will be protective of the rights of the participants and beneficiaries because the Fund will receive a purchase price which is an amount representing the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) the Sale is a one-time transaction for cash; (b) the terms and conditions are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party; (c) the Sales price is an amount which represents the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser; and (d) the Fund does not incur any expenses with respect to the Sale.

Notice to Interested Persons: Notice of the proposed exemption shall be given 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 pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due on or before [date]. For further Information Contact: Mr. James Scott Frazier, telephone (202) 219-8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transactions provisions to which the transaction 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 16th day of June, 1998.

Ivan Strasfeld,

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

[FR Doc. 98–16335 Filed 6–18–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration


Grant of Individual Exemptions; Massachusetts Mutual Life Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code). Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

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

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.


Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by MM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) Transfers Between Accounts

(1) The restrictions of section 406(b)(2) of the Act shall not apply to
the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is payable at any time without penalty.

(e) Shared Debt Investments—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower, any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, or any exercise of a right under the loan agreement in the event of such default, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM thereof on behalf of two or more ERISA-Covered Accounts; (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by MM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) Additional Capital Contributions—

(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is payable at any time without penalty.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is payable at any time without penalty.

(3) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate pro rata equity capital contributions or the failure to make such additional contributions) in the joint venture by one or more Accounts which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate pro rata equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all
additional equity capital contributions on a proportionate basis.

(b) Third Party Purchase Offers—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer’s interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and “selling” Account’s interests in the joint venture.

(c) Rights of First Refusal—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer’s interest in the joint venture at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer’s interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally disinterested in a transactions with respect to commercial real estate investments, or

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments that are structured as shared investments under this exemption is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the final exemption.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) a business organization which has at least five years of experience with respect to commercial real estate investments,

(2) a committee composed of three to five individuals (who may be investors or investor representatives approved by the plans participating in the ERISA-Covered Account, and) who each have at least five years of experience with respect to commercial real estate investments, or

(3) the plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of MM or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from MM, its affiliates and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his or her annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation shall not include compensation for services rendered to a single-customer ERISA-Covered Account by an independent fiduciary who is initially selected by the Plan sponsor for that ERISA-Covered Account.

The income limitation will include income for services rendered to the Accounts as an independent fiduciary under any prohibited transaction exemption(s) granted by the
Department. Notwithstanding the foregoing, such income limitation shall not include any income for services rendered to a single customer ERISA-Covered Account by an independent fiduciary selected by the Plan sponsor to the extent determined by the Department in any subsequent prohibited transaction exemption proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, MM, its affiliates, or any Account maintained by MM or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by MM or its affiliates for each of the transactions in this exemption. In the case of a possible transfer or exchange of any interest in a shared investment between the General Account and an ERISA-Covered Account, the independent fiduciary shall also have full authority to negotiate the terms of the transfer. MM and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments. With regard to the shared real estate investments, the independent fiduciary shall be concerned those persons to whom MM proposes to engage in transactions under this exemption who have authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary.

Second, with respect to the second paragraph of Representation 1 of the Summary, MM wishes to clarify that the exemption will cover Accounts (including ERISA-Covered Accounts) other than those currently in existence, and which may invest in equity real estate and mortgage investments.

Third, the last sentence of Representation 7 of the Summary concerns those persons to whom MM must make certain disclosures regarding its shared real estate investments. With respect to the proposed exemption and other information to be contained in such disclosures, MM seeks to clarify that it was only required to provide a copy of the proposed exemption within 30 days of the publication of the proposed exemption (i.e., March 8, 1998) to each current contract holder in an ERISA-Covered Account that proposes to engage in transactions which are structured as shared investments under the exemption. In addition, MM states that it will provide a copy of this exemption (as published in the Federal Register) before the Account begins to participate in such investments.
Fourth, concerning the first sentence of Representation 8 of the Summary, MM states that in order to more clearly define the persons to whom certain disclosures must be made, the sentence should be rewritten to read as follows:

With respect to new contractholders in an ERISA-Covered Account that participates in the sharing of investments which are structured as shared investments under this exemption, each such contractholder may be provided with the description outlined above, a copy of the notice of pendency and a copy of the exemption as granted, before the Account begins to participate in the sharing of such investments.

