Laboratory subject to the limitations and conditions listed below:

Limitations

This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standard for the testing and certification of equipment or materials included within the scope of this standard:

- ETI has stated that the standard is utilized to test equipment or materials which may be used in environments under OSHA's jurisdiction. This standard is considered appropriate under 29 CFR 1910.07(c): ANSI/UL 508—Industrial Control Equipment.

Conditions

Electro-Test, Inc. shall also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

- The Occupational Safety and Health Administration shall be allowed access to ETI's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;
- If ETI has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;
- ETI shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ETI agrees that it will allow no representation that it is either a recognized or accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;
- ETI shall inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, including details;
- ETI shall continue to meet the requirements for recognition in all areas where it has been recognized; and
- ETI shall always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Effective Date: This recognition will become effective on October 6, 1995 and will be valid for a period of five years from that date, until October 6, 2000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, D.C. this 2nd day of October 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–24941 Filed 10–5–95; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–10096, et al.]

Proposed Exemptions; Profit Sharing Plan of NEBCO, Inc.

AGENCY: Pension and Welfare Benefits 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 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: All interested persons are invited to submit written comments or request 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 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.

Profit Sharing Plan of NEBCO, Inc. (the Plan) Located in Lincoln, Nebraska

[Application No. D–10096]

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). If the exemption is granted 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 (1) the proposed extensions of credit in the form of guarantees and advances of funds (the Advances) to the Plan by NEBCO, Inc. (the Employer), the sponsor of the Plan, with respect to the Guaranteed Investment Contract No. 64238 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation);

and (2) the repayment of the Advances by the Plan to the Employer; provided that the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan would receive in arm's-length transactions; (b) No interest payments or expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Advances will be restricted to proceeds from the GIC (GIC Proceeds); (d) Repayment of Advances will be waived by the Employer to the extent that Advances exceed the GIC Proceeds; and (e) All unpaid principal and earned interest of the GIC will be completely paid by the Advances to the Plan by March 15, 2000.

Summary of Facts and Representations

1. The Employer, which has been in business since 1910, is a privately-owned Nebraska corporation. It is primarily engaged in the production, manufacture, and sale and resale of construction materials. These materials include, among other things, sand and gravel, pipe, ready mixed concrete block, and other prestressed products. Its principal place of business is Lincoln, Nebraska and it employs approximately 500 individuals.

2. The Plan is a defined contribution profit sharing plan, providing for individually-directed participant accounts, which includes a cash or deferred arrangement that is intended to qualify under sections 401(a) and 401(k) of the Code. As of December 31, 1994, the Plan had 414 participants and total assets of $18,947,900.00.

The Employer is the administer and named fiduciary as prescribed by the Act. Authority to administer and manage the Plan has been allocated by the Employer to the Retirement Committee (the Committee), which is appointed annually from the officers of the Employer by its Board of Directors.[1]

With the respect to the Plan, the duties of the Committee include, *inter alia,* selecting trustees, portfolio managers, and the investment options for the participants, as well as monitoring the investment performance of the assets of the Plan. In performing its duties, the Committee has selected four different funds for the participants to direct the investment of assets in their respective Plan accounts, which include the following: (a) The Bond Fund, (b) the Equity Fund, (c) the International Equity Fund, and (d) the Stable Value Fund.

The Bond Fund is managed by FirsTier Financial, Inc., a regional multi-bank holding company incorporated and headquartered in Nebraska.

The assets of the Equity Fund offers three different investment options: the Washington Mutual Investors Fund; the American Mutual Funds; and E.B. Growth Stock Fund. The first two options are registered mutual funds and the third is a bank collective trust fund managed by FirsTier Financial, Inc. The three options are invested primarily in shares of common stocks of U.S. corporations.

The International Equity Fund has all its assets invested in the Templeton Foreign Fund, a registered mutual fund with its investments in shares of common stock issued by foreign corporations.

