

certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Banc One* means Banc One Capital Corporation, an Ohio corporation, and its affiliates.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of Prohibited Transaction

Exemption (PTE) 95-60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, at 35932.

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 August 11, 1995 at 60 FR 41127.

**EFFECTIVE DATE:** This exemption is effective for transactions occurring on or after June 2, 1995.

**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 18th day of September, 1995.

Ivan Strasfeld,

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

[FR Doc. 95-23463 Filed 9-20-95; 8:45 am]

BILLING CODE 4510-29-P

[Application No. L-09927, et al.]

#### Proposed Exemptions; Plumbers and Steamfitters Local No. 177

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

#### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

### 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.

Plumbers and Steamfitters Local No. 177, Health and Welfare Fund (the Welfare Plan), and Plumbers and Steamfitters Local No. 177, Pension Trust Fund (the Pension Plan; collectively, the Plans), Located in Brunswick, Georgia

[Application Nos. L-09927, D-09928 and L-09929]

#### *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 sections 4975(c)(1) (A) through (E) of the Code, shall not apply (1) effective February 17, 1994, to the past sale by the Welfare Plan of an office building located in Brunswick, Georgia (the Office Building) to Plumbers and Steamfitters Local No.

177 (the Union), a party in interest with respect to the Plans; and (2) effective February 16, 1995, to the past and proposed leases (the Leases) of space in the Office Building by the Union to the Plans; provided the following conditions are satisfied:

(a) The purchase price paid by the Union for the Office Building was no less than the fair market value of the Office Building as of the date of the sale;

(b) All terms of the Leases are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties;

(c) Rents paid under the Leases do not exceed the fair market rental values of the leased spaces;

(d) The interests of the Plans under the Leases for all purposes are represented by a qualified independent fiduciary who monitors the Leases and takes appropriate action to enforce the Union's compliance with all Lease terms and conditions; and

(e) Within 60 days of the publication in the Federal Register of a notice granting this exemption, the Union pays any excise taxes applicable under section 4975(a) of the Code by virtue of the past Leases for the period commencing February 17, 1994 to February 16, 1995.

**EFFECTIVE DATES:** This exemption, if granted, will be effective as of February 17, 1994 with respect to the sale of the Office Building, and February 16, 1995 with respect to the Leases.

#### *Summary of Facts and Representations*

1. The Welfare Plan is a multi-employer welfare benefit plan with total assets of \$650,788 and approximately 600 participants as of July 31, 1994. The Pension Plan is a defined contribution money purchase pension plan, with total assets of \$8,406,592, and approximately 240 participants as of December 31, 1994. The Plans are maintained pursuant to collective bargaining agreements between the Union and employers of members of the Union (the Employers). The Plans share the same board of trustees (the Trustees), consisting of three representatives of the Union and three representatives of the Employers.

2. The Office Building, located on the New Jesup Highway in Brunswick, Georgia, was constructed in 1960 as a single-family residence, and has been remodeled and adapted for use as a business office facility. The Office Building has 4,550 square feet of floor space and is situated on a 4.11 acre parcel of land. The Trustees represent that they purchased the Office Building on behalf of the Welfare Plan on August 1, 1985 for \$168,000 from an individual

unrelated to the Plans, the Union and the Employers. Since 1985 the Office Building has served as the site of the administrative offices of the Welfare Plan. The Welfare Plan also shared space in the Office Building with the Pension Plan and the Union.<sup>1</sup>

3. In early 1994 the Trustees determined that the assets of the Welfare Plan were in need of diversification and enhanced liquidity, and that the Office Building should be sold in order to address these needs. After investigations into the prevailing circumstances of the real estate market in which the Office Building is situated, the Trustees determined to accept an offer by the Union to purchase the Office Building from the Welfare Plan. Accordingly, on February 17, 1994, the Union purchased the Office Building from the Welfare Plan, and the Union immediately commenced leasing space in the Office Building to the Welfare Plan and the Pension Plan (the New Leases). The Trustees are requesting an exemption with respect to the sale of the Office Building to the Union and the past and proposed New Leases, under the terms and conditions described herein.

4. The Trustees represent that their sale of the Office Building was necessary in order to diversify the investment of the assets of the Welfare Plan, which were invested disproportionately in real property, and that the sale to the Union was the most advantageous means of achieving such a sale. The Trustees represent that due to the "soft" conditions prevailing in the local real estate market, the Welfare Plan could not reasonably expect to receive the full appraised fair market value of the Office Building in an arm's length sale transaction involving an unrelated buyer. In the sale of the Office Building to the Union, however, the Trustees state that they succeeded in obtaining a purchase price in the amount of the Office Building's full fair market value as of the sale date. The Office Building was appraised by Richard C. Friedman, SRA (Friedman), an independent professional realty appraiser in Brunswick, Georgia, who determined that as of February 5, 1994, the Office Building had a fair market

<sup>1</sup> The Trustees represent that the sharing of office space in the Office Building with the Pension Plan, the apprenticeship plan and the Union satisfied the requirements of Prohibited Transaction Class Exemption 76-1 (PTCE 76-1, 41 FR 12740, March 26, 1976) and Prohibited Transaction Class Exemption 77-10 (PTCE 77-10, 42 FR 33918, July 1, 1977), and, therefore, is exempt from the prohibitions of sections 406(a) and 406(b)(2) of the Act. The Department expresses no opinion on whether the sharing arrangements satisfied the requirements of PTCEs 76-1 and 77-10.

value of \$230,000. In accordance with Friedman's appraisal, the Union bought the Office Building on February 17, 1994 for a cash purchase price of \$230,000. Aside from a settlement charge of \$230, the Union paid all expenses related to the sale transaction.

5. Since the Union's purchase of the Office Building, the Welfare Plan and the Pension Plan have continued to occupy and utilize space therein as they had done prior to the sale transaction. Effective February 28, 1994, leases were executed on behalf of each Plan (the Leases) providing for the Plans' lease of space in the Office Building from the Union. Under the Leases, each Plan leases one half of the same 1,327 square feet of space in the Office Building which the Plans had shared and utilized prior to the Union's purchase of the Office Building from the Union, consisting of a large office, supply room, reception area, and use of all common areas. The Union occupies and utilizes the remaining office space in the Office Building, which consists of an office for the Union's business manager, a general office, meeting space, storage space, reception area, and use of all common areas. The Plans' Leases each have an initial term of three years, with provisions for successive three-year renewal periods under the same terms as the initial Lease, subject to increases in the rental amounts. Under each Lease the Union is responsible for paying all taxes, insurance and utilities other than telephone service, and for all repairs to the Office Building. Each Lease includes a provision giving the Plan the unconditional right to terminate the Lease at any time without penalty upon sixty days written notice. The interests of the Plans for all purposes under the Leases are represented by an independent fiduciary (the Fiduciary), described below, whose functions include the negotiation, monitoring and enforcement of the Leases' terms and conditions on behalf of the Plans.

