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.

Retirement Plan for Employees of United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc. and Affiliated Agencies and Institutions (the Plan) Located in New York, New York

[Application No. D–09582]

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), 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 effective May 29, 1990, to the past purchase and sale of certain securities (the Securities) on May 29, 1990, between the Plan and the endowment fund (the Fund) of the United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc. (the Federation), a sponsor of the Plan and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The transfer of the Securities was a one-time cash transaction;

(b) The transaction was at fair market value as determined by the closing prices on May 25, 1990, on the New York Stock Exchange (NYSE) and the American Stock Exchange (AMEX);

(c) The Plan paid no commissions with respect to the transaction;

(d) The Federation determined upon consultation with Delaware Investment Advisors (Delaware) to engage in the transaction;

(e) The Securities transferred from the Fund to the Plan were all listed on either the NYSE or AMEX, and constituted exactly a 50% pro rata share of all the securities then owned by the Fund; and

(f) Over a three plan year period, the Federation will contribute $513,009.39 to the Plan to make up the loss sustained by the Plan when the Securities were sold out of the Plan portfolio.

EFFECTIVE DATE: If granted this exemption will be effective as of May 29, 1990.

Summary of Facts and Representations

1. The Plan is a defined benefit multiple employer plan. As of September 30, 1993, the Plan had $76,919,425 million in net assets, and as of October 1, 1994, the Plan had approximately 5634 participants. Chemical Bank (formerly Manufacturers Hanover Trust Company) is the Plan's trustee.

2. The Federation is a not-for-profit corporation which is exempt from federal tax under section 501(c)(3) of the Code. The Federation is a private, local voluntary human service organization. The Fund is a special general asset account of the Federation.[1]

3. The investment committee (the Investment Committee) of the Federation appoints investment managers to manage the Fund's and the Plan's assets. The members of the Investment Committee are appointed by the Board of Directors of the Federation. Delaware Investment Advisors (Delaware), a division of Delaware Management Company Inc., served as an investment manager for the Fund from 1983 through January of 1993, and managed the Fund's assets of approximately $30 million. Fiduciary Trust Co. was the custodian for this account.

4. The applicant represents that early in 1990, the Investment Committee decided that it wanted to hire Delaware to replace another investment manager, Delphi Management (Delphi), with respect to the management of approximately $10 million of the Plan's assets. At that time, the Investment Committee also determined that the total amount of the Federation related assets, including the assets of the Plan and the Fund, managed by any one investment manager should be limited. This would limit the risk to the portfolios of the Fund and the Plan and further protect the Federation, which as the Plan sponsor was ultimately responsible for any losses to the Plan. Because Delaware was already managing a desired maximum level of the Fund's assets, it was determined that one half of this desired maximum should be managed by Delaware for the Plan and one half managed by Delaware for the Fund. Fees charged by Delaware for its investment management services consisted of an annual charge (billed in quarterly installments) based upon the amount of assets under management.

5. In April of 1990, James L. Rothkopf (Mr. Rothkopf), the chief financial officer of the Federation, informed Delaware that the Investment Committee wanted a portion of the Plan's assets at that time managed by Delphi, to be invested with Delaware. Mr. Rothkopf also indicated that to keep the total Federation related assets under Delaware management at the same level, the Fund investment with Delaware would be reduced to one-half the previous level and that one-half of the Fund's investments would be transferred pro-rata to the Plan portfolio. Delaware indicated to the Investment Committee that it wanted the Plan's portfolio to be virtually identical to the Fund's portfolio.

6. The purchase of Securities by the Plan from the Fund took place on May 29, 1990, at the direction of the Assistant Comptroller of the Federation. In order to accomplish the prescribed allocation, and to avoid the Plan paying any commissions on the acquisition of the Securities, approximately fifty percent (50%) of the amount of each Security held in the Fund portfolio was transferred from Fiduciary Trust Co., custodian for the Fund, into the Plan account at Manufacturers Hanover Trust Company, the custodian of the Plan's assets, and cash representing the fair market value of these Securities ($10,577,756.77) was transferred to a portion of the Fund asset portfolio not

[1] The Federation's consolidated assets are composed of amounts received from donor-created endowments and funds designated by the Federation's Board of Directors to provide for the Federation's long-term needs.