The Stable Value Fund is managed by two different portfolio managers. One of these portfolio managers is Norwest Corporation, a bank holding company headquartered in Minneapolis, Minnesota with bank branches in Nebraska. Norwest Corporation manages a pooled fund invested in Guaranteed Investment Contracts and other short term instruments issued by insurance companies, banks, and corporations. The other portfolio manager for the Stable Value Fund is the FirsTier Financial, Inc., which selects and manages the investments in individual Guaranteed Investment Contracts issued by insurance companies. As of December 31, 1994, the Stable Value Fund had 199 participant accounts with a value of $4,067,446.98 equalling 21.5 percent of the total value of the Plan.

Wyoming Trust and Management Company, incorporated in Wyoming and a subsidiary of FirsTier Financial, Inc., is the trustee of the Plan (the Trustee), which provides the services as custodian of Plan assets and as participant recordkeeper.

3. Among the Plan assets in the Stable Value Fund is the GIC issued on March 15, 1991, by Confederation for the principal sum of $500,000.00 to the nominee of FirsTier Financial, Inc. as contract holder for various employee benefit plans.[2] The applicant represents that the GIC is a single-deposit non-benefit-responsive contract, earning interest on the principal at the annual rate of 8.47 percent. The contract provides for annual interest payments, and has a maturity date of March 14, 1996. As of December 31, 1994, the Plan's allocated share of the principal and accumulated interest of the GIC was $257,754.62, representing 6.3 percent of the value of the Stable Value Fund.

The applicant represents that on August 11, 1994, the insurance regulators of Canada seized the assets of Confederation, and on the following day, August 12, 1994, the Ingham County Circuit Court, Lansing, Michigan placed the assets of Confederation located in the United States in conservatorship and rehabilitation, causing Confederation to suspend all payments on its contracts, including the GIC.[3] The applicant further represents that Confederation did not make its scheduled interest payment on the GIC for March 14, 1995, and that it appears unlikely that Confederation will make payment of the principal and interest to the Plan when the GIC matures on March 14, 1996.

4. In order to protect the Plan and its participants and beneficiaries, the Employer proposes to guarantee and advance funds for the payment of the principal amount of the GIC plus interest at the stated contract interest rate of 8.47 percent per annum through December 31, 1994, and thereafter, at the quarterly interest rate earned by the Plan's investment in a diversified Guaranteed Investment Contract fund (the Stable Return Fund) managed by Norwest Corporation.[4] If the conservatorship and rehabilitation of Confederation extends beyond March 14, 2000, the Employer represents that it will make Advances on March 15, 2000, to satisfy any remaining guaranteed amount so that the Plan has complete recovery of the principal amount of the GIC and the earned interest as guaranteed by the Employer.

The applicant represents that Advances will be made only if and when needed by the Plan to satisfy liquidity requirements created by withdrawals such as benefit payments and hardship withdrawals, or transfer

[1] Present members of the Committee are James W. Hewitt, Vice President and General Counsel; Robert E. Miller, Vice President and Director; Charles D. Meyer, Secretary/Treasurer; and Joyce A. Huff, Corporate Benefits Manager.

[2] The GIC was acquired as an investment by the Plan and 3 other employee benefit plans that are sponsored by the Employer and 2 other closely-held employers, respectively, all with some common ownership. Each of the 4 employee benefit plans was allocated a portion of the principal amount of the GIC with the Plan receiving an allocation of $241,450.00 as its portion of the GIC.

[3] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility provisions of Part 4, Subtitle B of Title I of the Act. In this regard, the Department is not herein proposing relief for any violation of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

[4] The applicant represents that the quarterly return for the Stable Return Fund for the calendar quarter ended March 31, 1995, and June 30, 1995, was 1.51 percent to 1.5 percent, respectively or annually approximately 6.5 percent to 7 percent, respectively.

requests from participants.[5] Repayment of Advances will be restricted to GIC Proceeds, which are defined by the applicant to consist of cash proceeds obtained by the Plan from Confederation or any successor to Confederation, or from state guaranty funds, or any other third-party making payments with respect to the obligations of Confederation under the GIC. The final Advance will be made by the Employer on March 15, 2000, to ensure that the Plan will have received the principal amount of the GIC and the earned interest as guaranteed by the Employer. The terms of the Advances will be evidenced in a written agreement by and between the Plan and the Employer.