6. Rent under the Leases, payable monthly, will be no more than the fair market value of the space leased. In another appraisal of the Office Building, Friedman determined that as of April 17, 1995, the fair market rental value of the Office Building space leased under each Lease was \$359.40 per month, for a combined total of \$718.80. In accordance with Friedman's appraisal, initial rent under each Lease is set at \$359.40 per month. Rental during any successive renewal term(s) will be established as follows: During the last two months of the initial term, and thereafter during the last two months of the renewal term, the Fiduciary shall cause the Office Building to be

reappraised for its fair market rental value, and the rental in the subsequent renewal term, if any, shall be the newly reappraised fair rental market of the leased space.

7. The interests of the Plans under the Leases are represented for all purposes by the Fiduciary, Julian R. Friedman, Esq., an attorney who represents that he is independent of the Union.<sup>2</sup> The Fiduciary represents that he has substantial experience with collectively-bargained employee benefit plans and the fiduciary responsibility provisions of the Act. Acting as a fiduciary under the Act on behalf of the Plans, the Fiduciary will oversee the relationship between the Union as lessor and the Plans as lessees under the Leases, and will monitor and enforce the Union's performance of its obligations thereunder. The Fiduciary will be responsible for securing the appraisals required by the Leases' rental-review provisions, and for making any adjustments in the rent in accordance with such appraisals. The Fiduciary negotiated and prepared the Leases on behalf of the Plans, and he states that he has determined that they are in the best interests of the participants and beneficiaries of the Plans due to the protective and advantageous features of the Leases. The Fiduciary also represents that he has determined that the particular space in the Office Building which is shared by the Plans and rented from the Union pursuant to the Leases is sufficient and appropriate for the Plans' operations, and that the arrangement does not have the effect of subsidizing the Union's use of other space in the Office Building.

8. The Department is not proposing exemptive relief for the Leases for any period prior to February 16, 1995, because that is the date on which the Plans's interests under the Leases commenced to be represented for all purposes by the Fiduciary. The Union recognizes that the leases of the Office Building to the Plans under the Leases for the period commencing February 28, 1994 to February 16, 1995 constituted prohibited transactions under the Act and the Code for which no exemptive relief is proposed herein. Accordingly, as a condition of the proposed exemption, if granted, within sixty days of the publication in the Federal Register of a notice granting the exemption, the Union will pay any excise taxes which are applicable under section 4975(a) of the Code by reason of

<sup>2</sup> The Fiduciary represents that he is not related to Richard C. Friedman, S.R.A., a real property appraiser previously referred to in this summary of facts and representations.

such Leases of the Office Building for the period commencing February 28, 1994 to February 16, 1995.

9. In summary, the applicant represents that the past and proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The sale of the Office Building was necessary to enhance the liquidity and diversification of the assets of the Welfare Plan; (2) The sale was a cash transaction in which the Welfare Plan received the full appraised fair market value of the Property as of the sale date; (3) The interests of the Plans under the Leases are represented by the Fiduciary, who has determined that the Leases are in the best interests and protective of the participants and beneficiaries of the Plans, and who will monitor and enforce the Union's compliance with all Lease terms and conditions; (4) The Plans will pay no more than fair market rental for the space leased in the Office Building; and (5) Each Plan has the right under each Lease to terminate the Lease for any reason upon sixty days written notice.

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

State Mutual Life Assurance Company of America (State Mutual) Located in Worcester, MA

[Application No. D-10008]

#### *Proposed Exemption*

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).<sup>3</sup>

#### Section I. Covered Transactions

If the exemption is granted, 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 (a) the receipt of common stock of State Mutual, (b) the substitution of the common stock of Allmerica Financial Corporation (Allmerica), State Mutual's prospective sole owner, for the State Mutual stock, or (c) the receipt of cash or policy credits, by or on behalf of an employee benefit plan policyholder of

<sup>3</sup> For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

State Mutual (the Plan), other than any policyholder which is a Plan maintained by State Mutual or an affiliate of State Mutual for its own employees (the State Mutual Plans)<sup>4</sup>, in exchange for such policyholder's membership interest in State Mutual, in accordance with the terms of a plan of reorganization (the Demutualization Plan) adopted by State Mutual and implemented pursuant to section 19E (Section 19E) of Chapter 175 of the Massachusetts General Laws.

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 the State Mutual Pension Plan, of employer securities in the form of excess stock, in accordance with the terms of the Demutualization Plan.

This proposed exemption is subject to the conditions set forth below in Section II.

## Section II. General Conditions

(a) The Demutualization Plan is implemented in accordance with procedural and substantive safeguards that are imposed under Massachusetts law and is subject to the review and supervision by the Massachusetts Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to certain policyholders of State Mutual, which include, but are not limited to the subject Plans and the State Mutual Plans (the Eligible Policyholders), as part of such Commissioner's review of the Demutualization Plan, and approves the Demutualization Plan following a determination that such Demutualization Plan is not prejudicial to all Eligible Policyholders.

(c) The Demutualization Plan is filed with the New York Superintendent of Insurance (the Superintendent) who determines whether the Demutualization Plan is fair and equitable to Eligible Policyholders from New York.

(d) Each Eligible Policyholder has an opportunity to comment on the Demutualization Plan and decide

whether to vote to approve such Demutualization Plan after full written disclosure is given such Eligible Policyholder by State Mutual, of the terms of the Demutualization Plan.

(e) Any election by an Eligible Policyholder which is a Plan (including the State Mutual Plans), to receive stock, cash or policy credits, pursuant to the terms of the Demutualization Plan is made by one or more independent fiduciaries (the Independent Fiduciaries) of such Plan and neither State Mutual nor any of its affiliates exercises any discretion or provides investment advice with respect to such election.

(f) In the case of the State Mutual Plans, where the consideration is in the form of stock, the Independent Fiduciary—

(1) Elects the form of consideration that such Plans receive;

(2) Monitors, on behalf of such Plans, the acquisition and holding of the stock;

(3) Makes determinations on behalf of such Plans with respect to the voting, the continued holding or the disposition of such stock; and

(4) Disposes, in a prudent manner, shares of stock exceeding the 10 percent holding limitation of section 407(a)(2) of the Act within 90 days following its receipt by the State Mutual Pension Plan. Such shares that are not disposed of during this initial 90 day period must be disposed of within an additional period of 90 days.

