

## II. Nominations

On January 24, 2000, the Agency solicited nominations for membership on MACOSH (65 FR 3740). Interested persons were invited to submit their own names or the name of another person who they believed to be qualified to serve on the advisory committee. OSHA will publish the names of those selected for membership on MACOSH shortly in the **Federal Register**.

## III. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210, pursuant to sections 6(b) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR Part 1912.

Signed at Washington, DC this 6th day of March 2000.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000-11; Exemption Application No. D-10721, et al.]

### Grant of Individual Exemptions; Metropolitan Life

**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, DC. 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.

### Metropolitan Life Insurance Company (MetLife), Located in New York, NY

[Prohibited Transaction Exemption 2000-11; Exemption Application No. D-10721]

### Exemption

Section I. Exemptions Involving the Demutualization of MetLife and the Excess Holding of Consideration by Plans Sponsored by MetLife and its Affiliates (the MetLife Plans)

The restrictions of section 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 to the receipt, by any eligible policyholder (the Eligible Policyholder) of MetLife that is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, including any Eligible Policyholder that is a Plan covering employees of MetLife or its affiliates, of an interest (the Interest) in a trust (the Trust), whose corpus consists of common stock (the Common Stock) issued by MetLife, Inc. (the Holding Company), the parent of MetLife; or (2) the receipt of cash or

policy credits by such Plans,<sup>1</sup> in exchange for such Eligible Policyholder's membership interest in MetLife, pursuant to a plan of conversion (the Plan of Reorganization) adopted by MetLife and implemented in accordance with section 7312 of the New York Insurance Law.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by a MetLife Plan, of Trust Interests, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

The exemptions that are described above are subject to the following conditions:

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under New York Insurance Law and is subject to review and approval by the New York Superintendent of Insurance (the Superintendent). The Superintendent reviews the terms of the options that are provided to Eligible Policyholders of MetLife as part of such Superintendent's review of the Plan of Reorganization, and the Superintendent only approves the Plan of Reorganization following a determination that the Plan is fair and equitable to all Eligible Policyholders and is not detrimental to the public.

(b) Each Eligible Policyholder has an opportunity to vote at a special meeting to approve the Plan of Reorganization after receiving full written disclosure from MetLife.

(c) One or more independent fiduciaries of a Plan (the Independent Fiduciary) that is an Eligible Policyholder receives Trust Interests, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither MetLife nor any of its affiliates exercises any discretion or provides "investment advice," within the meaning of 29 CFR 2510.3-21(c) with respect to such acquisition.

(d) In the case of a MetLife Plan, the Independent Fiduciary—

(1) Votes at the special meeting of Eligible Policyholders to approve the Plan of Reorganization;

(2) Makes any election, to the extent available under the Plan of Reorganization, to receive Trust Interests or cash on behalf of the MetLife Plan;

(3) Monitors, on behalf of the MetLife Plan, the acquisition and holding of any Trust Interests received;

<sup>1</sup> Unless otherwise noted, the terms "Plan" and "MetLife Plan" are referred to collectively as the "Plans."

(4) Makes determinations on behalf of the MetLife Plan with respect to the voting and the continued holding of Trust Interests by such Plan.

(5) Withdraws shares of Holding Company Common Stock that are held in Trust which are equivalent to Trust Interests allocated to a MetLife Plan and disposes of such Trust Interests:

(i) Not exceeding the limits of section 407(a) of the Act in a prudent manner.

(ii) Exceeding the limits of section 407(a) of the Act within six months of the initial public offering (the IPO); and

(6) Provides the Department with a complete and detailed final report as it relates to the MetLife Plans prior to the effective date of the demutualization.

(e) Each Eligible Policyholder entitled to receive Trust Interests is allocated at least ten shares of Holding Company Common Stock and additional consideration may be allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of MetLife, which formulas have been reviewed by the Superintendent.

(f) All Eligible Policyholders that are Plans participate in the demutualization transaction on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(g) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of consideration.

(h) All of MetLife's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

(i) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

## Section II. Exemptions Involving Sales or Withdrawals Occurring in Connection With the Operation or Termination of the Trust

The restrictions of section 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 to the (1) sale by a Plan to the Holding Company of Holding Company Common Stock, which is held in the Trust for the benefit of such participating Plan and is evidenced by Trust Interests, following the effective date of the demutualization or upon the termination of the Trust; and (2) the withdrawal by a Plan of Holding Company Common Stock, as evidenced by Trust Interests, beginning on the first anniversary of the effective date of the demutualization until the termination of the Trust.

The exemptions are subject to the following conditions:

(a) The decision by a Plan to arrange for the sale of Holding Company Common Stock to the Holding Company or to withdraw Holding Company Common Stock is made by a Plan fiduciary which is independent of MetLife and its affiliates.

(b) No Plan pays any fees or commissions in connection with either transaction.

(c) The terms of the transactions are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(d) Any sale of shares of Holding Company Common Stock held in the Trust for the benefit of a Plan to the Holding Company is at a price reflecting the fair market value of the Common Stock as determined by averaging the high and low trading prices as reported on the New York Stock Exchange on the day of sale, except that if such sale is pursuant to the termination of the Trust, such fair market value is determined as the average of the closing price for a share of such Holding Company Common Stock for the twenty consecutive trading days ending on the third calendar day immediately prior to the date of the sale.

## Section III. Definitions

For purposes of this exemption:

(a) The term "MetLife" means Metropolitan Life Insurance Company and any affiliate of MetLife as defined in paragraph (b) of this Section III.

(b) An "affiliate" of MetLife includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with MetLife. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term "Eligible Policyholder" means a policyholder whose name appears on MetLife's records as the owner of a policy on the adoption date of MetLife's Plan of Reorganization by MetLife's Board of Directors and, which is in full force for its full basic benefits and has not matured by death or otherwise been surrendered or terminated.

