

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 2000-49; Exemption Application Nos. D-10879]

**Actuarial Sciences Associates, Inc. (ASA) and ASA Fiduciary Counselors Inc. (ASA) Counselors, Located in Alexandria, VA**

**AGENCY:** Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

**ACTION:** Notice of Technical Correction.

On October 11, 2000, the Department published in the **Federal Register** (65 FR 60454) an individual exemption which permits a transaction between a party in interest with respect to the Plumbers and Pipe Fitters National Pension Fund (the Fund) and an account that holds certain assets of the Fund managed by ASA or ASA Counselors, while serving as independent named fiduciary in connection with Prohibited Transaction Exemption 99-46 (64 FR 61944, November 15, 1999).

On page 60454 of the grant notice, the Prohibited Transaction Exemption (PTE) number was erroneously listed as 2000-47. The PTE number for this exemption is 2000-49. Therefore, the Department hereby corrects such error by designating the exemption as PTE 2000-49.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena LeBlanc of the Department at (202) 219-8883. (This is not a toll-free number.)

Signed at Washington, D.C., this 13th day of October, 2000.

**Ivan L. Strasfeld,**

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

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**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 2000-50; Exemption Application No. D-10871, et al.]

**Grant of Individual Exemptions; IRA FBO Floyd A. Ross (the IRA)**

**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, 5 U.S.C. App. 1 (1996), 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.

**IRA FBO Floyd A. Ross (the IRA)  
Located in Ukiah, California**

[Prohibited Transaction Exemption 2000-50; Exemption Application No. D-10871]

**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 proposed purchase by the IRA of certain closely held common stock (the Stock) from the Ross Family Trust (the Family Trust), a disqualified person with respect to the IRA,<sup>1</sup> provided that the following conditions are satisfied:

- (a) The purchase is a one-time transaction for cash;
- (b) The terms and conditions of the purchase are at least as favorable to the IRA as those available in a comparable arm's length transaction with an unrelated party;
- (c) The IRA pays a purchase price that is no greater than the fair market value of the Stock at the time of the transaction, as established by a qualified, independent appraiser;
- (d) The IRA pays no commissions nor other expenses in connection with the purchase; and
- (e) The fair market value of the Stock represents no more than 25 percent of the total assets of the IRA at the time of the transaction.

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 September 7, 2000 at 65 FR 54313.

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

**Platt Orthopedics Retirement Plan (the Plan) Located in Rancho Mirage, California**

[Prohibited Transaction Exemption 2000-51; Exemption Application No. D-10875]

**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 proposed sale by the Plan of certain improved real property (the Property) to Morris and Arthur Platt, disqualified persons with respect to the Plan,<sup>2</sup> provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other expenses relating to the sale; and (3) the Plan receives an amount equal to the average of two independent appraisals

<sup>1</sup> Pursuant to 29 CFR 2510.3-2(d), the IRA is 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.

<sup>2</sup> Because Morris and Arthur Platt, who are owner-employees, and Arthur Platt's wife are the only participants in the Plan, the Plan is 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.

of the Property's fair market value, as of the date of 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 September 7, 2000 at 65 FR 54314.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng 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 13th day of October, 2000.

**Ivan Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10651, et al.]

### Proposed Exemptions; Merrill Lynch & Co., Inc. (ML&Co.)

**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 restrictions 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 requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and 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 the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 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, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### Merrill Lynch & Co., Inc. (ML&Co.)

#### Located in New York, NY

[Application No. D-10651]

#### Proposed Exemption

Based on the facts and representations set forth in the application, 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).<sup>1</sup>

#### Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) 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 to (1) the purchase or sale by employee benefit plans (the Plans), other than Plans sponsored by ML&Co. or its affiliates (collectively, the Applicants), of Market Index Target-Term Securities (the MITTS), which are debt securities issued by the Applicants; and (2) the extension of credit by the Plans to the Applicants in connection with the holding of the MITTS.

<sup>1</sup> For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise noted herein, refer also to corresponding provisions of the Code.