(g) After each Eligible Policyholder entitled to receive stock is allocated at least thirty shares of stock, additional consideration is 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 State Mutual which formulas have been approved by the Commissioner and the Superintendent.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of stock or in connection with the implementation of the commission-free sales program.

(j) All of State Mutual's policyholder obligations remain in force and are not affected by the Demutualization Plan.

## Section III. Definitions

For purposes of this proposed exemption:

(a) The term "State Mutual" means State Mutual Life Assurance Company of America and any affiliate of State

Mutual as defined in paragraph (b) of this Section III.

(b) An "affiliate" of State Mutual includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with State Mutual. (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.

(c) The term "Eligible Policyholder" means a policyholder whose name appears on the conversion date on the insurer's records as owner of a participating policy under which there is a right to vote and which is in full force on both the December 31 immediately preceding the conversion date and the date the insurer's board of directors first votes to convert to stock form. Under Massachusetts law, only such policyholders are entitled to receive consideration in the demutualization. Policyholders who are not Eligible Policyholders will not receive any stock or other consideration. As used herein, the term "Eligible Policyholder" includes, but is not limited to, the State Mutual Pension Plan as well as those Plans that are not sponsored by State Mutual.

(d) The term "policy credit" means an increase in accumulation account value (to which no surrender or similar charges are applied) in the general account or an increase in a dividend accumulation on a policy.

## Summary of Facts and Representations

1. State Mutual is a mutual life insurance company organized under the laws of the State of Massachusetts and maintaining its headquarters in Worcester, Massachusetts. It is the fifth oldest life insurance company in the United States. In asset size, State Mutual ranks among the 20 largest mutual life insurance companies in the country. As of December 31, 1994, State Mutual and its subsidiaries had total assets in excess of \$10.5 billion and more than \$40.2 billion of individual life insurance policies in force. State Mutual has a number of subsidiaries and affiliates that provide a variety of financial services to policyholders including investment management and brokerage services. State Mutual and its investment management subsidiaries had approximately \$10.7 billion in

<sup>4</sup>With the exception of the State Mutual Companies' Pension Plan (the State Mutual Pension Plan), State Mutual is not requesting, nor is the Department providing exemptive relief herein with respect to the distributions of State Mutual or Allmerica common stock to other plans that State Mutual or its affiliates maintain for their own employees. State Mutual represents that such stock would constitute qualifying employer securities within the meaning of section 407(d)(5) of the Act and that section 408(e) of the Act would apply to such distributions. In this regard, the Department expresses no opinion on whether such distributions would satisfy the terms and conditions of section 408(e) of the Act.

assets under management as of December 31, 1994.

As a mutual life insurance company, State Mutual has no stockholders. Instead, policyholders of State Mutual are considered members of the company and, in this capacity, are entitled to vote to elect directors of State Mutual and to share in the assets of the company upon its liquidation.

2. State Mutual is the common parent of an affiliated group of companies. One of these companies is SMA Financial Corporation (SMA Financial), a Massachusetts corporation which is a wholly owned, direct subsidiary of State Mutual. SMA Financial owns 57 percent of the common stock of Allmerica Property & Casualty Companies, Inc. (APY), a Delaware corporation. As a majority shareholder, State Mutual exercises management control over APY. SMA Financial also owns 100 percent of the stock of SMA Life Assurance Company (SMA Life), a Delaware stock life insurance company.

The stock of APY that is not held by SMA Financial is widely held and is traded on the New York Stock Exchange. APY is the holding company and is the common parent of an affiliated group of companies which includes two property and casualty insurance companies—The Hanover Insurance Company and Citizens Insurance Company of America.

State Mutual and its affiliates provide a variety of fiduciary and other services to Plans. These services include plan administration and related services, investment management services and securities brokerage and related services. Many Plans for which State Mutual provides services are also State Mutual policyholders. As of December 31, 1994, there were approximately 10,000 State Mutual insurance policies and contracts held by pension and welfare plans.

3. State Mutual and its affiliates sponsor a number of plans for which it is not requesting exemptive relief herein.<sup>5</sup> However, one plan, for which State Mutual has specifically requested exemptive relief is the State Mutual Companies' Pension Plan, a defined benefit plan. The State Mutual Pension Plan covers eligible career agents, general agents and clerical employees of State Mutual and its affiliates. The State Mutual Pension Plan provides retirement, disability and death benefits to eligible participants and their

<sup>5</sup> As stated previously, State Mutual believes that distributions of stock to such Plans would constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act and that section 408(e) of the Act would apply to such distributions.

beneficiaries. The trustee of the State Mutual Pension Plan is Mechanics Bank of Worcester, Massachusetts. The decisionmakers with respect to investments in the State Mutual Pension Plan are members of an investment committee consisting of State Mutual's Board of Directors. As of December 31, 1994, the State Mutual Pension Plan had 6,187 participants. As of December 31, 1994, the State Mutual Pension Plan had net assets available for benefits of \$156,100,000.

4. In July 1993, State Mutual's Board of Directors authorized management to develop a plan of demutualization whereby State Mutual would be converted from a mutual life insurance company to a stock life insurance company. The purposes of the Demutualization Plan are to (a) improve State Mutual's access to the capital markets and competitiveness in the insurance industry; (b) establish Allmerica, a single, publicly-traded company, which will become the exclusive owner of State Mutual and whose stock will be issued by State Mutual to certain Eligible Policyholders as a result of the demutualization; and (c) raise capital for State Mutual through an initial public offering (the IPO) of the stock of the new publicly-traded company. State Mutual has developed the Demutualization Plan and its Board of Directors formally adopted the Demutualization Plan on February 28, 1995.

5. It is currently anticipated that the following steps will be undertaken with respect to the implementation of State Mutual's Demutualization Plan:

(a) *The Demutualization.* To become a stock life insurance company, State Mutual will demutualize under Massachusetts law as well as under the provisions of the Demutualization Plan. Each policyholder's membership interest in State Mutual will be terminated. As compensation for their membership interests, Eligible Policyholders will receive cash, policy credits and initially, shares of State Mutual common stock. The State Mutual common stock will be issued to First Chicago Trust Company of New York as transfer agent on behalf of Eligible Policyholders and exchanged in the merger described below in Step (b).

