managed by Delaware. All the Securities involved in the transaction were securities of companies listed on the NYSE, with the exception of one Security listed on the AMEX. The fair market value of the Securities was determined by using the exchanges' closing prices on Friday, May 25, 1990. It is represented that the Plan did not pay any fees related to the subject transaction.

7. The applicant represents that the actual transfer of the Securities took place on Tuesday, May 29, 1990, because the prior business day Monday, May 28 was a legal holiday and therefore, there was no trading. The applicant represents that the closing price of the Securities on Friday, May 25, 1990, was effectively equal to the opening price of the Securities on Tuesday, May 29, 1990. Upon completion of the transaction, the Plan held legal title to the Securities acquired from the Fund. It is represented that at the time of the transfer, approximately 17% of the Plan's assets were involved in the transaction.

8. Delaware represents that the Federation consummated the transaction upon facilitation by Delaware and approved the transfer of the Securities from the Fund to the Plan. In an affidavit submitted to the Department, Mr. Rothkopf of the Federation stated that Mr. Marion Dixon, a former money manager with Delaware who was responsible for the Fund portfolio and subsequently for the Plan portfolio, advised him that the initial Plan portfolio should represent 50 percent (50%) of the existing Fund portfolio. This would enable the Fund and the Plan to have identical investment portfolios, thereby achieving the portfolio structures desired by Mr. Dixon, and would also save brokerage commissions. Delaware represents that Mr. Dixon agreed that the initial portfolio for the Plan should contain substantially the same securities as were in the Fund portfolio at that time. Delaware represents that they were of the opinion then, as well as now, that the transfer transaction was in the best interest and protective of the Plan.

9. The applicant states that between June 1990 and January 1993, Delaware sold all the Securities purchased by the Plan in the transaction subject to this exemption request. The determination of gains and losses on the sale of the Securities by the Plan was calculated on a ''first in first out'' basis. The total difference between the aggregate purchase price of the Securities by the Plan and the aggregate sale price of the Securities by the Plan, was an aggregate loss of $513,009.39. The applicant maintains that the Plan portfolio was a managed portfolio with transactions not necessarily based on individual stock profit or loss positions, but based on the portfolio's desired position. As such, stock was sold for a number of reasons, including availability of stock with a better return potential or less downside risk, diversity, cyclical markets, and a variety of other factors. In this regard, stocks were often sold prior to a profit realization because preferable alternative investments were available or concentrations of stock needed to be changed. However, the applicant represents that the Federation is now prepared to contribute to the Plan an amount equal to $513,009.39 over a three plan year period (the Contribution), in order to make up for the loss to the Plan. The Contribution will be made at the same time that the last installment of each annual contribution is made to the Plan for the applicable plan year.

10. The applicant represents that subsequent to the transaction, both the Plan and the Federation were audited by a ''Big Six'' accounting firm, and the transaction was not identified by the auditors as being prohibited during either audit. In the summer of 1993, counsel for the Federation contacted the law firm of Proskauer Rose Goetz & Mendelson [2] (PRG&M) to discuss the Fund's and the Plan's claims in a class action settlement against the issuer of one of the Securities involved in the subject transaction. When the facts of the transaction surfaced in the discussion, it was questioned whether a prohibited transaction had occurred as a result of the Plan's purchase of the Securities from the Fund. PRG&M then commenced an investigation of the facts surrounding the transaction and the ERISA provisions involved. The applicant then filed an exemption request in this matter.

11. The applicant has requested retroactive relief for the transaction which occurred on May 29, 1990, noting, among other things that: (1) The transaction was a one-time transfer of the Securities for cash; (2) the transaction was in the interest and protective of the Plan because the Plan was able to acquire the Securities at fair market value and not pay any commissions; and (3) the Securities represented a well-diversified portfolio of stock of recognized companies.

12. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

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

(b) The transaction was at fair market value as evidenced by the closing prices on May 25, 1990 on the NYSE and the AMEX;

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

(d) The Federation determined upon consultation with 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.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Motors Hourly-Rate Employes Pension Plan, General Motors Retirement Program for Salaried Employees (the Salaried Plan), Saturn Individual Retirement Plan for Represented Team Members, Saturn Personal Choices Retirement Plan for Non-Represented Team Members, and Employees' Retirement Plan for GMAC Mortgage Corporation (collectively, the Plans) Located in New York, New York

[Application Nos. D–09859 through D–09863]

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) 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, effective April 9, 1994, to the acquisition by the Plans of limited partnership interests (the Interests) in APA Excelsior III, L.P. from Metropolitan Life Insurance Company (Metropolitan), a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction were at least as favorable to the Plans as those which the Plans

[2] This law firm was not counsel to the Federation nor the Plan at the time of the transaction.