

**Section III—Definitions**

(a) **Index Fund**—Any investment fund, account or portfolio sponsored, maintained and/or trustee by the Bank, or an affiliate of the Bank, in which one or more investors invest which is designed to replicate the capitalization-weighted composition of a stock index which satisfies the conditions of Section I(a) and (i).

(b) **Model-Driven Fund**—Any investment fund, account or portfolio sponsored, maintained and/or trustee by the Bank, or an affiliate of the Bank, in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independent third-party stock index which satisfies the conditions of Section I (a) and (i).

(c) **Affiliate**—Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or a sister of such person; and any corporation or partnership of which such person is an officer, director, or partner.

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 12, 1995, at 60 FR 35944.

**FOR FURTHER INFORMATION CONTACT:** Mr. E. F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

**Rollover Individual Retirement Accounts for Joseph Shepard, Located in Jacksonville, Florida; William Haspel, Located in Bethesda, Maryland; and Richard Geisendaffer, Paul Petryszak, William Kroh and Rolf Graage, Located in Baltimore, Maryland (Collectively, the IRAs)**

[Prohibited Transaction Exemption 95-80; Exemption Application Nos. D-10054-10059]

**Exemption**

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 past sale by the IRAs of all the common stock (the Stock) of Purchase Port Services, Inc. (PPS) held by the IRAs to PPS, provided that the following conditions were satisfied: (1) The sale of Stock by each IRA was a one-time transaction for cash; (2) no commissions or other expenses were paid by the IRAs in connection with the sale; and (3) the IRAs received the greater of: (a) the fair market value of the Stock as determined

by a qualified independent appraiser as of May 31, 1995, or (b) the fair market value of the Stock as of the time of the sale.<sup>2</sup>

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 21, 1995 at 60 FR 37688.

**EFFECTIVE DATE:** This exemption is effective July 28, 1995.

**WRITTEN COMMENT:** The Department received one written comment with respect to the proposed exemption, which was submitted by the applicants. The applicants had represented (see notice of proposed exemption, rep. 4) when they filed their exemption application that "Business and income tax considerations have compelled PPS to consider making an election to be treated as a 'Subchapter S' Corporation under section 1362(a) of the Code." The applicants noted in their comment letter that subsequent to the filing of the exemption request, PPS determined that, rather than electing Subchapter S Corporation status itself, PPS would merge into its subsidiary, Hobelmann Port Services, Inc. (HPS), and that HPS would elect Subchapter S Corporation status. That merger was concluded effective July 31, 1995, and HPS elected Subchapter S Corporation status effective August 1, 1995. The applicants represent that the decision to make HPS rather than PPS the entity to elect Subchapter S status was made for business purposes unrelated to the redemption of the IRAs' shares, and is not material to the requested exemption.

The applicants also requested that the exemption be made effective July 28, 1995, instead of July 31, 1995, as had been proposed. The sale of shares from the IRAs to PPS occurred on July 28, 1995 to allow sufficient time before July 31, 1995 to complete other steps relating to the Subchapter S Corporation election. The applicants represent that the sale was made in accordance with all of the conditions set forth in the proposed exemption.

The Department has considered the entire record, including the comment submitted by the applicants, and has determined to grant the exemption effective July 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

<sup>2</sup>Pursuant to 29 CFR 2510.3-2(d), the IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

**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 are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 31st day of August, 1995.

**Ivan Strasfeld,**

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

[FR Doc. 95-22042 Filed 9-5-95; 8:45 am]

**BILLING CODE 4510-29-P**

[Application No. D-09956, et al.]

**Proposed Exemptions; TSC International Ltd., Custom Marketing and Import Profit Sharing Plan (the Plan)**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request 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. 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 request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**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 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. 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.

**TSC International Ltd., Custom Marketing and Import Profit Sharing Plan (the Plan) Located in Kansas City, MO**

[Application No. D-09956]

*Proposed Exemption*

The Department of Labor is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed (1) redemption by TSC International Merchandising Ltd., Custom Marketing and Import Company (TSC) of 19,000 shares of common stock issued by TSC and held by the Plan; and (2) the extension of credit by the Plan to TSC in connection with the redemption of the stock.<sup>1</sup>

The proposed exemption is conditioned on the following requirements:

(1) The redemption price for the stock is determined by a qualified, independent appraiser.

(2) The note which evidences the redemption price for the stock represents not more than 25 percent of the Plan's assets.

(3) The terms of the note are based upon terms that are comparable to those that would be extended by a third party lender.

(4) The stock, which secures TSC's obligations under the note, at all times represents 200 percent of the outstanding balance of the note; however, if the value of the stock ever falls below the 200 percent level, TSC will pledge additional collateral.

(5) The Plan is not required to pay any fees or commissions in connection with the redemption of the stock or the administration of the note.

(6) Boatmen's First National Bank of Kansas City (Boatmen's) holds certificates representing the stock in an escrow account until TSC pays the redemption price in full.

(7) The Plan increases its liquidity and investment yield by disposing of an asset and receives cash to promote asset diversification.