Fifth, with respect to Footnote 4 in Representation 12 of the Summary, relating to the sophistication of investors participating in MM's single contract, the pool of closed-end real estate Accounts, MM states that this footnote only refers to contractholders in its ERISA-Covered Accounts which engage in transactions structured as shared investments under this exemption.

Finally, the third sentence in Representation 18 of the Summary and the fourth paragraph of Representation 21 of the Summary both refer to the partition and sale of undivided and divided real estate investment interests, respectively. In this regard, MM seeks to clarify that the partition and sale of such interests is meant to establish a possible resolution to the stalemates which are described in the above representation, and the sale of one or more resulting divided interests, including those interests which are co-owned by some of the Accounts. The Department confirms that these scenarios are presented only as examples of possible resolutions to the stalemates which are described in Representations 18 and 21 of the Summary. Such events would involve the partition of property in which Accounts own a fractional undivided interest in the whole, and the sale of one or more resulting divided interests, including those interests which are co-owned by some of the Accounts. The Department confirms that these scenarios are presented only as examples of possible resolutions to the stalemates which are described in Representations 18 and 21 of the Summary, and are not meant to describe resolutions to other matters.

In addition, the Department acknowledges all of the above-described clarifications by MM to the record which formed the basis for the proposed exemption as published in the Federal Register.

Accordingly, after considering the entire record, including the comments made by MM, the Department has determined to grant the exemption as proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Knoxville Surgical Group Qualified Retirement Plan (the Plan) Located in Knoxville, Tennessee
[Prohibited Transaction Exemption 98–29; Exemption Application No. D–10506]

Exemption
The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the sale (the Sale) of the medical office condominium (the Property) by the Plan to Hugh C. Hyatt, M.D., Richard A. Brinner, M.D., Randal O. Graham, Michael D. Kropilak, M.D., and P. Kevin Zirkle, M.D., parties in interest with respect to the Plan provided the following conditions are satisfied: (1) the Sale will be a one-time transaction for cash; (2) the Property will be sold at a price equal to the greater of $780,000 or the fair market value of the Property on the date of the Sale; and (3) the Plan will pay no commissions or expenses associated with the Sale.

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 February 6, 1998 at 63 FR 6216.

Written Comments: The Department received one comment from the applicant. The applicant noted that during the Department's consideration of the exemption application, the Knoxville Surgical Group had originally planned to merge the Plan into the Premier Surgical Plan. However, this merger did not occur. Rather, the Plan will remain a dormant plan with all participants fully vested.

The Department has considered the entire record, including the comment submitted by the applicant, and has determined to grant the exemption as proposed.

For Further Information Contact: Allison Padams Lavigne, U. S. Department of Labor, telephone (202) 219–8971. (This is not a toll-free number.)

Jack Mayesh Wholesale Florist, Inc. Profit Sharing Plan (the Plan) Located in Los Angeles, California
[Prohibited Transaction Exemption 98–30; Exemption Application No. D–10524]

Exemption
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 to the sale by the Plan of certain unimproved real property (the Property) to Roy Dahlson, a party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) the Sale is a one-time transaction for cash; (2) the Plan pays no commissions or other expenses associated with the Sale; and (3) the Plan receives an amount which is the greater of either (a) the fair market value of the Property as of the date of the Sale, as determined by a qualified independent appraiser, or (b) the original acquisition cost of the Property to the Plan, plus lost opportunity costs attributable to the Property.

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 22, 1998 at 63 FR 19950.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Pipefitters Local Union No. 537 Pension Fund (the Plan) Located in Boston, Massachusetts
[Prohibited Transaction Exemption 98–31; Application No. D–10577]

Exemption
The restrictions of sections 406(a) and 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 to the sale (the Sale) of certain real property (the Property) to the Plan by Local Union 537 (the Union) of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are more favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

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

(C) The Plan incurs no expenses from the Sale;

(D) The Plan pays no expenses from the Sale;

(E) The independent fiduciary for the Plan undertakes to monitor and enforce the terms of the exemption.

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 22, 1998 at 63 FR 19950.
exemption, refer to the Notice of Proposed Exemption published on April 22, 1998, at 63 FR 19953.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

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

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

Signed at Washington, D.C., this 16th day of June 1998.

Ivan Strasfeld,
Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.
[FR Doc. 98-16337 Filed 6-18-98; 8:45 am]