(d) The term "policy credit" means (1) an increase in accumulation value, to which the Company will apply no sales, surrender charges, or that will be further increased in value to offset any of these charges, under a policy that is a deferred

annuity; (2) an increase in the amount of the payments distributed under a policy that is in the course of annuity payments; (3) additional insurance or dividends with interest, as appropriate (depending upon whether the additional insurance option or the dividends with interest option has been selected with respect to the underlying policy, provided that dividends with interest will apply where an option other than additional insurance or dividends with interest has been selected), under a policy that is a life insurance policy; or (4) an increase in the retired lives reserve, under a policy that is a life or health insurance funding account or a guaranteed life insurance funding account.

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 (the Notice) that was published on November 24, 1999 at 64 FR 66201.

## Written Comments

The Department received 25 written comments with respect to the Notice. Twenty-four comments were submitted by Eligible Policyholders of MetLife and one comment was submitted by MetLife.

Of the Eligible Policyholder comments received, one commenter was in favor of the exemption and urged the Department to grant it. Six commenters requested general information that was not relevant to the exemption and their comments were, in turn, forwarded to appropriate personnel within MetLife for response.

Seventeen commenters said they were opposed to the exemption for various reasons. These commenters questioned whether the exemption would have an adverse impact upon their benefits or they expressed general dissatisfaction with the demutualization concept or with the insurer. Because many of the comment letters presented similar issues, particularly the effect of the demutualization on policyholder benefits, the Department forwarded a representative sample to MetLife for response.

In its comment, MetLife requested clarification to the Notice. The comment also sought to expand on the description of the transactions described in the Notice and the Summary of Facts and Representations (the Summary).

Discussed below are the substantive comments that were submitted by the Eligible Policyholders as well as MetLife's responses to the comment letters. Also discussed is MetLife's comment and the Department's responses to specific areas of technical

clarification in the Notice and the Summary.

#### *Eligible Policyholder Comments*

As noted above, a number of commenters said they were opposed to the exemption because they believed it might affect their policyholder benefits adversely or, as one commenter stated, "relieve those in charge of the plan from the obligations of ERISA."

In response, MetLife asserts that the comments have nothing to do with the merits of the exemption. Instead, MetLife explains that the commenters had an ample opportunity to express their concerns at the policyholder hearing that was held on January 24, 2000. In addition, MetLife states that the concerns of these policyholders have been addressed in the "Policyholder Information Booklet, Part I," which was mailed to all Eligible Policyholders. According to MetLife, in that booklet, it is clearly stated that "Your policy benefits, values, guarantees and dividend eligibility will not be reduced, and your policy premiums will not be increased, in any way, due to the demutualization."

#### *MetLife's Comments*

1. *Duties of the Independent Fiduciary.* On page 66202 of the Notice, Section I(d) sets forth the duties of State Street Bank and Trust Company (State Street), the independent fiduciary for the MetLife Plans. MetLife states that it is its understanding that State Street's duty to continue to monitor a MetLife Plan's holding of Trust Interests or Holding Company Common Stock will exist only so long as the MetLife Plan's holding is in excess of the 10 percent limitation in section 407(a) of the Act. Once a MetLife Plan's holdings have been reduced to below this limit, which must occur within six months of the initial public offering (the IPO), MetLife notes that State Street's oversight activities will cease.

The Department wishes to confirm MetLife's understanding of the role of State Street as independent fiduciary for the MetLife Plans.

2. *Eligible Policyholder Consideration.* On page 66202 of the Notice, paragraph (e) of Section I provides for the allocation of Holding Company Common Stock to Eligible Policyholders among the fixed and variable components. However, MetLife represents that it would be more accurate to reword this condition as follows since not all policyholders who receive the fixed component of compensation will also receive the variable component:

(e) Each Eligible Policyholder entitled to receive Trust Interests is allocated at least ten shares of Holding Company Common Stock, and additional consideration may be allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of MetLife, which formulas have been reviewed by the Superintendent.

MetLife points out that the same comment is applicable to Representation 9(d) of the Summary.

In response to this clarification, the Department has made the requested revisions to the Notice and the Summary.

3. *MetLife Definition.* On page 66202 of the Notice, Section III(a) in part, defines the term "MetLife" as "The MetLife Insurance Company." However, MetLife requests that the article "The," be deleted from the term and in response to this comment, the Department has made the requested revision.

4. *Affiliate Definition.* On page 66202 of the Notice, paragraph (b) defines the term "affiliate" of MetLife to include—

(1) Any person directly or indirectly through one or more intermediaries, controlling controlled by, or under common control with MetLife; (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person; and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

While MetLife concedes that subparagraphs (1) and (2) of the definition are acceptable, that portion of subparagraph (3) which includes an entity in which MetLife holds an interest of 5 percent or more is too broad. In preparing the list of MetLife Plans, MetLife states that it included Plans of entities in which it owned a 50 percent or greater interest. If it were required to use the 5 percent threshold, MetLife states that the list of Plans would have to include Plans of companies in which it holds a minority (but greater than 5 percent) interest. In many cases, MetLife represents that it has no knowledge of these Plans, and as a minority owner, has no control over them. Accordingly, MetLife requests that the Department delete subparagraph (3) from the definition. MetLife notes that subparagraph (1) would still pick up the majority-owned subsidiaries whose Plans are already included in the schedule of the MetLife Plans supplied to the Department.

The Department concurs with this comment and has made the requested modification.

5. *Eligible Policyholder Definition.* On page 66202 of the Notice, paragraph (c) of Section III defines the term "Eligible Policyholder" as —

\* \* \* a policyholder whose name appears on MetLife's records as the owner of a policy on the adoption date of MetLife's Plan of Reorganization by MetLife's Board of Directors, which is in full force for its full basic benefits and has not matured by death or otherwise been surrendered or terminated and which remains in force on the effective date of MetLife's demutualization.