(b) *Creation of Special Purpose Subsidiary.* Allmerica will form a special purpose Massachusetts subsidiary called "Allmerica Merger Subsidiary Inc." (Merger Sub). On the effective date of the demutualization (i.e., on or before December 31, 1995), Merger Sub will merge with and into the demutualized State Mutual pursuant to Section 19E of Massachusetts

demutualization law. In the merger, Eligible Policyholders will receive shares of Allmerica common stock in exchange for the shares of State Mutual common stock they initially held. The stock of Merger Sub will be converted into the only issued and outstanding stock of State Mutual. State Mutual will then become a wholly owned subsidiary of Allmerica.

(c) *The IPO.* Allmerica may sell new Allmerica stock in an underwritten IPO, which is expected to occur on the same day as the demutualization. At present, the size of the IPO is not known.<sup>6</sup>

(d) *Contribution to the Capital of State Mutual.* Following the transactions described above, Allmerica will contribute cash raised in the IPO to State Mutual. The Demutualization Plan requires that the contribution be in an amount at least equal to the amount required for State Mutual (a) to pay transaction expenses resulting from the demutualization, (b) to pay cash and fund policy credits awarded to Eligible Policyholders required to receive such consideration under the terms of such Demutualization Plan and (c) to purchase assets required for the funding of certain "closed block" policies.<sup>7</sup> The amount of this contribution is currently anticipated to be in excess of \$100 million.

The Demutualization Plan also permits Allmerica to retain, for general corporate purposes, amounts raised in the IPO (or by the other transactions described above) in excess of the amount to State Mutual.

6. In addition to economic arguments raised by State Mutual in support of the Demutualization Plan, as noted above, State Mutual represents that its proposed conversion from a mutual life insurance company to a stock life insurance company will give Eligible Policyholders marketable securities, cash or policy credits in exchange for their membership interests. State Mutual represents that the

<sup>6</sup> The Demutualization Plan provides that in addition to the IPO, Allmerica may raise capital through one or more of the following: (a) A private placement of debt securities on or prior to the demutualization date, (b) bank borrowings on or prior to the demutualization date or (c) a public offering of debt securities on the demutualization date.

<sup>7</sup> According to State Mutual, the closed block is an accounting mechanism whereby the experience on certain dividend-paying policies and contracts of State Mutual will be accounted for separately on State Mutual's books so that dividend scales can be revised in the future to reflect that experience. No assets will be physically segregated. The closed block is not set aside or deposited for the purpose of doing business. Thus, the purpose of the closed block is to protect the dividend expectations of such dividend-paying policies and contracts after the effective date of the Demutualization Plan.

demutualization will provide the flexibility to cause its non-insurance operations to become direct holdings of an "upstream" holding company and enable it to use stock options or other equity-based compensation arrangements in order to attract and retain talented employees. State Mutual believes these consequences of the conversion will benefit all of its policyholders. State Mutual further explains that its insurance policies will remain in force and policyholders will be entitled to receive the benefits under their policies and contracts to which they would have been entitled if the Demutualization Plan had not been adopted.

7. State Mutual represents that Section 19E of the Massachusetts demutualization law establishes an approval process for the demutualization of a life insurance company organized under Massachusetts law. Section 19E requires that the demutualization plan be filed with, and approved by, the Massachusetts Commissioner of Insurance. The Commissioner may approve the demutualization plan only after notice is given to the insurer, its directors, officers, employees and policyholders and a hearing on such plan is held. All persons to whom notice is given have the right to appear and be heard at the hearing and to present oral or written comments.

After the hearing, State Mutual explains that the Commissioner may approve the demutualization plan if he determines that the plan is not prejudicial to the insurer's policyholders or to the "insuring public." The Commissioner must also determine that the demutualization plan conforms to the provisions of Section 19E. In pertinent part, Section 19E requires that (a) policyholders be provided with reasonable notice of the procedure for voting on the demutualization plan; (b) each policyholder, in exchange for membership interests in the insurer, is given appropriate consideration determined under a fair and reasonable formula, which is based upon the insurer's entire adjusted surplus; (c) unless not approved by the Commissioner, each policyholder is given a preemptive right to acquire such policyholder's proportionate interest in the capital stock of the insurer within a reasonable time period; (d) shares of the insurer's stock are offered to policyholders at a price not greater than that offered to others under the demutualization plan; (e) each policyholder receives consideration which may consist of cash, securities, a

certificate of contribution, additional life insurance or annuity benefits, increased dividends or other consideration or any combination of such forms of consideration; (f) the converted insurer's paid-in capital stock is in an amount not less than the minimum paid-in capital stock plus the net cash surplus required of a new domestic stock insurer authorized to transact similar kinds of insurance business; (g) the insurer's management has not sought to affect the number or identity of the insurer's policyholders to be entitled to participate in the demutualization plan, or to secure for the insurer's management, any unfair advantage through the demutualization plan; and (h) the classifications of management and employee groups that are offered shares not subscribed for by policyholders in the preemptive offering are reasonable.

Section 19E authorizes the Commissioner to employ staff personnel and to engage outside consultants to assist the Commissioner in determining whether a demutualization plan meets the requirements of Section 19E and any other relevant provisions of Massachusetts law. In the case of State Mutual, it is anticipated that the Commissioner will retain an actuarial firm, legal advisers and an investment banking firm as consultants, and possibly other consultants as well. A decision by the Commissioner to approve a demutualization plan under Section 19E is subject to judicial review in the Massachusetts courts.

In addition to being approved by the Commissioner, State Mutual represents that the demutualization plan must be approved by the policyholders of the insurer. In this regard, Section 19E, requires that the policyholders be provided with notice of a meeting convened for the purpose of voting on whether to approve the demutualization plan. Moreover, the demutualization plan must be approved by a vote of not less than two-thirds of the votes of the policyholders who may vote in person, by proxy or by mail.<sup>8</sup>

8. State Mutual represents that it is licensed to transact business in all fifty states. However, only the State of New York requires that a foreign insurance company that is planning to

<sup>8</sup> State Mutual has approximately 100,000 policyholders who are eligible to vote on the Demutualization Plan. The voting provisions follow the voting regulations for annual meetings of mutual insurance companies, as set out in Chapter 175, Section 94 of Massachusetts Insurance Law. The number of votes to which any Eligible Policyholder is entitled will vary with the number of policies and the amounts of insurance owned by such Policyholder. In no case, however, may an Eligible Policyholder cast more than 20 votes.

demutualize file a copy of its demutualization plan with state insurance authorities. In this regard, State Mutual explains that section 1106(i) (Section 1106(ii)) of the New York Insurance Law authorizes the Superintendent to review the demutualization plan of a foreign life insurer licensed in New York and to specify the conditions that the Superintendent would impose in order for the foreign insurer to retain its New York license following its demutualization. Specifically, Section 1106(i) requires that a foreign life insurer licensed in New York file with the Superintendent a copy of the demutualization plan at least 90 days prior to the earlier of (a) the date of any public hearing required to be held on the demutualization plan by the insurer's state of domicile, and (b) the proposed date of the demutualization.