The applicant represents that the proposed transactions will protect the integrity of the Plan as well as protect the participants and beneficiaries of the Plan from any losses that might arise from the GIC if Confederation does not satisfy its obligations. The Employer represents that the transactions will enable the participants and beneficiaries of the Plan to avoid losing confidence in the purpose of the Plan for providing their respective retirement benefits.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the transactions will enable the Plan to recover all amounts due with respect to the GIC; (b) the Advances will enable the Plan to fund benefit payments, hardship withdrawals, and investment fund transfers within the Plan; (c) repayment of the Advances will be restricted to the GIC Proceeds; (d) repayments will be waived by the Employer to the extent the Advances exceed the GIC Proceeds; and (e) no interest payments or expenses will be incurred by the Plan with respect to the transactions.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is a toll-free number.)

Profit Sharing Plan of Constructors, Inc. (the Plan) Located in Lincoln, Nebraska

[Application No. D–10097]

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). If the exemption is granted 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 (1) the proposed extensions of credit in the form of guarantees and advances of funds (the Advances) to the Plan by Constructors, Inc. (the Employer), the sponsor of the Plan, with respect to the Guaranteed Investment Contract No. 64238 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation); and (2) the repayment of the Advances by the Plan to the Employer; provided that the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan would receive in arm's-length transactions; (b) No interest payments or expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Advances will be restricted to proceeds from the GIC (GIC Proceeds); (d) Repayment of Advances will be waived by the Employer to the extent that Advances exceed the GIC Proceeds; and (e) All unpaid principal and earned interest of the GIC will be completely paid by the Advances to the Plan by March 15, 2000.

Summary of Facts and Representations

1. The Employer is privately-owned Nebraska corporation that was established in 1948. Its principal place of business located in Lincoln, Nebraska. Employing approximately 300 individuals, the Employer is primarily engaged in the business of highway construction, traffic control, and limestone mining.

2. The Plan is a defined contribution profit sharing plan, providing for individually-directed participant accounts, which is intended to qualify under section 401(a) of the Code. As of December 31, 1994, the Plan had 155 participants and total assets of $4,223,729.49.

The Employer is the administer and named fiduciary as prescribed by the Act. Authority to administer and manage the Plan has been allocated by the Employer to the Retirement Committee (the Committee), which is appointed annually from the officers of the Employer by its Board of Directors.[6] With the respect to the Plan, the duties of the Committee include, *inter alia*, selecting trustees, portfolio managers, and the investment options for the participants, as well as monitoring the investment performance of the assets of the Plan. In performing its duties, the Committee has selected four different funds for the participants to direct the investment of assets in their respective Plan accounts, which include the following: (a) The Bond Fund, (b) the Equity Fund, (c) the International Equity Fund, and (d) the Stable Value Fund.

The Bond Fund is managed by FirsTier Financial, Inc., a regional multi-bank holding company incorporated and headquartered in Nebraska.

The assets of the Equity Fund offers three different investment options: the Washington Mutual Investors Fund; the American Mutual Funds; and E.B. Growth Stock Fund. The first two options are registered mutual funds and the third is a bank collective trust fund managed by FirsTier Financial, Inc. The three options are invested primarily in shares of common stocks of U.S. corporations.

The International Equity Fund has all its assets invested in the Templeton Foreign Fund, a registered mutual fund with its investments in shares of common stock issued by foreign corporations.

The Stable Value Fund is managed by two different portfolio managers. One of these portfolio managers is Norwest Corporation, a bank holding company headquartered in Minneapolis, Minnesota with bank branches in Nebraska. Norwest Corporation manages a pooled fund invested in Guaranteed Investment Contracts and other short term instruments issued by insurance companies, banks, and corporations. The other portfolio manager for the Stable Value Fund is the FirsTier Financial, Inc., which selects and manages the investments in individual Guaranteed Investment Contracts issued by insurance companies. As of December 31, 1994, the Stable Value Fund had 14 participant accounts with a value of $1,536,392.46 equalling 36.4 percent of the total value of the Plan.