MetLife notes that the definition ends with the phrase "and which remains in force on the effective date of MetLife's demutualization." However, MetLife wishes to clarify that New York law was recently amended to eliminate the requirement that the policy remain in force until the effective date to be eligible. Therefore, MetLife states that its Plan of Reorganization now provides that a policy which was in force on the adoption date (September 28, 1999) will be eligible even if it does not remain in force until the effective date.

In response, the Department has considered this clarification and has made the requested modification to the Notice.

6. *Policy Credit Definition.* On page 66202 of the Notice, paragraph (d) of Section III defines the term "policy credit" as —

\* \* \* (1) a dividend deposit or dividend addition; (2) an increase in accumulation value (to which no sales or surrender or similar charges shall be applied); (3) additional coverage or benefits; (4) an extension of the expiry date; or (5) a reduction in premium payments.

MetLife represents that the definition of the term "policy credit" in the Notice is a somewhat simplified version. Therefore, it requests that the term as defined in the Plan of Reorganization, which is stated as follows, be substituted:

\* \* \* (1) an increase in accumulation value, to which the Company will apply no sales, surrender charges, or that will be further increased in value to offset any of these charges, under a policy that is a deferred annuity; (2) an increase in the amount of the payments distributed under a policy that is in the course of annuity payments; (3) additional insurance or dividends with interest, as appropriate (depending upon whether the additional insurance option or the dividends with interest option has been selected with respect to the underlying policy, provided that dividends with interest will apply where an option

other than additional insurance or dividends with interest has been selected), under a policy that is a life insurance policy; or (4) an increase in the retired lives reserve,<sup>2</sup> under a policy that is a life or health insurance funding account or a guaranteed life insurance funding account.

In response, the Department has revised the definition of the term "policy credit" to reflect the version set forth in MetLife's final Plan of Reorganization.

7. *Trust Corpus.* On page 66203 of the Notice, the first sentence of Representation 5 of the Summary provides, in part, that MetLife will establish the Trust "to hold shares of Holding Company Common Stock that are received by millions of policyholders under its Plan of Reorganization." For the sake of accuracy, MetLife states that this clause should be revised to state that the Trust will hold shares of Holding Company Common Stock that are allocated to policyholders since the policyholders will not actually "receive" the shares unless and until they are withdrawn from the Trust.

The Department concurs with this comment and has revised the first sentence of Representation 5.

8. *Miscellaneous Changes/Clarifications.* On page 66204 of the Notice, in the third paragraph of Representation 7 of the Summary, MetLife points out that the proper spelling of the Superintendent's actuarial adviser is "Milliman & Robertson" and not "Miliman & Robertson." Similarly, on page 66204 of the Notice, in Representation 8 of the Summary, the parenthetical in the first sentence of the fourth paragraph should read "(approximately 11.1 million in the case of MetLife) instead of "(approximately 16 million in the case of MetLife)." Finally, on page 66205 of the Notice, in Representation 9, Footnote 5 of the Summary states that the special policyholder meeting will be held "in early January 2000." However, MetLife wishes to clarify that the public hearing occurred on January 24, 2000 and the policyholder vote took place on February 7, 2000.

The Department notes these clarifications.

9. *Canadian Policies.* On page 66205 of the Notice, in Representation 10 of the Summary, Footnote 6 describes the status of certain former Canadian policyholders of MetLife. To clarify the

status of these policies, MetLife states that in July 1998, it sold a substantial portion of its Canadian operations to Clarica Life Insurance Company (Clarica Life). As part of that sale, MetLife explains that a large block of policies in effect with MetLife in Canada were transferred to Clarica Life and the holders of the transferred Canadian policies became policyholders of Clarica Life. MetLife indicates that the transferred policyholders are no longer MetLife policyholders and, therefore, are not entitled to compensation under the Plan of Reorganization.

However, as a result of a commitment made in connection with obtaining Canadian regulatory approval of that sale, if it demutualizes, MetLife states that its Canadian branch will make cash payments to those who are, or are deemed to be, holders of these transferred Canadian policies. MetLife notes that the payments will be determined in a manner that is consistent with the treatment of, and will be fair and equitable to, Eligible Policyholders. Further, MetLife states that the process of the IPO and any Other Capital Raising Transactions must be sufficient to reimburse MetLife for those payments.

Also in Representation 10, MetLife states that there is language describing how the shares of policyholders who elect to be cashed out will be sold to the Holding Company and the proceeds distributed to those policyholders. MetLife states that it is now contemplated that no shares of Holding Company Common Stock will be issued with respect to such policyholders. Instead, "cash for cash-outs" will be funded by the IPO or "Other Capital Raising Transactions," a term defined in the Plan of Reorganization. MetLife adds that the Holding Company will always purchase Holding Company Common Stock at its discretion and it will not purchase such shares to provide cash for cash-outs. Instead, cash for cash-outs will be raised through the IPO or Other Capital Raising Transactions.

Further, the first paragraph of Representation 10 lists those categories of policyholders entitled to receive consideration in the form of cash. However, MetLife wishes to clarify that aside from the listed categories, the following category of policyholders is also entitled to receive cash:

Each group Eligible Policyholder that (a) is an owner of a policy that is an individual retirement annuity within the meaning of section 408 or 408A of the Code or a tax-sheltered annuity within the meaning of section 403(b) of the Code, and (b) has affirmatively made an election to receive cash in lieu of Trust Interests on a form

approved by the Superintendent that has been provided to such Eligible Policyholder pursuant to Section 5.5(b) (of the Plan of Reorganization) and has been properly completed and received by MetLife prior to the date set by the MetLife, but only with respect to such policy.