If, after examining the demutualization plan, the Superintendent finds that the plan is not fair or equitable to the New York policyholders of the insurer, the Superintendent must set forth the reasons for his findings. In addition, the Superintendent must notify the insurer and its domestic state insurance regulator of his findings and his reasons for such findings and advise of any requirements he considers necessary for the protection of current New York policyholders in order to permit the insurer to continue to conduct business in New York as a stock life insurer after the demutualization. In the event the Superintendent has any objections to the Demutualization Plan, State Mutual represents that it will amend the Plan so that it will meet the approval of the Superintendent or otherwise, work out a satisfactory solution with the Superintendent. However, should the Superintendent require changes in the Demutualization Plan that are unacceptable to the Commissioner, State Mutual will make a decision on how to proceed.

9. Once finalized, it is expected that State Mutual's Demutualization Plan will provide for Eligible Policyholders to ultimately receive common stock of Allmerica,<sup>9</sup> cash or policy credits as consideration for giving up their membership interests in State Mutual. Accordingly, State Mutual requests an administrative exemption from the Department in order that certain of its

<sup>9</sup> It is expected that Allmerica stock will be traded on the New York Stock Exchange. Under the terms of the Demutualization Plan, Allmerica is required to arrange for the listing of its stock on a national securities exchange and to use its best efforts to maintain such listing for as long as it is a publicly-traded company.

Eligible Policyholders that are Plans, including the State Mutual Plans, may receive stock, cash or policy credits in exchange for their membership interests in State Mutual. In addition, State Mutual requests exemptive relief in order that the State Mutual Pension Plan, may receive consideration in the form of stock. Because the value of the stock to be received by the State Mutual Pension Plan will exceed the 10 percent limitation prescribed in section 407(a)(2) of the Act by 6 percent, State Mutual requests exemptive relief so that the State Mutual Pension Plan may continue holding stock exceeding such limitation for a temporary, three month period.

10. According to the Demutualization Plan, certain Eligible Policyholders will receive cash or policy credits in lieu of stock under the following circumstances:

a. *Cash* will be received in lieu of allocable stock (1) with respect to a policy that is known to State Mutual to be subject to a lien (other than a policy loan made by State Mutual) or a bankruptcy proceeding, or (2) where the Eligible Policyholder's address for mailing purposes, as shown on the records of State Mutual, is located outside the United States of America, or (3) where the Eligible Policyholder has made an affirmative election, on a form provided to such Eligible Policyholder by State Mutual, to receive cash in lieu of stock. (If no such preference is expressed under Item 3, the Eligible Policyholder will receive stock.<sup>10</sup>

<sup>10</sup> Under the Demutualization Plan, Eligible Policyholders who receive their entire consideration in the form of Allmerica common stock were asked to express a preference for cash in lieu of stock, should funds become available. However, these "cash elections" are restricted by a number of factors. First, a limited amount of cash will be available to pay all such cash elections (currently estimated at \$24 million). Second, all Eligible Policyholders actually receiving cash pursuant to cash elections will receive their entire consideration in the form of cash. Third, to the extent the available cash is insufficient to satisfy all cash elections, the cash elections of Eligible Policyholders allocated the fewest number of shares will be satisfied first. Fourth, if State Mutual is unable to pay cash to Eligible Policyholders allocated the fewest number of shares who have expressed a cash preference, no cash payments (other than mandatory cash payments) will be made.

Accordingly, on the effective date of the Demutualization Plan, State Mutual, with the approval of the Commissioner, will allocate an amount to make cash elections. Such cash will be applied first to pay the entire consideration of those Eligible Policyholders allocated the fewest number of shares, if all such requests for cash may be satisfied. Thereafter, State Mutual will continue to apply the allocated cash to pay the entire consideration of each Eligible Policyholder requesting cash at higher share allocations until such allocated cash is exhausted. After the allocated cash is exhausted, each Eligible Policyholder whose

b. *Policy credits* will be received in lieu of stock allocable to any policy that is (1) an individual retirement annuity contract within the meaning of section 408 of the Code, (2) a tax sheltered annuity contract within the meaning of section 403(b) of the Code, (3) an individual annuity contract that has been issued pursuant to a plan qualified under section 401(a) of the Code directly to the plan participant, or (4) an individual life insurance policy that has been issued pursuant to a plan qualified under section 401(a) of the Code directly to the plan participant.

The cash or policy credits will have a value equal to the stock such policyholders would otherwise have received, based on the price per share of Allmerica stock in the IPO which is expected to occur at the time of the demutualization. Any election by a Plan, including the State Mutual Plans, to receive stock or cash pursuant to the terms of the Demutualization Plan, will be made by one or more fiduciaries of such Plan which is independent of State Mutual.<sup>11</sup> In addition, neither State Mutual nor any of its affiliates may exercise discretion or provide investment advice with respect to such

request cannot be satisfied will receive his or her entire consideration in the form of stock. Thus, Eligible Policyholders electing cash will receive either stock or cash but *not* both.

<sup>11</sup> State Mutual represents that under paragraph 5 of Section 19E of Massachusetts Insurance Law, the policyholder eligible to participate in the distribution of stock, cash, policy credits or other consideration resulting from the Demutualization Plan is "the person whose name appears . . . on the insurer's records as owner" of the policy. State Mutual further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, State Mutual asserts that it is required under Massachusetts Insurance Law to make distributions resulting from the Demutualization Plan to the employer or trustee as owner of the policy, with the following exception. Specifically, the Demutualization Plan provides that where group policies or annuities have been issued to a trust established by State Mutual for an employee benefit plan, the employer will be deemed to be the owner of such policy if the employer plan or policy has adopted the master trust to which the policy is issued. The trustee of any such trust established by State Mutual will not be considered a policyholder or owner.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3-3) at the time when State Mutual incurs the obligation to distribute stock, cash, policy credits or other compensation, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

election. Further, no Eligible Policyholder will pay any brokerage commissions or fees in connection with their receipt of stock.<sup>12</sup>

The stock allocated to Eligible Policyholders will be allocated among them by providing at least thirty shares for each such Policyholder. This number is, however, subject to proportional adjustment. Any remaining stock will be allocated substantially on the basis of the contributions to surplus made by each such Policyholder's in force participating policies. The allocation methodology must be fair and reasonable and approved by the Commissioner. The allocation formulas are also subject to review by the Superintendent.