*Summary of Facts and Representations*

1. The Plan is a profit sharing plan with Mr. Jack Hardgree as its only participant. As of December 12, 1994, the Plan had net assets of \$565,500. The trustee of the Plan and the decisionmaker with respect to the Plan's investments is Mr. Hardgree.

2. TSC is a "C" corporation that maintains its principal place of business in Prairie Village, Kansas. It is engaged in the import business and primarily deals in metal products for U.S. manufacturers. Mr. Hardgree is the sole director, officer and employee of TSC.

3. The Plan currently holds 19,000 shares of common stock of TSC. The stock has a stated par value of \$10 per share and it is not publicly-traded. The shares of stock that are held by the Plan represent 97 percent of the issued and outstanding stock of TSC. The 3 percent remaining shares of stock are owned by Mr. Hardgree.

4. Prior to the incorporation of TSC in January 1984, Mr. Hardgree was a manufacturer's representative with an unrelated company, Merchandise International, Inc. (MII). That company had a money purchase pension plan (the MII Plan) with individually-directed accounts. In late 1983, Mr. Hardgree resigned from his employment with MII, having been bought out by the two remaining principals of MII. Although Mr. Hardgree had no further connections with MII as an employee or

<sup>1</sup> Because Mr. Jack Hardgree is the sole participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

owner after his resignation, he continued to participate in the MII Plan.

5. In January 1984, Mr. Hardgree formed TSC. At the time of incorporation of TSC, Mr. Hardgree, in his personal capacity, acquired 500 shares of TSC common stock directly from TSC for \$10 per share. This amount represented the par value of such stock. In May 1985, Mr. Hardgree directed the trustee of the MII Plan to acquire, from TSC, 9,500 shares of TSC common stock for his individually-directed account in such Plan. The acquisition price for the stock was \$10 per share. Although the stock had been authorized in TSC's corporate charter, it had not been issued.

In 1986, Mr. Hardgree again directed the trustee of the MII Plan to acquire, from TSC, an additional 9,500 shares of TSC's authorized but unissued common stock, for his individually-directed account in the MII Plan. The acquisition price for the stock was also established at \$10 per share. It is represented that at the time of both stock acquisitions, Mr. Hardgree had no interest in MII other than as a participant in the MII Plan. It is also represented that following the stock acquisitions, TSC common stock constituted the majority of the assets of Mr. Hardgree's account in the MII Plan.<sup>2</sup>

6. In January 1991, TSC established the Plan by adopting the Mid American Bank & Trust Company Defined Contribution Master Plan. Soon after the establishment of the Plan, the trustee of the MII Plan transferred all 19,000 shares of TSC common stock to Mid American Bank & Trust Company, the former trustee of the Plan, in a "trustee-to-trustee transfer." It is represented that Mr. Hardgree was advised that the stock transfer which was made on behalf of the Plan did not constitute a prohibited transaction.<sup>3</sup>

7. Mid American Bank & Trust Company later became part of Johnson County Bank which was thereafter acquired by Mercantile Bank. In December 1994, Mercantile Bank became the custodian for the Plan and Mr. Hardgree, the trustee.

8. TSC paid an unrelated third-party investment banking firm, Stern Brothers & Co. of Kansas City, Missouri for a valuation report of the 19,000 shares of TSC common stock that are held by the

Plan. According to the appraisal report dated December 14, 1994, which was prepared by Messrs. John C. Korschot, CFA, ASA, CBA and David K. Jones, CBA of the firm, as of December 2, 1994, the 19,000 shares of TSC common stock held by the Plan had a fair market value of \$535,500 or \$27.46 per share. The appraisers stated that they used the adjusted book value approach and the market comparison approach in rendering their opinion as to the fair market value of the Plan's controlling interest in the stock. In addition, the appraisers explained that they applied a discount factor of 15 percent to the initial value of \$640,000 they had determined for the stock due to its lack of marketability. The appraisers further noted that a control premium was implied in the \$640,000 initial value.

9. Although the value of TSC common stock and Plan assets have increased significantly, it is represented that by holding only TSC stock, the Plan is in an illiquid position should assets be needed for distributions. Moreover, it is represented that TSC cannot promise that its stock will hold or increase in value. Therefore, TSC requests an administrative exemption from the Department in order to redeem the shares of TSC common stock that are held by the Plan in return for cash and a promissory note.

10. TSC proposes to redeem the stock held by the Plan by giving the Plan a cash downpayment of \$394,125 and a promissory note in the principal amount of \$141,375. The note will bear a fixed rate of interest of 11 percent per annum. The note will also provide for monthly installments of principal and interest over a period of two years after the date of the redemption. The note may be prepayable without penalty at any time by TSC. In addition, the Plan will not be required to pay any fees or commissions in connection with the redemption of the TSC common stock or with respect to the administration of the proposed loan.