Additionally, in Representation 10, MetLife requests that the description of the categories of policies which will receive compensation in the form of policy credits be revised to more accurately read as follows:

\* \* \* Further, MetLife will allocate policy credits to (a) each owner of a policy this is an individual retirement annuity within the meaning of section 408A of the Code or a tax-sheltered annuity within the meaning of section 403(b) of the Code; (b) each owner of a policy that is an individual annuity contract that has been issued pursuant to a Plan qualified under section 401(a) or 403(a) of the Code directly to the Plan participant; (c) each owner of a policy that is an individual life insurance policy that has been issued pursuant to a Plan qualified under section 401(a) or 403(a) of the Code directly to the Plan participant; and (d) each owner of a policy that is a life or health insurance funding account or guaranteed life insurance funding account.

Finally, in Representation 10, Footnote 6 describes the possible limits on cash compensation. MetLife requests that the second bullet be revised to read as follows:

- Each group Eligible Policyholder that elects to receive cash and is allocated not more than 25,000 shares will receive compensation in the form of cash.

Immediately following this bullet, MetLife also requests that a third bullet be added which would read:

- Each group Eligible Policyholder that elects to receive cash and is allocated more than 25,000 shares will receive compensation in the form of—

The Department acknowledges these comments and has made the requested revisions.

10. *Holding Company Common Stock Held in the Trust.* On page 66206 of the Notice, the third sentence in the second paragraph of Representation 11 states, in pertinent part, that "shares allocated to the Trust Beneficiary will continue to be held in the Trust until such Trust Beneficiary decides to withdraw allocable shares of Holding Company Common Stock for sale." MetLife wishes to emphasize that after one year from the effective date of the demutualization, shares may be withdrawn for any reason.

Also in Representation 11, Footnote 8 refers to Section 3.4(b) of the draft Trust Agreement. MetLife states that the

<sup>2</sup> MetLife represents that the phrase "retired lives reserve" refers to a reserve which is part of a group term life or health insurance policy by which monies are set aside under the policy for the payment of future premiums for eligible retirees covered under the policy.

reference should be to Section 4.2 of the Trust Agreement which governs the transfer of Trust Interests.

The Department notes these changes.

11. *The Purchase and Sale Program.*

On page 66206 of the Notice, Representation 12 of the Summary describes the Purchase and Sale Program which will be established by the Holding Company following the completion of the IPO for each beneficiary of the Trust (the Trust Beneficiary). MetLife wishes to modify the fourth sentence in the second bullet point to read "Following any partial withdrawal for sale, the Trust Beneficiary must still hold at least 100 Trust Interests."

MetLife also notes that purchases under the Purchase and Sale Program will not begin until the first trading day following the 90th day after the effective date of the Plan of Reorganization, and that MetLife expects that sales will not begin until approximately 30 days after the effective date.

Finally, in the third sentence of the third full paragraph of Representation 12 the parenthetical reads "(Accordingly, the Trust Beneficiary will receive the same consideration for its shares whether they are purchased by the Holding Company or by an unrelated party on the open market.)" MetLife wishes to point out that this will not be the case for all sales. If the sale is on the open market, MetLife represents that the Trust Beneficiary will receive consideration equal to the weighted average price for all shares of Holding Company Common Stock that are held by the Trust (the Trust Shares) which are sold on that day. If the sale is to the Holding Company, MetLife explains that the consideration will be equal to the weighted average of the high and low trading prices of the shares for the date of the sale. Further, MetLife notes that these formulas are designed to provide an average market price for the day, but will not necessarily be the same as the price involved for each trade occurring on that day.

The Department notes these clarifications to Representation 12.

Also on page 66206 of the Notice, Representation 13 of the Summary describes the purchase aspect of the Purchase and Sale Program. However, MetLife states that this description can be further clarified. In this regard, MetLife points out that generally, Trust Beneficiaries with fewer than 1,000 Trust Interests may purchase additional shares of Holding Company Common Stock (to be held in the Trust) to increase their Trust Interests up to 1,000. Trust Beneficiaries must

purchase at least \$250 worth of shares or a smaller amount required to purchase up to the 1,000 maximum number of Trust Interests. Therefore, MetLife explains that "multiple of 100" rule is not part of the purchase side of the Purchase and Sale Program.

The Department has considered this clarification and has revised Representation 13 to reflect this change.

12. *Shareholder Number.* On page 66207 of the Notice, in Representation 14, the first sentence of Footnote 10 states that "MetLife projects that the initial number of shareholders of the Holding Company may exceed 10 million." MetLife states that it would be more accurate to revise this sentence to read as follows: "MetLife projects that, if the Trust mechanism were not used, the initial number of shareholders of the Holding Company could exceed 10 million."

The Department notes this revision and has made the requested modification.

13. *Dividend Distribution.* On page 66207 of the Notice, Representation 15 describes the method of distributing dividends on Trust Shares which are paid to the Trustee. MetLife notes that the Trust Agreement also permits the Trustee to arrange with the Holding Company for the direct payment by the Holding Company of cash dividends to the Trust Beneficiaries at the same time as the payment of dividends to the Holding Company stockholders. Therefore, it wishes to clarify that the Holding Company intends to declare annual cash dividends, subject to the discretion of its Board of Directors, and to distribute them directly to the Trust Beneficiaries, as permitted by this provision.

The Department notes this clarification.

14. *Matters for Trust Beneficiary Voting.* On page 66207 of the Notice, the first sentence in the first paragraph of Representation 16 lists matters on which Trust Beneficiaries would be entitled to direct the Trustee how to vote shares of Holding Company Common Stock. However, MetLife wishes to expand the list to include \* \* \* any merger or consolidation, a sale, lease or exchange of all or substantially all of the assets of the Holding Company, or a recapitalization or dissolution of the Holding Company \* \* \* MetLife states that this provision would require a vote under applicable Delaware law.