11. State Mutual notes that the proposed receipt of stock by the State Mutual Pension Plan would violate section 406(a)(1)(E) of the Act because the receipt of such stock would be in violation of section 407(a)(2) of the Act, which prohibits the acquisition by a plan of any qualifying employer security if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets. State Mutual represents that the stock, which will be a "qualifying employer security" represent approximately 16 percent of the assets of the State Mutual Pension Plan after its acquisition and thus will exceed the 10 percent limitation of section 407(a)(2) of the Act.

Accordingly, State Mutual represents that the statutory exemptive relief contained in section 408(e) of the Act will not apply to the acquisition and holding of the stock by the State Mutual Pension Plan. Thus, State Mutual requests administrative exemptive relief from the Department. State Mutual further notes that the holding of stock by the State Mutual Pension Plan will not violate the provisions of section 407(f) of the Act.

12. State Mutual represents that pursuant to a Retainer Agreement and an Indemnification Agreement, both of which are dated March 27, 1995 (collectively, the Engagement Agreements), it has retained the services of State Street Bank and Trust Company (State Street) of Quincy, Massachusetts to serve, on behalf of the State Mutual Pension Plan and the other State Mutual Plans, as the Independent Fiduciary

<sup>12</sup> Under current provisions of the Demutualization Plan, Eligible Policyholders who receive stock or, for that matter, any other form of consideration, will not be entitled to receive subscription rights to purchase additional stock. Under Section 19E of Massachusetts Insurance Law, the Commissioner has the authority to approve a plan which provides for no preemptive rights.

(and also investment manager). Specifically, State Street represents that it has been retained to consider, on behalf of the State Mutual Plans, whether to approve the proposed transactions and, if so approved, whether to receive consideration in the form of stock or cash. To assist State Street in carrying out its fiduciary responsibilities under the Engagement Agreements, State Street has retained Whitman Heffernan Rhein & Co. (WHR & Co.), as its independent financial adviser, and Paul, Weiss, Rifkind, Wharton & Garrison (Paul Weiss), as its independent legal counsel.

State Street represents that it is one of the largest trust companies in the United States with over \$170 billion in assets under management, a significant percentage of which consists of pension plan assets. State Street also represents that it has served as an independent fiduciary for numerous retirement plans that acquire or hold employer securities and has managed, at various times, over \$20 billion in employer securities held by various retirement plans. In managing such investments, State Street states that it has supervised numerous transactions involving the acquisition, retention and disposition of employer securities. Further, State Street explains that it monitors the performance of the employer securities it manages on a continuing basis.

State Street represents that it has the following *de minimus* business relationships with State Mutual:

(a) Its Insurance Division provides various services to several retained asset accounts of State Mutual and/or various subsidiaries of State Mutual. Revenue received by State Street for these services in 1994 totaled approximately \$52,000.

(b) It serves as an investment manager for fixed income investment funds of defined contribution plans. Currently, it manages approximately \$6 billion in fixed income securities. Approximately \$84 million of that is invested, on behalf of various clients, in guaranteed investment contracts issued by State Mutual. Revenue received in 1994 by State Street for the investment in these contracts totaled less than \$10,000.

(c) It provides master trust and custody services to various pension plans. Some of these plans may invest in guaranteed investment contracts issued by State Mutual. It also serves as a directed trustee/custodian to these plans and receives no revenue from the investment in these contracts. State Street receives a trust/custody fee based on the total value of the plan, irrespective of the investments.

(d) It has voting and/or dispositive control over 221,800 shares of Allmerica stock.

State Street also explains that it had revenues in 1994 of over \$981 million. However, State Street points out that all revenues and fees that were associated with State Mutual represented less than one-hundredth of one percent of State Street's total revenues.

In addition, State Street represents that none of its officers or directors is an officer or director of State Mutual or vice versa. Further, State Street represents that State Mutual does not have an ownership interest in State Street and State Street does not have an ownership interest in State Mutual except for the relationships described above.

As the Independent Fiduciary for the State Mutual Plans, State Street represents that it understands and acknowledges its duties, responsibilities and liabilities under the Act as a fiduciary for such Plans. In this regard, State Street asserts that it will have the authority and responsibility to monitor the acquisition and holding of the stock that is received by the State Mutual Plans. State Street also represents that it will be authorized to dispose, in a prudent manner, shares of the stock that is held by the State Mutual Pension Plan which exceeds the 10 percent limitation imposed by section 407(a)(2) of the Act. Such disposition will take place within 90 days of the receipt of the stock by the State Mutual Pension Plan. If, however, State Street is unable to dispose of the stock following the initial 90 day period, it will sell the stock within the following 90 day period. Therefore, State Street must dispose of all shares of excess stock that are held by the State Mutual Pension Plan within 180 days of receipt.

State Street also asserts that it will act as the Independent Fiduciary for both the State Mutual Plans with respect to the policyholder vote and decisions to be made by such plans as to the form of consideration. Moreover, State Street explains that it will monitor the proposed transactions throughout their duration on behalf of these Plans and take all actions that are necessary and proper to safeguard the interests of such Plans.

State Street represents that the proposed transactions are prudent for the State Mutual Plans and in the best interests of such Plans' participants and beneficiaries. State Street notes that the consummation of the proposed transactions is conditioned upon approval by Eligible Policyholders of State Mutual as well as the other conditions set forth in the

Demutualization Plan (including the receipt of state regulatory approval). As a general matter, however, State Street explains that its determination that the proposed transactions are appropriate for the State Mutual Plans is based upon an economic analysis of the consideration to be acquired by such Plans. In this connection, State Street represents that WHR & Co. has performed a comprehensive analysis of State Mutual in the context of prevailing market conditions and has concluded that for each State Mutual Plan, the proposed consideration to be received is fair to such plan from a financial point of view. In reaching this conclusion, State Street indicates that WHR & Co. has performed various activities such as reviewing annual reports prepared by State Mutual and its affiliates, conducting discussions with senior management of State Mutual and Allmerica and reviewing the Demutualization Plan and portions of the Policyholder Information Statement. In addition, State Street represents that it has conducted its own due diligence which included a review of all available policyholder information, a review of all relevant Plan information, interviews with management and attending policyholder meetings and public hearings relating to the proposed transaction. Finally, State Street asserts that its fiduciary committee met and determined, based on presentations from WHR & Co., Paul Weiss, corporate counsel and other bank management officials, that the transactions would be in the best interests of all of the State Mutual Plans and their participants and beneficiaries. Accordingly, State Street has directed the appropriate fiduciaries to approve the proposed transactions.

