

rendered as an independent fiduciary, aside from its trustee duties.

Regions, a subsidiary of Regions Bank Financial Corporation, a major Southern bank holding company, is one of the 25 largest banking companies in America with current assets in excess of \$39 billion. Of these total assets, the Trust Division of Regions holds more than \$23.5 billion in trust assets and the assets of the Plan constitute approximately 0.05 percent of Regions' total trust assets.

Mr. Arnold, the principal owner of the Employer, maintains a checking account with Regions. However, the total balance of Mr. Arnold's account with Regions represents a negligible portion of the bank's total deposits. In addition, the Employer maintains a checking account with Regions but funds are swept to another bank on a daily basis, so a zero balance is maintained. Further, neither Mr. Arnold nor the Employer has a lending relationship with Regions and no officer or director of Regions sits on the Board of Directors of the Employer or vice versa. Finally, there are no familial relationships existing between Mr. Arnold, his son, and Regions or between the Employer and Regions.

Regions represents that it is knowledgeable and experienced with lease transactions and it maintains a staff of qualified trust and investment professionals who provide legal, portfolio management and consulting services to clients.

As the successor independent fiduciary under the Prior Exemptions and the Master Lease, Regions has agreed to (a) represent the interests of the Plan for the duration of the initial term of the Master Lease and during each renewal term; (b) monitor the transactions on the Plan's behalf; (c) enforce compliance with all conditions of the leases; and (d) ensure that the transactions remain in the best interest of the Plan and protective of the Plan's participants and beneficiaries. In addition, Regions has also reviewed the Prior Exemptions and has evaluated the terms and conditions of the subject leases. Based upon this review, Regions believes the leasing arrangements should be continued under the Master Lease.

IV. Other Modifications

The Department has modified the operative language of the proposed exemption in order to clarify the relevant terms of the Master Lease and the role of the independent fiduciary, thereby replacing the Prior Exemptions:

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the

Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, (1) effective October 1, 1999, until September 30, 2002, to the leasing by the Plan of a parcel of real property and the improvements thereon (the New Facilities Property), as described in Prohibited Transaction Exemption (PTE) 81-56 (46 FR 36273, July 17, 1981), to the Truman Arnold Companies, Inc. (the Employer), a party in interest with respect to the Plan; and (2) to the leasing, effective October 1, 2002, by the Plan to the Employer, under the provisions of a master lease (the Master Lease) of the New Facilities Property, another parcel of real property and the improvements comprising the Employer's headquarters (the Home Site Property), as described in PTE 85-19 (50 FR 3045, January 23, 1985), and two buildings (the Buildings) constructed on the Home Site Property and described in PTE 89-5 (54 FR 4348, January 30, 1989). (The New Facilities Property, the Home Site Property and the Buildings are collectively referred to herein as the "Properties.")

This proposed exemption is subject to the following conditions:

(a) The terms of the Master Lease remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(b) The Employer is obligated under the terms of the Master Lease for expenses incurred by the Properties, including taxes and assessments, maintenance, insurance and utilities.

(c) The interests of the Plan with regard to the Master Lease are, at all times, represented by an independent fiduciary. Such independent fiduciary—

(i) Represents the interests of the Plan for the remaining duration of the Master Lease;

(ii) Monitors the terms and conditions of the Master Lease on behalf of the Plan;

(iii) Enforces compliance with all conditions of the Master Lease;

(iv) Ensures that the Master Lease remains in the best interest of the Plan and protective of the Plan's participants and beneficiaries;

(v) Following review and evaluation of the Master Lease, determines that the retention of the Properties by the Plan and the continued leasing of such Properties to the Employer are in the best interest of the Plan and its participants and beneficiaries;

(vi) Adjusts the rental rate under the Master Lease every third year such lease is in effect based upon independent appraisals of the Properties and ensures that the rentals equal the greater of 14 percent of the fair market value of the Properties or the prior rental amounts paid; and

(vii) Takes all actions that are necessary and proper to enforce and protect the rights of the Plan and its participants and beneficiaries.

(d) The rental rate under the Master Lease, during its initial term and each renewal term remains at 14 percent of the fair market value of the Properties, which amount is not less than the current fair market value of such Properties;

(e) The aggregate fair market value of the Properties that are subject to the Master

Lease, at no time, exceeds 25 percent of the Plan's assets.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and, therefore, must be examined under applicable provisions of the Code, including section 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be provided to interested persons within 14 days of the publication of the notice of proposed exemption in the **Federal Register**. With respect to active employees of the Employer, notice will be delivered in writing at such employees' place of employment. With respect to retired employees or participants having deferred vested interests in the Plan, notice will be provided by first class mail. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required under 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. All written comments and/or requests for a hearing are due within 44 days after the date of publication of the pendency notice in the **Federal Register**.

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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and 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 require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of