In addition, the second through fourth sentences of the first paragraph of Representation 16 provide that the Trustee will vote all shares of Holding Company Common Stock that is held in

Trust in proportion to the instructions received from Trust Beneficiaries which give such instructions unless the issue is a choice of competing candidates for director positions and Trust Beneficiaries representing 20 percent or fewer of the Trust Interests provide instructions. Then, the Trustee will vote only the shares of Holding Company Common Stock that are equal in number to the number of Trust Interests held by Trust Beneficiaries which provide instructions.

MetLife wishes to point out that the exception relating to when fewer than 20 percent of the Trust Beneficiaries provide instructions, has been deleted.

Finally, the third paragraph of Representation 16 discusses the termination of the Trust and provides that a Trust Beneficiary will have the option of receiving shares of allocable Holding Company Common Stock in-kind or receiving cash as a result of the sale of such Stock to the Holding Company. MetLife wishes to emphasize that upon termination of the Trust, a Trust Beneficiary will have the option of receiving shares in-kind or cash only if the Holding Company, in its sole discretion, elects to purchase all or a portion of the shares.<sup>3</sup>

In response, the Department has revised Representation 16 in light of these modifications.

15. *MetLife's Ownership Interest in State Street.* On page 66208 of the Notice, the fourth paragraph of Representation 17 of the Summary states, in part, that MetLife "does not have an ownership interest" in State Street. MetLife explains that this sentence should be read to mean an ownership interest other than the very minor one (*i.e.*, MetLife holds approximately .005962 of the total outstanding shares of State Street) which is described in the immediately preceding paragraph involving separate accounts.

The Department notes this clarification and has added the parenthetical "(other than a negligible one)," after the phrase "ownership interest in State Street" and before the word "nor."

<sup>3</sup> MetLife represents that it has not yet formulated procedures which will govern the possible purchase of Holding Company Common Stock upon the termination of the Trust. MetLife explains that there may be reasons why such purchase will not be strictly *pro rata*. For example, the Holding Company may wish to buy out odd lot holders first, or buy out holders who own more than (or less than) a certain number of shares. However, MetLife further explains that the result should not result in discrimination among Trust Beneficiaries since those who are not bought out by the Holding Company may sell their shares of Common Stock on the open market for fair market value.

16. *Preliminary Review/MetLife Plans.* On page 66208 of the Notice, the final sentence of Representation 18 states that "MetLife" rather than "State Street" has conducted a preliminary review of the Plan of Reorganization. The Department notes this error and has revised the sentence, accordingly.

Finally, MetLife states that it has come to its attention that seven in-house Plans of a MetLife subsidiary, New England Life Insurance Company, as well as one in-house Plan of another subsidiary, Fulcrum Financial Advisors, hold policies which may be eligible to receive compensation in the demutualization.<sup>4</sup> MetLife points out that State Street will act on behalf of these MetLife Plans and State Street has confirmed that it will undertake independent fiduciary responsibilities on behalf of these Plans.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-10721) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

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

**First American Capital Management, Inc. (FACM), Located in Newport Beach, California**

[Prohibited Transaction Exemption No. 2000-12; Exemption Application No. D-10819]

*Exemption*

**Section I—Definitions and Special Rules**

The following definitions and special rules will apply to this exemption:

<sup>4</sup> These MetLife Plans include The New England Benefit Plan for the Field Force; The New England Benefit Plan, The New England 401(k) Plan and Trust; The New England Retirement Plan and Trust; The New England Agents' Retirement Plan and Trust; The New England Agents' Deferred Compensation Plan and Trust; The New England Agency Employees' Retirement Plan and Trust; and Fulcrum Financial Advisors 401(k) Plan.

(a) The term "person" includes the person and affiliates of the person.

(b) An "affiliate" of a person includes the following:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), brother, sister, or spouse of a brother or sister, of the person; and

(3) Any corporation or partnership of which the person is an officer, director or partner.

A person is not an affiliate of another person solely because one of them has investment discretion over the other's assets. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An "affiliate of FACM" includes Pacific American Securities, LLC, (PAS) and any other broker-dealer registered under the Securities Exchange Act of 1934 with respect to which FACM has at least a 40 percent minority ownership interest and which is subject to regulations similar to those to which PAS is subject (such entities referred to collectively herein as "FACM").

(d) An "agency cross transaction" is a securities transaction in which the same person acts as agent for both any seller and any buyer for the purchase or sale of a security.

(e) The term "covered transaction" means an action described in section II(a), (b), or (c) of this exemption.

(f) The phrase "effecting or executing a securities transaction" means the execution of a securities transaction as agent for another person and/or the performance of clearance, settlement, custodial or other functions ancillary thereto.

(g) A Plan fiduciary is independent of a person only if the fiduciary has no relationship to or interest in such person that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(h) The term "profit" includes all charges relating to effecting or executing securities transactions, less reasonable and necessary expenses including reasonable indirect expenses (such as overhead costs) properly allocated to the performance of these transactions under generally accepted accounting principles.

(i) The term "securities transaction" means the purchase or sale of securities.

(j) The term "nondiscretionary trustee" of a Plan means a trustee or custodian whose power and duties with respect to any assets of the Plan are

limited to (1) the provision of nondiscretionary trust services to the Plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person does not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

**Section II—Covered Transactions**

If each condition of Section III of this exemption is either satisfied or non-applicable under Section IV, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, shall not apply to—

(a) First American Capital Management (FACM) using its authority to cause an employee benefit plan (a "Plan") to pay a fee to PAS, or another affiliate of FACM, for effecting or executing securities transactions as an agent for the Plan, but only to the extent that such transactions are not excessive under the circumstances, in either amount or frequency;

(b) FACM acting through PAS, or another affiliate of FACM, as an agent in an agency cross transaction for both a Plan with respect to which FACM is a fiduciary and one or more other parties to the transaction; or (c) The receipt by FACM, through its affiliates, of reasonable compensation for effecting or executing an agency cross transaction in which a Plan is a party from one or more other parties to the transaction.