13. The Demutualization Plan provides for the establishment of a commission-free sales program whereby Eligible Policyholders will be permitted to sell the stock they have received pursuant to the Demutualization Plan in the public market. The commission-free sales program will commence on the first business day after the six month anniversary of the effective date of the demutualization and will continue for ninety days thereafter. The program may be extended with the approval of the Commissioner, if the Board of Directors of Allmerica determines such extension would be appropriate and in the best interest of Allmerica and its stockholders. In the commission-free sales program, any Eligible Policyholder receiving fewer than one hundred shares of stock will have the opportunity to sell, at prevailing market prices, all of the stock or to increase

such Eligible Policyholder's holdings to a one hundred share round lot. No brokerage commissions, mailing charges, registration fees or other administrative expenses will be charged in connection with either the demutualization or with sales or purchases of stock under the commission-free sales program.

14. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Demutualization Plan will be implemented in accordance with procedural and substantive safeguards that are imposed under Massachusetts law and will be subject to the review and supervision by the Commissioner.

(b) The Commissioner will review the terms of the options that are provided to Eligible Policyholders of State Mutual as part of such Commissioner's review of the Demutualization Plan, and will approve the Demutualization Plan following a determination that such Demutualization Plan is not prejudicial to all Eligible Policyholders.

(c) The Demutualization Plan will be filed with the New York Superintendent who will determine whether the Demutualization Plan is fair and equitable to Eligible Policyholders from New York.

(d) Each Eligible Policyholder will have an opportunity to comment orally or in writing on the Demutualization Plan and decide whether to vote to approve in writing such Demutualization Plan after full written disclosure is given such policyholder by State Mutual, of the terms of the Demutualization Plan.

(e) Any election by an Eligible Policyholder which is a Plan to receive stock, cash or policy credits, pursuant to the terms of the Demutualization Plan will be made by one or more Independent Fiduciaries of such plan and neither State Mutual nor any of its affiliates will exercise any discretion or provides investment advice with respect to such election.

(f) In the case of the State Mutual Plans, where the consideration is in the form of stock, an Independent Fiduciary will (1) monitor, on behalf of such Plans, the acquisition and holding of the stock; (2) make determinations, on behalf of such Plans, with respect to the voting, the holding or the disposition of such stock, and (3) dispose, in a prudent manner, on behalf of the State Mutual Pension Plan, stock that exceeds the 10 percent limitation under section 407(a)(2) of the Act within 90 days following its receipt; however, if there are any shares of excess stock remaining after the initial period, the Independent

Fiduciary will have an additional 90 days to sell such stock.

(g) After each Eligible Policyholder is allocated at least thirty shares of stock, additional consideration allocated to Eligible Policyholders who own participating policies will be based on actuarial formulas that take into account each participating policy's contribution to the surplus of State Mutual which formulas have been approved by the Commissioner and reviewed by the Superintendent.

(h) All Plans that are Eligible Policyholders, including the State Mutual Plans and the State Mutual Pension Plan, will participate in the transactions on the same basis as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder will pay any brokerage commissions or fees in connection with such Eligible Policyholder's receipt of stock or in connection with the implementation of the commission-free sales program.

(j) All of State Mutual's policyholder obligations will remain in force and will not be affected by the Demutualization Plan.

#### *Notice to Interested Persons*

State Mutual will provide notice of the proposed exemption to Eligible Policyholders which include Plans and the State Mutual Plan within 5 days of the publication of the notice of pendency in the Federal Register. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the Federal Register. The notice will also inform interested persons of their right to comment on the proposed exemption and/or to request a hearing. Comments with respect to the notice of proposed exemption are due within 35 days after the date of publication of this exemption in the Federal Register.

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

Michael Elkin Individual Retirement Account (the IRA), Located in New York, New York

[Application No. D-10022]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of 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 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 proposed purchase for cash of a certain limited partnership interest in the Medallion Fund (the Interest) by the IRA from Michael Elkin, a disqualified person with respect to the IRA,<sup>13</sup> provided the following conditions are met:

(a) The purchase is a one-time transaction for cash;

(b) The terms and conditions of the purchase are at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party;

(c) The IRA pays no more than the fair market value of the Interest, as established by an independent qualified appraiser at the time of the transaction;

(d) The IRA is not required to pay any commissions, costs or other expenses in connection with the transaction; and

(e) The fair market value of the Interest is based on an independent valuation of the total net asset value of the Fund and does not represent more than 25% of the total assets of the IRA at the time of the transaction.

#### *Summary of Facts and Representations*

1. The IRA is an individual retirement account, as described under section 408(a) of the Code, which was established by Michael Elkin (Mr. Elkin). As of March 31, 1995, the IRA had assets valued at \$330,286. The trustee of the IRA is the Independent Trust Corporation, located at 15255 S. 94th Avenue, Orland Park, Illinois.

2. Mr. Elkin owns a limited partnership interest in the Medallion Fund (the Fund). Mr. Elkin's interest in the Fund had a net asset value of \$251,854 as of April 30, 1995. The total net asset value of the Fund was \$585,910,089, as of April 30, 1995. Thus, Mr. Elkin states that his interest in the Fund represented less than 1/20 of one (1) percent of the total net asset value of the Fund as of such date.

3. The Fund is an investment fund established on April 1, 1988, which was organized as an exempted limited partnership under the laws of the Islands of Bermuda. The Fund was formed for the purpose of investing in commodities of various types (i.e. foodstuffs, metals, industrial raw materials, etc.), commodity futures contracts, financial futures contracts (including stock index futures contracts), forward contracts, as well as

<sup>13</sup> Pursuant to 29 CFR 2510.3-2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

options to purchase or sell any of the foregoing financial instruments. Assets of the Fund not on deposit with brokers are invested principally in U.S. Treasury Bills held at the Bank of New York, checking accounts held at other major banks in the United States, and short-term commercial paper with a minimum rating of A-1 or P-1 by Moody's Investors Service.

Interests in the Fund are not registered under the Securities Act of 1933 (the Securities Act), the Investment Company Act of 1940, or the securities laws of any of the States of the United States. Mr. Elkin states that he purchased his interest in the Fund as part of an offering that was made in reliance upon an exemption from the registration requirements of the Securities Act for a sale of securities which does not involve a public offering, and analogous exemptions under state securities laws. However, Mr. Elkin represents that the Fund otherwise is fully registered with the appropriate U.S. regulatory authorities and complies with various state "blue sky" laws, as discussed in the Fund's Information Memorandum. Mr. Elkin also represents that the Fund fully complies with U.S. tax laws. In this regard, the Fund files U.S. tax returns and provides all investors (i.e. partners) with K-1 information returns so that such investors can include their proportionate income in their personal tax returns.