Wyoming Trust and Management Company, incorporated in Wyoming and a subsidiary of FirsTier Financial, Inc., is the trustee of the Plan (the Trustee), which provides the services as custodian of Plan assets and as participant recordkeeper.

3. Among the Plan assets in the Stable Value Fund is the GIC issued on March 15, 1991, by Confederation for the principal sum of $500,000.00 to the nominee of FirsTier, Financial, Inc. as contract holder for various employee

[5] The determination as to when advances are needed will be made by the Committee.

[6] Present members of the Committee are James W. Hewitt, Vice President and General Counsel; Robert E. Miller, Vice President and Director; Charles D. Meyer, Secretary/Treasurer; and Joyce A. Huff, Corporate Benefits Manager.

benefit plans.[7] The applicant represents that the GIC is a single-deposit non-benefit-responsive contract, earning interest on the principal at the annual rate of 8.47 percent. The contract provides for annual interest payments, and has a maturity date of March 14, 1996. As of December 31, 1994, the Plan's allocated share of the principal and accumulated interest of the GIC was $96,077.52, representing 6.25 percent of the value of the Stable Value Fund.

The applicant represents that on August 11, 1994, the insurance regulators of Canada seized the assets of Confederation, and on the following day, August 12, 1994, the Ingham County Circuit Court, Lansing, Michigan placed the assets of Confederation located in the United States in conservatorship and rehabilitation, causing Confederation to suspend all payments on its contracts, including the GIC.[8] The applicant further represents that Confederation did not make its scheduled interest payment on the GIC for March 14, 1995, and that it appears unlikely that Confederation will make payment of the principal and interest to the Plan when the GIC matures on March 14, 1996.

4. In order to protect the Plan and its participants and beneficiaries, the Employer proposes to guarantee and advance funds for the payment of the principal amount of the GIC plus interest at the stated contract interest rate of 8.47 percent per annum through December 31, 1994, and thereafter, at the quarterly interest rate earned by the Plan's investment in a diversified Guaranteed Investment Contract fund (the Stable Return Fund) managed by Norwest Corporation.[9] If the conservatorship and rehabilitation of Confederation extends beyond March 14, 2000, the Employer represents that it will make Advances on March 15, 2000, to satisfy any remaining guaranteed amount so that the Plan has complete recovery of the principal amount of the GIC and the earned interest as guaranteed by the Employer.

The applicant represents that Advances will be made only if and when needed by the Plan to satisfy liquidity requirements created by withdrawals such as benefit payments and hardship withdrawals, or transfer requests from participants.[10] Repayment of Advances will be restricted to GIC Proceeds, which are defined by the applicant to consist of cash proceeds obtained by the Plan from Confederation or any successor to Confederation, or from state guaranty funds, or any other third-party making payments with respect to the obligations of Confederation under the GIC. The final Advance will be made by the Employer on March 15, 2000, to ensure that the Plan will have received the principal amount of the GIC and the earned interest as guaranteed by the Employer. The terms of the Advances will be evidenced in a written agreement by and between the Plan and the Employer.

The applicant represents that the proposed transactions will protect the integrity of the Plan as well as protect the participants and beneficiaries of the Plan from any losses that might arise from the GIC if Confederation does not satisfy its obligations. The Employer represents that the transactions will enable the participants and beneficiaries of the Plan to avoid losing confidence in the purpose of the Plan for providing their respective retirement benefits.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the transactions will enable the Plan to recover all amounts due with respect to the GIC; (b) the Advances will enable the Plan to fund benefit payments, hardship withdrawals, and investment fund transfers within the Plan; (c) repayment of the Advances will be restricted to the GIC Proceeds; (d) repayments will be waived by the Employer to the extent the Advances exceed the GIC Proceeds; and (e) no interest payments or expenses will be incurred by the Plan with respect to the transactions.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is a toll-free number.)