**Section III—Conditions**

Except to the extent otherwise provided in Section IV of this exemption, Section II of this exemption applies only if the following conditions are satisfied:

(a) The person engaging in the covered transaction is not a trustee (other than a nondiscretionary trustee) or an administrator of the Plan, or an employer any of whose employees are covered by the Plan.

(b) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each Plan whose assets are involved in the transaction, which Plan fiduciary is independent of FACM.

(c) The authorization referred to in paragraph (b) of this section is terminable at will by the Plan, without penalty to the Plan, upon receipt by

FACM of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (b) of this section with instructions on the use of the form must be supplied to the authorizing fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the Plan, without penalty to the Plan, upon receipt by FACM of written notice from the authorizing fiduciary or other Plan official having authority to terminate the authorization; and

(2) Failure to return the form will result in the continued authorization of FACM to engage in the covered transactions on behalf of the Plan.

(d) Within three (3) months before an authorization is made, the authorizing fiduciary is furnished with any reasonably available information that FACM reasonably believes to be necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, the form for termination of authorization described in Section II(c), a description of FACM's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests.

(e) FACM furnishes the authorizing fiduciary with either:

(1) a confirmation slip for each securities transaction underlying a covered transaction within ten (10) business days of the securities transaction containing the information described in Rule 10b-10(a)(1-7) under the Securities Exchange Act of 1934, 17 CFR 240.10b-10; or

(2) at least once every three (3) months, and not later than 45 days following the period to which it relates, a report disclosing:

(A) a compilation of the information that would be provided to the Plan pursuant to subparagraph (e)(1) of this Section during the three-month period covered by the report;

(B) the total of all securities transaction-related charges incurred by the Plan during such period in connection with such covered transactions; and

(C) the amount of the securities transaction-related charges retained by FACM and the amount of such charges paid to other persons for execution or other services.

For purposes of this paragraph (e), the words "incurred by the Plan" shall be construed to mean "incurred by the pooled fund" when FACM engages in covered transactions on behalf of a

pooled fund in which the Plan participates.

(f) The authorizing fiduciary is furnished with a summary of the information required under paragraph (e)(1) at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following:

(1) the total of all securities transaction-related charges incurred by the Plan during the period in connection with covered securities transactions;

(2) the amount of the securities transaction-related charges retained by FACM and the amount of these charges paid to other persons for execution or other services;

(3) A description of FACM's brokerage placement practices, if such practices have materially changed during the period covered by the summary;

(4) (i) A portfolio turnover ratio, calculated in a manner which is reasonably designed to provide the authorizing fiduciary with the information needed to assist in discharging its duty of prudence. The requirements of this subparagraph (f)(4)(i) will be met if the "annualized portfolio turnover ratio," calculated in the manner described in subparagraph (f)(4)(ii), is contained in the summary;

(ii) The "annualized portfolio turnover ratio" shall be calculated as a percentage of the Plan assets consisting of securities or cash over which FACM had discretionary investment authority, or with respect to which FACM rendered, or had any responsibility to render, investment advice (the "portfolio") at any time or times ("management period(s)") during the period covered by the report. First, the "portfolio turnover ratio" (not annualized) is obtained by dividing (A) the lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the management period(s) by (B) the monthly average of the market value of the portfolio securities during all management period(s). Such monthly average is calculated by totaling the market values of the portfolio securities as of the beginning and end of each management period and as of the end of each month that ends within such period(s), and dividing the sum by the number of valuation dates so used. For purposes of this calculation, all debt securities whose maturities at the time of acquisition were one year or less are excluded from both the numerator and the denominator.

The "annualized portfolio turnover ratio" is then derived by multiplying the

"portfolio turnover ratio" by an annualizing factor. The annualizing factor is obtained by dividing (C) the number twelve (12) by (D) the aggregate duration of the management period(s) expressed in months (and fractions thereof).

(iii) The information described in this paragraph (f)(4) is not required to be furnished in any case where FACM has not exercised discretionary authority over trading in the Plan's account during the period covered by the report.

For purposes of this paragraph (f), the words "incurred by the Plan" shall be construed to mean "incurred by the pooled fund" when FACM engages in covered transactions on behalf of a pooled fund in which the Plan participates.

(g) If an agency cross transaction to which Section IV(b) does not apply is involved, the following conditions must also be satisfied:

(1) The information required under Sections III(d) or IV(d)(1)(B) of this exemption includes a statement to the effect that, with respect to agency cross transactions, FACM will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions;

(2) The summary required under Section III(f) of this exemption includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by FACM in connection with those transactions during the period;

(3) FACM has the discretionary authority to act on behalf of, and/or provide investment advice to, either (A) one or more sellers or (B) one or more buyers with respect to the transaction, but not both;

(4) The agency cross transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available; and

(5) The agency cross transaction is executed or effected at a price that is at or between the independent bid and independent ask prices for the security prevailing at the time of the transaction.

#### Section IV—Exceptions From Conditions

(a) Certain plans not covering employees. Section III does not apply to covered transactions to the extent they are engaged in on behalf of individual retirement accounts (IRAs) meeting the conditions of 29 CFR 2510.3-2(d), or Plans, other than training programs, that



cover no employees within the meaning of 29 CFR 2510.3-3.

(b) Certain agency cross transactions. Section III of this exemption does not apply in the case of an agency cross transaction, provided that FACM:

(1) does not render investment advice to any Plan for a fee within the meaning of section 3(21)(A)(ii) of the Act with respect to the transaction;

(2) is not otherwise a fiduciary who has investment discretion with respect to any Plan assets involved in the transaction (see 29 CFR 2510.3-21(d)); and

(3) does not have the authority to engage, retain or discharge any person who is, or is proposed to be, a fiduciary regarding any such Plan assets.

