million. Chrysler Group represents that these amounts were determined in accordance with the terms set forth in the Settlement Agreement (after taking into account the merging two employee benefit plans covered by the Settlement Agreement). Chrysler Group states that such apportionment reflects the terms of the Settlement Agreement, and takes into account, among other things, certain funding characteristics of the Plans.

5. The Settlement Agreement provides that the third Installment Payment may be achieved in one of two ways: (1) In the form of a $200 million cash payment by Daimler to Chrysler Group by June 7, 2011 (the Installment Due Date), after which Chrysler Group must immediately transfer $200 million in cash to the Plans; or (2) by means of four notes issued by Daimler (the Daimler Notes) and delivered to Chrysler Group, pursuant to an arrangement whereby Chrysler is obligated to immediately contribute the Notes (the Contributions) to the Plans.

6. Chrysler Group states that the Contributions could be viewed as violating sections 406(a)(1)(A) and 406(b)(1) and (b)(2) of ERISA since the Contributions would involve an in-kind contribution by Chrysler Group to the Plans, which are defined benefit plans. In addition, Daimler notes that, when the parties entered into the Binding Term Sheet and negotiated the Settlement Agreement, Daimler was a party in interest to the Plans. Daimler believes that its agreement to issue the Daimler Notes as well as the actual entering into of the Daimler Notes under an arrangement whereby the Daimler Notes will be Contributed by Chrysler Group to the Plans, as such acts are contemplated by the Binding Term Sheet and the Settlement Agreement, could therefore be viewed as an impermissible extension of credit or sale or exchange in violation of sections 406(a)(1)(A) and (B) of ERISA.

7. Chrysler Group views the deliverance of the Daimler Notes to Chrysler Group for purposes of the Contributions as being more beneficial to the Plans than the alternative, which is a cash payment by Daimler to Chrysler Group on the Installment Due Date. In this regard, Chrysler Group represents that, once a Daimler Note is transferred by the Chrysler Group to a Plan, as is required under the Settlement Agreement, the obligation under the Note would run directly from Daimler to the Plan. Chrysler Group states that this arrangement significantly reduces the ability of Chrysler Group's creditors to reach the third Installment Payment. Additionally, once a Daimler Note is transferred to a Plan, the Plan could immediately sell the Note to parties other than Chrysler Group, subject to certain restrictions required by applicable securities laws. Accordingly, a Plan may receive the proceeds from the sale of a Daimler Note prior to the Installment Due Date.

8. Chrysler Group represents that the Contributions would be structured in a manner that is protective of the Plans. In this regard, following a Contribution, a Daimler Note will represent not more than 20 percent of the total fair market value of each Plan that receives such Note. Additionally, the Plans will not pay any fees, costs, or other charges in connection with the Contributions. Chrysler Group represents further that the fair market value of each Daimler Note will be determined as of the date of the Contribution, by a qualified independent appraiser. In this regard, Chrysler Group has selected PriceWaterhouseCoopers (PWC) to determine the fair market value of the Daimler Notes. Chrysler Group represents that PWC is independent of Chrysler Group, having received less than one percent of its revenue from Chrysler Group over the last two fiscal years. In addition, Chrysler Group states that PWC anticipates receiving less than one percent of its revenue from Chrysler Group during the current fiscal year.

9. Chrysler Group states that the exemption, if granted, will be administratively feasible because it involves a finite one-time transaction, and Daimler has no ownership in or on-going relationship with Chrysler Group or any of its affiliates. According to Chrysler Group, the internal fiduciaries of the Plans would have no hesitation to enforce the claims of the Plans in the unlikely event that Daimler failed to make a payment on the Daimler Note, and the internal fiduciaries would have no conflict of interest that could cloud their judgment in this regard. Chrysler Group states also that the PBGC, as a party to the Settlement Agreement, has the full right on its own initiative to enforce the terms of the Settlement Agreement, including the obligation of Daimler to make the third $200 million Installment Payment to the Plans.

10. Chrysler Group represent that, in addition to the safeguards described above, the Plans will not waive any rights or claims in connection with the Contributions. With respect to the issuance by Daimler of the Daimler Notes pursuant to an arrangement set forth while Daimler was a party-in-interest to the Plans, Daimler states that Daimler's entering into the Daimler Note will not be part of an arrangement, agreement, or understanding designed to benefit Daimler.