[7] The GIC was acquired as an investment by the Plan and 3 other employee benefit plans that are sponsored by the Employer and 2 other closely-held employers, respectively, all with some common ownership. Each of the 4 employee benefit plans was allocated a portion of the principal amount of the GIC with the Plan receiving an allocation of $90,000.00 as its portion of the GIC.

[8] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility provisions of Part 4, Subtitle B of Title I of the Act. In this regard, the Department is not herein proposing relief for any violation of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

[9] The applicant represents that the quarterly return for the Stable Return Fund for the calendar quarter ended March 31, 1995, and June 30, 1995, was 1.51 percent 1.5 percent, respectively or annually approximately 6.5 percent to 7 percent, respectively.

[10] The determination as to when advances are needed will be made by the Committee.

Universal Surety Company Profit Sharing Plan (the Plan) Located in Lincoln, Nebraska

[Application No. D–10098]

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). If the exemption is granted 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 (1) the proposed extensions of credit in the form of guarantees and advances of funds (the Advances) to the Plan by Universal Surety Company (the Employer), the sponsor of the Plan, with respect to the Guaranteed Investment Contract No. 64238 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation); and (2) the repayment of the Advances by the Plan to the Employer; provided that the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan would receive in arm's-length transactions; (b) No interest payments or expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Advances will be restricted to proceeds from the GIC (GIC Proceeds); (d) Repayment of Advances will be waived by the Employer to the extent that Advances exceed the GIC Proceeds; and (e) All unpaid principal and earned interest of the GIC will be completely paid by the Advances to the Plan by March 15, 2000.

Summary of Facts and Representations

1. The Employer is a privately-owned business that was incorporated in Nebraska during the year of 1947. Its principal place of business is located in Lincoln, Nebraska, where it is engaged in the business of underwriting surety bonds for the construction industry. The Employer currently has 18 employees.

2. The Plan is a defined contribution profit sharing plan, providing for individually-directed participant accounts, which is intended to qualify under section 401(a) of the Code. As of December 31, 1994, the Plan had 19 participants and total assets of $2,472,583.00.

The Employer is the administer and named fiduciary as prescribed by the

Act. Authority to administer and manage the Plan has been allocated by the Employer to the Retirement Committee (the Committee), which is appointed annually from the officers of the Employer by its Board of Directors.[11]

With the respect to the Plan, the duties of the Committee include, *inter alia*, selecting trustees, portfolio managers, and the investment options for the participants, as well as monitoring the investment performance of the assets of the Plan. In performing its duties, the Committee has selected four different funds for the participants to direct the investment of assets in their respective Plan accounts, which include the following: (a) the Bond Fund, (b) the Equity Fund, (c) the International Equity Fund, and (d) the Stable Value Fund.

The Bond Fund is managed by FirsTier Financial, Inc., a regional multi-bank holding company incorporated and headquartered in Nebraska.

The assets of the Equity Fund offers three different investment options: the Washington Mutual Investors Fund; the American Mutual Funds; and E.B. Growth Stock Fund. The first two options are registered mutual funds and the third is a bank collective trust fund managed by FirsTier Financial, Inc. The three options are invested primarily in shares of common stocks of U.S. corporations.

The International Equity Fund has all its assets invested in the Templeton Foreign Fund, a registered mutual fund with its investments in shares of common stock issued by foreign corporations.

The Stable Value Fund is managed by two different portfolio managers. One of these portfolio managers is Norwest Corporation, a bank holding company headquartered in Minneapolis, Minnesota with bank branches in Nebraska. Norwest Corporation manages a pooled fund invested in Guaranteed Investment Contracts and other short term instruments issued by insurance companies, banks, and corporations. The other portfolio manager for the Stable Value Fund is the FirsTier Financial, Inc., which selects and manages the investments in individual Guaranteed Investment Contracts issued by insurance companies. As of December 31, 1994, the Stable Value Fund had 9 participant accounts with a value of $482,008.00 equalling 19.5 percent of the total value of the Plan.

Wyoming Trust and Management Company, incorporated in Wyoming and a subsidiary of FirsTier Financial, Inc., is the trustee of the Plan (the Trustee), which provides the services as custodian of Plan assets and as participant recordkeeper.

