

that the offset mechanism described in Section II(d) of the Proposal will be implemented for all Client Plans as soon as practicable during the current year. Thus, it is the Bank's understanding that the exemption provided by Section II will be applicable upon implementation of the fee offset mechanism. The Department concurs with the applicant's clarification.

In addition, Sections I(c) and II(h) of the Proposal and Paragraph 8 of the Summary state that each Independent Fiduciary received from the Bank a written statement giving full disclosure of the fee structure prior to investment in the Funds. The Bank would like to clarify that the written statement received by Client Plans that participated in the conversion transaction described the PTE 77-4 credit mechanism rather than the fee offset mechanism described in Section II(d) of the Proposal. The applicant states that prior to implementation of the fee offset mechanism for Client Plans that participated in the conversion, each Independent Fiduciary will receive a written statement giving full disclosure of the fee structure described in Section II(d) of the Proposal, and the Bank will receive written authorization from the Independent Fiduciary approving the new fee structure. The Department concurs with the applicant's clarification.

With respect to fees payable under Rule 12b-1, Section II(f) of the Proposal provides that the Bank may not receive any fees payable pursuant to such Rule in connection with the investment of Plan assets in the Funds. The applicant notes that this condition is consistent with the representations made by the Bank. However, the applicant states that Paragraph 4 of the Summary overstates the representations made by the Bank with regard to 12b-1 fees and requires minor clarification. The third sentence of Paragraph 4 states that "* * * In addition, the Bank does not and will not receive fees payable pursuant to Rule 12b-1 in connection with transactions involving any shares of the Funds." The Bank represents that this statement is

investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77-4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

true with respect to trust accounts, but should be clarified to limit it to transactions described under the exemption. The Bank otherwise may receive 12b-1 fees for sales of Fund shares to investors other than the Client Plans. The Department concurs with the applicant's clarification.

With respect to the responsibility for distributing updated prospectuses, Paragraph 8 of the Summary states that "* * * Client Plan fiduciaries will also receive from Federated [Investors], the Fund's Distributor, an updated prospectus and periodic reports for each Fund." The applicant states that while it is true that Federated will prepare the updated prospectuses and periodic reports, these items will be distributed to Client Plans by the Bank, as trustee. The Department concurs with the applicant's clarification.

With respect to purchases and sales of Fund shares, Section II(c) of the Proposal states that neither the Bank nor any affiliate, including any officer or director of the Bank, may purchase or sell shares of the Funds to any Client Plan. In this regard, the applicant notes that the Fund's distributor will execute all purchases or redemptions of Fund shares by Client Plans. However, the applicant states that the Client Plans will place purchase and redemption orders through the Plan's account representative at the Bank. The Bank wishes to clarify that Section II(c) of the Proposal does not apply to a Client Plan's placement of a purchase or redemption order through its account representative at the Bank where the Fund's distributor executes the purchase or redemption order. The Department concurs with the applicant's clarification.

With respect to carrying out termination instructions, Section IV(h) of the Proposal and Paragraph 8 of the Summary provide that, upon receipt of an executed Termination Form, the Bank will effect the sale of Fund shares within one business day following receipt of the form; provided that if, due to circumstances beyond the Bank's control, the Bank may have one additional business day to complete the sale. In this regard, the applicant states that Fund shares may not be able to be redeemed in the event of extraordinary circumstances that result in market closure and/or other restrictions on trading mutual fund shares—e.g. natural disaster, war, etc. The Bank would like the Department to clarify that, in such event, the conditions of the exemption are satisfied provided the Bank redeems Fund shares within one business day after the market re-opens and/or Funds are able to be traded. The Department

concurs with the applicant's clarification.

Accordingly, after consideration of the entire record, the Department has determined to grant the exemption.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

Delaware Trust Capital Management, Inc. (DTCM), Located in Wilmington, DE

[Prohibited Transaction Exemption 95-34; Exemption Application No. D-09853]

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 sale by certain rollover individual retirement accounts (the IRAs) of their interests in certain securities (the Securities) to DTCM, a disqualified person with respect to the IRAs, provided the following conditions are satisfied: 1) the sale is a one-time transaction for cash; 2) no commissions or other expenses are paid by the IRAs in connection with the sale; 3) the IRAs receive the greater of: a) the fair market value of the Securities as of June 30, 1994, plus accrued interest, less principal repayments received, or b) the fair market value of the Securities as of the time of the sale as determined by a qualified, independent expert.²

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 March 20, 1995 at 60 FR 14793.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Shippers Paper Products Co., 401(k) Plan (the Plan), Located in Glenview, IL

[Prohibited Transaction Exemption 95-35; Application No. D-09866]

Exemption

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 to the sale by the Plan of Group Annuity Contract, No. GA-4725 (the GAC) issued by Mutual Benefit Life Insurance Company (Mutual Benefit) to Illinois Tool Works

² Pursuant to 29 CFR 2510.3-2(d), the IRAs are 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.