11. Chrysler Group states that the proposed transactions meet the requirements set forth in section 408(a) of ERISA since, among other things:

(a) The terms of each Contribution will be consistent with the terms of the Settlement Agreement, after taking into account the Merger;

(b) The fair market value of each Daimler Note will be determined as of the date of the Contribution, by a qualified independent appraiser;

(c) The fair market value of each Daimler Note contributed to a Plan will represent an amount that equates to the amount contemplated for such Plan under the Settlement Agreement, after taking into account the Merger;

(d) Each Daimler Note will represent not more than 20% of the total fair

[18] Hereinafter, the term "Chrysler Group" shall refer also to Chrysler LLC.

market value of the Plan that receives such Note at the time of the Contribution;

(e) With only limited exceptions, each Plan may immediately sell the Daimler Note it receives pursuant to a Contribution;

(f) The Plans will not waive any rights or claims in connection with the Contributions;

(g) The Plans will not pay any fees, costs, or other charges in connection with the Contributions; and

(h) Chrysler Group will provide the PBGC with written evidence that Chrysler Group: (1) Contributed the Daimler Notes to the Plans; and (2) gave the Plans' trustee instructions regarding the allocation of the Daimler Notes. Such written evidence will be provided within five business days after the receipt by Chrysler Group of such Notes.

12. Daimler states that the issuance by Daimler of the Daimler Notes pursuant to the Settlement Agreement meets the requirements set forth in section 408(a) of ERISA since Daimler's entering into the Daimler Note will not be part of an arrangement, agreement, or understanding designed to benefit Daimler.

Notice to Interested Persons

Chrysler Group requests that notice be provided by posting a copy of the proposed exemption wherever employee notices are posted in the work places. In addition, Chrysler Group represents that it will work with the UAW, the union representing many of the participants in the Plans, to post a copy of the notice in the union halls and arrange for a copy of the proposal to be printed in the union newspapers. Chrysler Group will also arrange for a copy of the proposed exemption to be printed in the local newspapers covering the general vicinity of Chrysler Group's current and closed plants and facilities. The notices shall advise each recipient of the recipient's right to provide comments to the Department and/or to request a hearing with respect to the proposed exemption and the due date for any such comments/request.

Such notice will be completed within 60 days of the issuance of the proposed exemption. Any written comments must be received by the Department from interested persons within 75 days of the publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chris Motta of the Department, telephone (202) 693–8544. (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 10th of September 2010.

Ivan Strasfeld,

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

[FR Doc. 2010–23059 Filed 9–15–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Renewal of the Advisory Committee on Apprenticeship (ACA), and an Open Meeting

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92 463; 5 U.S.C. APP. 1), notice is hereby given to announce the renewal of the ACA, the new membership appointments, and an open meeting being held on October 27–28, 2010.

The Employment and Training Administration (ETA) hereby announces the renewal of the ACA and that membership appointments have been made to fill committee vacancies. The ACA is an advisory board, authorized by 29 U.S.C. 50a, which permits the Secretary of Labor to appoint a national advisory committee to serve without compensation, and complies with the requirements of the Federal Advisory Committee Act (5 U.S.C., App.). The ACA will provide advice and recommendations to the Secretary of Labor on a variety of matters facing the National Registered Apprenticeship System. The ACA membership is comprised of individuals that represent labor unions, employers, and members of the public.

All members were appointed in July 2010, for two-year terms expiring in July 2012. Pursuant to the ACA Charter, the National Association of State and Territorial Apprenticeship Directors (NASTAD) and the National Association of Governmental Labor Officials (NAGLO) are both represented by their current Presidents on the public group of the ACA. The Secretary has appointed Ms. Phaedra Ellis-Lamkins, Chief Executive Officer from Green for All as the Chairperson of the ACA.

TIME AND DATE: An open meeting of the ACA is scheduled for October 27–28, 2010, in Washington, DC. The meeting will begin at approximately 9 a.m. on Wednesday, October 27, 2010, and continue until approximately 5 p.m. The meeting will reconvene on Thursday, October 28, 2010, at approximately 9 a.m. and adjourn at approximately 5 p.m.

PLACE: U.S. Department of Labor, Frances Perkins Building, the Great Hall, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. John V. Ladd, Administrator, Office of