(c) Recapture of profits. Section III(a) of this exemption does not apply in any case where FACM returns or credits to the Plan all profits earned by FACM in connection with the securities transactions associated with the covered transaction.

(d) Special rule for pooled funds. If FACM engages in a covered transaction on behalf of an account or fund for the collective investment of the assets of more than one Plan (a Pooled Fund):

(1) Sections III(b), (c), and (d) do not apply if—

(A) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this paragraph (d)(1), of a plan fiduciary with respect to each Plan whose assets are invested in the Pooled Fund who is independent of FACM. The requirement that the authorizing fiduciary be independent of FACM shall not apply in the case of a Plan covering only employees of FACM, if the requirements of Sections IV(d)(2)(A) and (B) are met.

(B) The authorizing fiduciary is furnished with any reasonably available information that FACM believes to be necessary to determine whether the authorization should be given or continued, not less than 30 days prior to implementation of the arrangement or material change thereto, including (but not limited to) a description of FACM's brokerage placement practices, and, where requested, any reasonably available information regarding the matter upon the reasonable request of the authorizing fiduciary at any time.

(C) In the event an authorizing fiduciary submits a notice in writing to FACM objecting to the implementation of, material change in, or continuation of, the arrangement, the Plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the Pooled Fund, without

penalty to the Plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing Plans and to the non-withdrawing Plans. In the case of a Plan that elects to withdraw under this subparagraph (d)(1)(C), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a Plan electing to withdraw.

(D) In the case of a Plan whose assets are proposed to be invested in the Pooled Fund subsequent to the implementation of the arrangement and that has not authorized the arrangement in the manner described in subparagraphs (d)(1)(B) and (C) of this section, the Plan's investment in the Pooled Fund is subject to the prior written authorization of an authorizing fiduciary who satisfies the requirements of subparagraph (d)(1)(A).

(2) Section III(a) of this exemption, to the extent that it prohibits FACM from being the employer of employees covered by a plan investing in a pool managed by FACM, does not apply if—

(A) FACM is an "investment manager" as defined in section 3(38) of the Act, and

(B) Either (i) FACM returns or credits to the Pooled Fund all profits earned by FACM in connection with all covered transactions engaged in by FACM on behalf of the Pooled Fund, or (ii) the Pooled Fund satisfies the requirements of subparagraph (d)(3) of this section.

(3) A Pooled Fund satisfies the requirements of paragraph (d) of this section for a fiscal year of the Fund if—

(A) On the first day of such fiscal year, and immediately following each acquisition of an interest in the Pooled Fund during the fiscal year by any Plan covering employees of FACM, the aggregate fair market value of the interests in such Fund of all Plans covering employees of FACM does not exceed twenty (20) percent of the fair market value of the total assets of the Fund; and

(B) The aggregate brokerage commissions received by FACM, in connection with covered transactions engaged in by FACM on behalf of all Pooled Funds in which a Plan covering employees of FACM participates, do not exceed five (5) percent of the total brokerage commissions received by FACM from all sources in such fiscal year.

**Effective Date:** This exemption is effective for transactions occurring on or after March 13, 2000.

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 December 17, 1999, at 64 FR 70742.

**Notice to Interested Persons:** The applicant was unable to provide notice to interested persons of the pendency of the proposed exemption within the time period specified in the notice of proposed exemption published in the **Federal Register** on December 17, 1999. However, by letter dated February 1, 2000, the applicant represents that a copy of the notice of proposed exemption, and a supplemental statement in connection therewith as required by the Department's procedures at 29 CFR 2570.43(b), was delivered by January 25, 2000, to each client of FACM which is, or is using the assets of, an "employee benefit plan" (as defined in section 3(3) of the Act) or a "plan" (as defined in section 4975(e) of the Code). Interested persons were informed that they had until February 28, 2000, to comment or request a hearing on the proposed exemption. No written comments or hearing requests were received by the Department.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

**Deutsche Bank AG, et al. (Deutsche Bank), Located in New York, NY**

[Prohibited Transaction Exemption 2000-13; Exemption Application No. D-10384]

### Exemption

#### Section I. Covered Transactions

The restrictions of section 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 to (1) the sale to employee benefit plans (the Plans) of a synthetic guaranteed investment contract (the Buy & Hold Synthetic GIC) offered by Deutsche Bank, which is or may become a party in interest with respect to the Plans; and (2) extensions of credit by Deutsche Bank to the Plans for the purpose of funding benefit withdrawals.

This exemption is conditioned on the requirements set forth below in Section II.

#### Section II. General Conditions

(a) The decision to enter into a Buy & Hold Synthetic GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of Deutsche Bank.

(b) Only Plans with total assets having an aggregate market value of at least \$50 million are permitted to purchase Buy &



Hold Synthetic GICs; provided however that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are “plan assets” under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity has purchased a Buy & Hold Synthetic GIC, the foregoing \$50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million, or

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are “plan assets” under the Plan Asset Regulation, which entity has purchased a Buy & Hold Synthetic GIC, the foregoing \$50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to Plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of \$100 million.

(c) Prior to the execution of a Buy & Hold Synthetic GIC, the independent Plan fiduciary receives a full and detailed written disclosure of all

material features concerning the Buy & Hold Synthetic GIC, including—

(1) A copy of the contract (the Contract), underlying the Buy & Hold Synthetic GIC, which has been executed by Deutsche Bank and the Plan fiduciary, which stipulates the relevant provisions of such instrument, the interest rate that is credited (the Crediting Rate) to the book value account (the Book Value Account) of the Buy & Hold Synthetic GIC, the applicable fees and the rights and obligations of the parties;

(2) Information explaining in a manner calculated to be understood by a Plan fiduciary that if adverse market conditions occur, that the Crediting Rate to the Book Value Account of a Buy & Hold Synthetic GIC may be as low as 0 percent; and

(3) Copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Following the receipt of such disclosure, the Plan fiduciary approves, in writing, the execution of the Buy & Hold Synthetic GIC on behalf of the Plan.