3. Among the Plan assets in the Stable Value Fund is the GIC issued on March 15, 1991, by Confederation for the principal sum of $500,000.00 to the nominee of FirsTier, Financial, Inc. as contract holder for various employee benefit plans.[12]

The applicant represents that the GIC is a single-deposit non-benefit-responsive contract, earning interest on the principal at the annual rate of 8.47 percent. The contract provides for annual interest payments, and has a maturity date of March 14, 1996. As of December 31, 1994, the Plan's allocated share of the principal and accumulated interest of the GIC was $53,963.54, representing 11 percent of the value of the Stable Value Fund.

The applicant represents that on August 11, 1994, the insurance regulators of Canada seized the assets of Confederation, and on the following day, August 12, 1994, the Ingham County Circuit Court, Lansing, Michigan placed the assets of Confederation located in the United States in conservatorship and rehabilitation, causing Confederation to suspend all payments on its contracts, including the GIC.[13] The applicant further represents that Confederation did not make its scheduled interest payment on the GIC for March 14, 1995, and that it appears unlikely that Confederation will make payment of the principal and interest to the Plan when the GIC matures on March 14, 1996.

4. In order to protect the Plan and its participants and beneficiaries, the Employer proposes to guarantee and advance funds for the payment of the principal amount of the GIC plus interest at the stated contract interest rate of 8.47 percent per annum through December 31, 1994, and thereafter, at the quarterly interest rate earned by the Plan's investment in a diversified Guaranteed Investment Contract fund (the Stable Return Fund) managed by Norwest Corporation.[14] If the conservatorship and rehabilitation of Confederation extends beyond March 14, 2000, the Employer represents that it will make Advances on March 15, 2000, to satisfy any remaining guaranteed amount so that the Plan has complete recovery of the principal amount of the GIC and the earned interest as guaranteed by the Employer.

The applicant represents that Advances will be made only if and when needed by the Plan to satisfy liquidity requirements created by withdrawals such as benefit payments and hardship withdrawals, or transfer requests from participants.[15] Repayment of Advances will be restricted to GIC Proceeds, which are defined by the applicant to consist of cash proceeds obtained by the Plan from Confederation or any successor to Confederation, or from state guaranty funds, or any other third-party making payments with respect to the obligations of Confederation under the GIC. The final Advance will be made by the Employer on March 15, 2000, to ensure that the Plan will have received the principal amount of the GIC and the earned interest as guaranteed by the Employer. The terms of the Advances will be evidenced in a written agreement by and between the Plan and the Employer.

The applicant represents that the proposed transactions will protect the integrity of the Plan as well as protect the participants and beneficiaries of the Plan from any losses that might arise from the GIC if Confederation does not satisfy its obligations. The Employer represents that the transactions will enable the participants and beneficiaries of the Plan to avoid losing confidence in the purpose of the Plan for providing their respective retirement benefits.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the transactions will enable the Plan to recover all amounts due with respect to the GIC; (b) the Advances will enable the Plan to fund benefit payments, hardship withdrawals, and investment fund transfers within the Plan; (c) repayment of the Advances will be restricted to the GIC Proceeds; (d) repayments will be waived by the

[11] Present members of the Committee are Thomas A. Tallman, President of the Employer and Leon Harre, Secretary of the Employer.

[12] The GIC was acquired as an investment by the Plan and 3 other employee benefit plans that are sponsored by the Employer and 2 other closely-held employers, respectively, all with some common ownership. Each of the 4 employee benefit plans was allocated a portion of the principal amount of the GIC with the Plan receiving an allocation of $50,550.00 as its portion of the GIC.

[13] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility provisions of Part 4, Subtitle B of Title I of the Act. In this regard, the Department is not herein proposing relief for any violation of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

[14] The applicant represents that the quarterly return for the Stable Return Fund for the calendar quarter ended March 31, 1995, and June 30, 1995, was 1.51 percent 1.5 percent, respectively or annually approximately 6.5 percent to 7 percent, respectively.

[15] The determination as to when advances are needed will be made by the Committee.