11. The note will be secured by the shares of the TSC common stock that are redeemed from the Plan. The security interest in such shares will be a first security interest and it will be governed by an escrow agreement (the Escrow Agreement) between TSC and Boatmen's, with whom TSC currently has a revolving loan arrangement, as escrow agent. At all times, the fair market value of the stock will represent 200 percent of the outstanding principal balance of the note. If, however, the fair market value of the stock should ever fall below this level, TSC will pledge additional collateral to cover the loan payments made under the note. As

further security, Mr. Hardgree will assign a portion of his life insurance policy in the amount of the note.

12. By letter dated June 23, 1995, TSC received a loan commitment in the amount of \$141,375 from an unrelated lender, Missouri Bank & Trust Company of Kansas City (Missouri Bank & Trust). The terms offered by Missouri Bank & Trust are comparable to the terms of the note.

13. Under the Escrow Agreement, TSC will pledge all 19,000 shares of the stock that are redeemed from the Plan by the delivery of certificates evidencing such pledged shares to Boatmen's. Boatmen's will hold the certificates until the loan is repaid. If at any time TSC defaults in the payment of principal or interest on the note, and the default remains uncured for two months after written notice, the entire unpaid principal amount of the note and accrued interest thereon will become immediately due and payable. Then, the Plan will have all of the certificates on deposit delivered to it. At the end of 20 days after receipt of a written demand from the Plan, together with evidence that the notice of the demand has been given to TSC, Boatmen's will deliver to the Plan the certificates held by Boatmen's. If, however, satisfactory proof is presented to Boatmen's that all installments of the note have been paid, Boatmen's will deliver to TSC, the shares remaining in its possession. Afterwards, all obligations between the Plan, TSC and Boatmen's will cease.

The Plan will not be required to pay any fees or expenses in connection with the administration of the Escrow Agreement. Further, no parties to the Escrow Agreement will grant a security interest in any of the securities deposited with Boatmen's or create a lien, encumbrance, or other claim against monies or borrow from such stock.

14. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The redemption price for the stock has been determined by a qualified, independent appraiser.

(b) The note which evidences the redemption price for the stock will represent 25 percent of the Plan's assets.

(c) The terms of the note are based upon terms that are comparable to those that would be extended by a third party lender.

(d) The stock, which secures TSC's obligations under the note, at all times will represent 200 percent of the outstanding balance of the note.

<sup>2</sup>The Department expresses no opinion herein on whether the acquisition of TSC common stock by Mr. Hardgree's individually-directed account in the MII Plan violated any of the provisions of Part 4 of Title I of the Act.

<sup>3</sup>The Department expresses no opinion herein on whether the transfer of the TSC common stock from the MII Plan to the Plan violated the exclusive benefit rule of section 401(a) of the Code.

(e) The Plan will not be required to pay any fees or commissions in connection with the redemption of the stock or the administration of the note.

(f) Boatmen's will hold certificates representing the stock in an escrow account until TSC pays the redemption price for the stock in full.

(g) The Plan will increase its liquidity and investment yield by disposing of an asset and receive cash to promote greater asset diversification.

**Notice to Interested Persons**

Because Mr. Hardgree is the only participant in the Plan who will be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of pendency to interested persons. Therefore, comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady 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 of 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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 31st day of August, 1995.

**Ivan Strasfeld,**

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

[FR Doc. 95-22043 Filed 9-5-95; 8:45 am]

BILLING CODE 4510-29-P

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 95-084]

**NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors meeting.

**DATES:** October 17, 1995, 8:30 a.m. to 4:30 p.m.; October 18, 1995, 8:30 a.m. to 4:30 p.m.; and October 19, 1995, 8:30 a.m. to 11:30 a.m.

**ADDRESSES:** National Aeronautics and Space Administration, Langley Research Center, Building 1268A, Room 2120, Hampton, VA 23681-0001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604-5567.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

- NASA Actions on Committee's Previous Recommendations
- NASA Human Factors Overview and Updates on Ames Research Center and Langley Research Center Programs
- Crew-Centered Design Philosophy
- Aviation Safety and Automation Program
- Human Engineering Methods
- Air Traffic Management Human Factors

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: August 31, 1995.

**Danalee Green,**

*Management Controls Office.*

[FR Doc. 95-22076 Filed 9-5-95; 8:45 am]

BILLING CODE 7510-01-M

**NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES**

**National Endowment for the Arts; President's Committee on the Arts and the Humanities**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that the President's Committee on the Arts and the Humanities will hold five Regional Planning Meetings in the month of September 1995.

The date, times, and locations are as follows:

Dates/times	Locations
September 13 from 2:30 p.m. to 4:30 p.m.	Lyndon Baines Johnson Library, 2313 Red River Street, Austin, TX 78705.
September 15 from 1:30 p.m. to 3:30 p.m.	J. Paul Getty Trust, 401 Wilshire Boulevard, Santa Monica, CA 90401.
September 18 from 2:30 p.m. to 4:30 p.m.	Room 527, Nancy Hanks Center, 1100 Pennsylvania Avenue, Washington, DC 20506.
September 19 from 2:00 p.m. to 4:00 p.m.	American Express Company, 200 Vesey Street, New York, NY 10285.
September 22 from 2:00 p.m. to 4:00 p.m.	Sara Lee Corporation, Three First National Plaza, Chicago, IL 60602.