(e) Upon entering into a Buy & Hold Synthetic GIC with a Plan fiduciary of a Plan that provides for participant investment selection, Deutsche Bank informs the Plan fiduciary that such fiduciary should provide each Plan participant with—

(1) A summary of the primary provisions of the Contract, including the applicable fees; and

(2) Information explaining that if adverse market conditions occur, the Book Value Account's Crediting Rate may be as low as 0 percent.

(f) Subsequent to a Plan's investment in a Buy & Hold Synthetic GIC, the Plan fiduciary and, if applicable, the Plan participant, upon such participant's request, receive a monthly report consisting of a statement of the Book Value Account, which specifies, among other things, the Book Value Account balance for the prior month, withdrawals from the Contract, any reduction in the balance of the Book Value Account on account of a security in the fixed portfolio (the Fixed Portfolio) becoming an impaired security, interest credited to the Book Value Account at the Crediting Rate, and the current month's ending balance for the Book Value Account. The report will also specify the Current Crediting Rate, the prior month's ending fair market value of the Fixed Portfolio, the proceeds of any securities liquidated, fees charged to the Plan, and the current month's ending fair market value of the Fixed Portfolio and rate of return.

(g) As to each Plan, the combined total of all fees and charges imposed under a Buy & Hold Synthetic GIC is not in excess of “reasonable compensation” within the meaning of section 408(b)(2) of the Act.

(h) Each Buy & Hold Synthetic GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(i) Each Buy & Hold Synthetic GIC has a predefined maturity date selected by the Plan fiduciary and agreed to by Deutsche Bank.

(j) Neither Deutsche Bank nor its affiliates maintain custody of the assets underlying the Buy & Hold Synthetic GIC or commingle those assets with other funds under their management.

(k) The formulas for computing the Crediting Rate for the Buy & Hold Synthetic GIC and a charge for terminating the Buy & Hold Synthetic GIC within three years of its effective date (the Early Termination Charge) are objectively determined. Further, the Early Termination Charge compensates Deutsche Bank for its direct costs incurred in connection with the Buy & Hold Synthetic GIC.

(l) Deutsche Bank maintains books and records of each Buy & Hold Synthetic GIC transaction for a period of six years in a manner that is accessible for audit and examination. Such books and records are subject to annual audit by independent, certified public accountants.

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 February 1, 2000 at 65 FR 4843 as well as a notice of technical correction published on February 8, 2000 at 65 FR 6228.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady 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, DC, this 8th day of March, 2000.

**Ivan Strasfeld,**

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

[FR Doc. 00-6048 Filed 3-10-00; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00-026)]

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Availability of Inventions for Licensing.

**SUMMARY:** The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Ames Research Center. Claims are deleted from the patent applications to avoid premature disclosure.

**DATE:** March 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Padilla, Patent Counsel, NASA Ames Research Center, Mail Code 202A-3, Moffett Field, CA 94035-1000; telephone (650) 604-5104, fax (650) 604-1592.

*NASA Case No. ARC-14359-1GE:*

Method and System for an Automated Tool for En Route Traffic Controllers;  
*NASA Case No. ARC-14491-1NP:* A Neural Net Algorithm that Emulates Chemical Processes.

Dated: March 6, 2000.

**Edward A. Frankle,**  
*General Counsel.*

[FR Doc. 00-6040 Filed 3-10-00; 8:45 am]

**BILLING CODE 7510-01-U**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00-025)]

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Prospective Patent License.

**SUMMARY:** NASA hereby gives notice that Cytec Industries, Inc., of Five Garret Mountain Plaza, West Paterson, NJ 07424, has applied for an exclusive license to practice the inventions described and claimed in NASA Case Numbers LAR 15544-1 entitled "HIGH PERFORMANCE/HIGH TEMPERATURE TRANSFER MOLDING RESINS," LAR 15543-1 entitled "PHENYLETHYNYL CONTAINING REACTIVE ADDITIVES," LAR 15834-1 entitled, "HIGH PERFORMANCE/HIGH TEMPERATURE RESINS FOR INFUSION AND TRANSFER MOLDING PROCESSES," LAR 15534-1 entitled "METHOD OF PREPARING POLYMERS WITH LOW MELT VISCOSITY," LAR 15700-1 entitled "BLENDS OF POLYMERS WITH REACTIVE AND NON-REACTIVE ADDITIVES HAVING LOWER MELT VISCOSITY," and U.S. Patent No. 5,965,687 entitled "METHOD OF PREPARING POLYMERS WITH LOW MELT VISCOSITY" all of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

**DATE:** Responses to this notice must be received by May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Hillary W. Hawkins, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681-2199; Telephone 757-864-8882; Fax 757-864-9190.

Dated: March 7, 2000.

**Edward A. Frankle,**  
*General Counsel.*

[FR Doc. 00-6039 Filed 3-10-00; 8:45 am]

**BILLING CODE 7510-01-U**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Nixon Presidential Historical Materials; Opening of Materials

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of opening of materials.

**SUMMARY:** This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), NARA has identified, inventoried, and prepared for public access integral file segments among the Nixon Presidential historical materials.

**DATES:** NARA intends to make these materials described in this notice available to the public beginning April 27, 2000. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense before April 12, 2000.

**ADDRESSES:** The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45 a.m. on April 27, 2000. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740-6001.

**FOR FURTHER INFORMATION CONTACT:** Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301-713-6950.

**SUPPLEMENTARY INFORMATION:** The integral file segments of textual materials to be opened on April 27, 2000, consist of 84 cubic feet.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumerical file scheme of 61