Employer to the extent the Advances exceed the GIC Proceeds; and (e) no interest payments or expenses will be incurred by the Plan with respect to the transactions.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is a toll-free number.)

Constructors, Inc. 401(k) Plan (the Plan) Located in Lincoln, NE

[Application No. D–10099]

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). If the exemption is granted 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 (1) the proposed extensions of credit in the form of guarantees and advances of funds (the Advances) to the Plan by Constructors Inc. (the Employer), the sponsor of the Plan, with respect to the Guaranteed Investment Contract No. 64238 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation); and (2) the repayment of the Advances by the Plan to the Employer; provided that the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan would receive in arm's-length transactions; (b) No interest payments or expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the Advances will be restricted to proceeds from the GIC (GIC Proceeds); (d) Repayment of Advances will be waived by the Employer to the extent that Advances exceed the GIC Proceeds; and (e) All unpaid principal and earned interest of the GIC will be completely paid by the Advances to the Plan by March 15, 2000.

Summary of Facts and Representations

1. The Employer is a privately-owned Nebraska corporation that was established in 1948. Its principal place of business located in Lincoln, Nebraska. Employing approximately 300 individuals, the Employer is primarily engaged in the business of highway construction, traffic control, and limestone mining.

2. The Plan is a defined contribution profit sharing plan, providing for individually-directed participant accounts, which is intended to qualify under section 401(a) and 401(k) of the Code. As of December 31, 1994, the Plan had 155 participants and total assets of $1,831,751.95.

The Employer is the administer and named fiduciary as prescribed by the Act. Authority to administer and manage the Plan has been allocated by the Employer to the Retirement Committee (the Committee), which is appointed annually from the officers of the Employer by its Board of Directors.[16] With the respect to the Plan, the duties of the Committee include, *inter alia*, selecting trustees, portfolio managers, and the investment options for the participants, as well as monitoring the investment performance of the assets of the Plan. In performing its duties, the Committee has selected four different funds for the participants to direct the investment of assets in their respective Plan accounts, which include the following: (a) the Bond Fund, (b) the Equity Fund, (c) the International Equity Fund, and (d) the Stable Value Fund.

The Bond Fund is managed by FirsTier Financial, Inc., a regional multi-bank holding company incorporated and headquartered in Nebraska.

The assets of the Equity Fund offers three different investment options: the Washington Mutual Investors Fund; the American Mutual Funds; and E.B. Growth Stock Fund. The first two options are registered mutual funds and the third is a bank collective trust fund managed by FirsTier Financial, Inc. The three options are invested primarily in shares of common stocks of U.S. corporations.

The International Equity Fund has all its assets invested in the Templeton Foreign Fund, a registered mutual fund with its investments in shares of common stock issued by foreign corporations.

The Stable Value Fund is managed by two different portfolio managers. One of these portfolio managers is Norwest Corporation, a bank holding company headquartered in Minneapolis, Minnesota with bank branches in Nebraska. Norwest Corporation manages a pooled fund invested in Guaranteed Investment Contracts and other short term instruments issued by insurance companies, banks, and corporations. The other portfolio manager for the Stable Value Fund is the FirsTier Financial, Inc., which selects and manages the investments in individual Guaranteed Investment Contracts issued by insurance companies. As of December 31, 1994, the Stable Value Fund had 59 participant accounts with a value of $599,704.89 equalling 32.7 percent of the total value of the Plan.

Wyoming Trust and Management Company, incorporated in Wyoming and a subsidiary of FirsTier Financial, Inc., is the trustee of the Plan (the Trustee), which provides the services as custodian of Plan assets and as participant recordkeeper.

3. Among the Plan assets in the Stable Value Fund is the GIC issued on March 15, 1991, by Confederation for the principal sum of $500,000.00 to the nominee of FirsTier, Financial, Inc. as contract holder for various employee benefit plans.[17] The applicant represents that the GIC is a single-deposit non-benefit-responsive contract, earning interest on the principal at the annual rate of 8.47 percent. The contract provides for annual interest payments, and has a maturity date of March 14, 1996. As of December 31, 1994, the Plan's allocated share of the principal and accumulated interest of the GIC was $125,968.30, representing 21 percent of the value of the Stable Value Fund.

The applicant represents that on August 11, 1994, the insurance regulators of Canada seized the assets of Confederation, and on the following day, August 12, 1994, the Ingham County Circuit Court, Lansing, Michigan placed the assets of Confederation located in the United States in conservatorship and rehabilitation, causing Confederation to suspend all payments on its contracts, including the GIC.[18] The applicant further represents that Confederation did not make its scheduled interest payment on the GIC for March 14, 1995, and that it appears unlikely that Confederation will make payment of the principal and interest to the Plan when the GIC matures on March 14, 1996.

4. In order to protect the Plan and its participants and beneficiaries, the Employer proposes to guarantee and advance funds for the payment of the

[16] Present members of the Committee are James W. Hewitt, Vice President and General Counsel; Robert E. Miller, Vice President and Director; Charles D. Meyer, Secretary/Treasurer; and Joyce A. Huff, Corporate Benefits Manager.

[17] The GIC was acquired as an investment by the Plan and 3 other employee benefit plans that are sponsored by the Employer and 2 other closely-held employers, respectively, all with some common ownership. Each of the 4 employee benefit plans was allocated a portion of the principal amount of the GIC with the Plan receiving an allocation of $118,000.00 as its portion of the GIC.

[18] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility provisions of Part 4, Subtitle B of Title I of the Act. In this regard, the Department is not herein proposing relief for any violation of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

principal amount of the GIC plus interest at the stated contract interest rate of 8.47 percent per annum through December 31, 1994, and thereafter, at the quarterly interest rate earned by the Plan's investment in a diversified Guaranteed Investment Contract fund (the Stable Return Fund) managed by Norwest Corporation.[19] If the conservatorship and rehabilitation of Confederation extends beyond March 14, 2000, the Employer represents that it will make Advances on March 15, 2000, to satisfy any remaining guaranteed amount so that the Plan has complete recovery of the principal amount of the GIC and the earned interest as guaranteed by the Employer.

The applicant represents that Advances will be made only if and when needed by the Plan to satisfy liquidity requirements created by withdrawals such as benefit payments and hardship withdrawals, or transfer requests from participants.[20] Repayment of Advances will be restricted to GIC Proceeds, which are defined by the applicant to consist of cash proceeds obtained by the Plan from Confederation or any successor to Confederation, or from state guaranty funds, or any other third-party making payments with respect to the obligations of Confederation under the GIC. The final Advance will be made by the Employer on March 15, 2000, to ensure that the Plan will have received the principal amount of the GIC and the earned interest as guaranteed by the Employer. The terms of the Advances will be evidenced in a written agreement by and between the Plan and the Employer.

The applicant represents that the proposed transactions will protect the integrity of the Plan as well as protect the participants and beneficiaries of the Plan from any losses that might arise from the GIC if Confederation does not satisfy its obligations. The Employer represents that the transactions will enable the participants and beneficiaries of the Plan to avoid losing confidence in the purpose of the Plan for providing their respective retirement benefits.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the transactions will enable the Plan to recover all amounts due with respect to the GIC; (b) the Advances will enable the Plan to fund benefit payments, hardship withdrawals, and investment fund transfers within the Plan; (c) repayment of the Advances will be restricted to the GIC Proceeds; (d) repayments will be waived by the Employer to the extent the Advances exceed the GIC Proceeds; and (e) no interest payments or expenses will be incurred by the Plan with respect to the transactions.

[19] The applicant represents that the quarterly return for the Stable Return Fund for the calendar quarter ended March 31, 1995, and June 30, 1995, was 1.51 percent 1.5 percent, respectively or annually approximately 6.5 percent to 7 percent, respectively.

[20] The determination as to when advances are needed will be made by the Committee.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is 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 that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of October, 1995.

Ivan Strasfeld,

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

[FR Doc. 95–24869 Filed 10–5–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–93; Exemption Application No. D–10026, et al.]

Grant of Individual Exemptions; Acushnet Company Employee

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 transaction 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