The Information Memorandum for the Fund indicates that interests in the Fund are subject to substantial restrictions on transferability. However, certain transfers of Fund interests to relatives or other entities are permissible under the terms of the Fund. In addition, limited partners of the Fund may redeem all or part of their interests in the Fund at the end of each calendar quarter on ten days notice.

Limited partners may also make, with permission of the managing general partner, additional capital contributions to the Fund on the first day of any calendar quarter. Each limited partner's respective liability for the Fund's debts and other obligations is limited to the balances in such partner's capital account. The Fund's limited partners are under no obligation to make additional capital contributions to the Fund.

4. The managing general partner of the Fund is Medallion Limited, located at 3 Reid Street, Hamilton, Bermuda. The applicant states that the individuals who are officers of Medallion Limited, Norman J. Holbrow (President) and Jan J. Spiering (Vice President), have no

relationship to Mr. Elkin or any of his affiliates.

The investment general partner of the Fund is the Renaissance Technologies Corporation (Renaissance), a corporation organized under the laws of the State of Delaware with its principal offices located at 800 Third Avenue, New York, New York. The Information Memorandum for the Fund states that Renaissance has been registered with the Commodity Futures Trading Commission (CFTC) as both the commodity pool operator and commodity trading adviser (CTA) of the Fund since July 6, 1988 and April 2, 1991, respectively. The applicant represents that since Renaissance is registered with the CFTC as a commodity pool operator and a CTA, the Fund is subject to the same regulatory regimen as any U.S. based commodity partnership. Mr. Elkin also states that he is independent of and unrelated to Renaissance and its affiliates.

5. The applicant proposes to have the IRA invest approximately \$75,000 to purchase part of Mr. Elkin's interest in the Fund (i.e. the Interest). The IRA would purchase the Interest directly from Mr. Elkin for cash. The applicant represents that the proposed transaction would be permissible under the terms of the Fund as they relate to the restrictions on the transferability of a limited partner's interests in the Fund. The IRA would pay no more than the fair market value of the Interest as established by an independent, qualified appraiser (as described below in Paragraph 7). The IRA would not pay any commissions or other expenses in connection with the transaction.

Mr. Elkin states that the proposed purchase of the Interest for \$75,000 would involve approximately 22% of the total assets of the IRA. Mr. Elkin states further that the proposed transaction will not exceed the lesser of either \$75,000 or 25% of the IRA's total assets at the time of the transaction (see Paragraph 7 below). After the purchase of the Interest by the IRA, the IRA would own approximately 1/60 of one (1) percent of the Fund, based on recent quarterly valuations for the Fund.<sup>14</sup> Mr.

<sup>14</sup> The applicant represents that the Fund's assets are not considered to be "plan assets" under the Department's regulations defining that term for purposes of plan investments because investments in the Fund by benefit plan investors are not significant (see 29 CFR 2510.3-101). In this regard, the Information Memorandum for the Fund states that it is the intention of the Fund to ensure that all types of plan investors collectively will own less than 25 percent of the outstanding interests in the Fund. The Department expresses no opinion in this proposed exemption as to whether the assets held

Elkin would continue to own the balance of his current interest in the Fund.

6. Mr. Elkin states that the Fund has exhibited superior investment performance over the last year. Mr. Elkin believes that an investment in the Fund by the IRA would represent an excellent opportunity for the IRA to achieve a high rate of return. Mr. Elkin states that the proposed purchase of the Interest by the IRA would be consistent with his investment strategy for the IRA's assets. In this regard, Mr. Elkin maintains that his primary goal for the assets of the IRA that would be involved in the proposed transaction is growth of capital, despite the higher degree of risk involved with such an investment.<sup>15</sup> Mr. Elkin represents that he has reviewed information regarding investment funds similar to the Fund and believes that the Fund offers a better prospect for achieving superior returns on capital invested than other such funds.

7. Kempe & Whittle Associates Limited (KWAL), the administrators for the Fund, will act as an independent, qualified appraiser to establish the fair market value of the Interest for purposes of the proposed transaction. KWAL is responsible for the maintenance of the Fund's books and records and for the preparation of the Fund's financial statements, annual reports, and monthly reports to investors. In addition, KWAL determines the total net asset value of the Fund on a quarterly basis for purposes of any redemptions of limited partnership interests by partners in the Fund at that time. KWAL states that a limited partnership interest in the Fund is equal to a partner's share of the Fund's total net asset value on such date.

Therefore, Mr. Elkin proposes to have the IRA purchase the Interest from

by the Fund would be considered "plan assets" under the Department's regulations.

<sup>15</sup> The Department notes that the Internal Revenue Service has taken the view that if a plan is exposed to the risk of large losses because of the speculative nature of investments made by the plan, such an investment strategy may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. For example, see Rev. Rul. 73-532, 1973-2 C.B. 128, which states, among other things, that the safeguards and diversity that a prudent investor would adhere to must be present in order for the "exclusive-benefit-of-employees" requirement to be met. The Department notes further that section 408(a) of the Code, which describes the tax qualification provisions for IRAs, also contains an exclusive benefit rule for an individual and his or her beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of section 408(a) of the Code would occur as a result of an IRA's acquisition of investments that may be speculative in nature, such as the proposed purchase of a partnership interest in a fund which invests in exchange-traded futures contracts as well as forward contracts and options relating to such financial instruments.

himself at an amount equal to the total net asset value which the Interest would represent, as established by KWAL, as of the end of the next calendar quarter following the granting of this proposed exemption, provided that such amount does not exceed the lesser of either \$75,000 or 25% of the IRA's total assets at the time of the transaction.

8. In summary, the applicant represents that the proposed transaction would satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the purchase will be at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party; (b) the purchase will be a one-time cash transaction which will allow the IRA to acquire an asset which, in the applicant's view, has the prospect for superior investment returns; (c) the IRA will pay no more than the fair market value of the Interest, as established by an independent, qualified appraiser at the time of the transaction; (d) the IRA will not pay any commissions or other expenses in connection with the transaction; (e) the fair market value of the Interest will be based on an independent valuation of the total net asset value of the Fund and will not represent more than 25% of the total assets of the IRA at the time of the transaction; and (f) Mr. Elkin has determined that the proposed transaction will be in the best interests of the IRA.

**NOTICE TO INTERESTED PERSONS:** Because Mr. Elkin is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Mr. E. F. Williams of the Department, telephone (202) 219-8194. (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 of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional 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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of September, 1995.

Ivan Strasfeld,

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

[FR Doc. 95-23464 Filed 9-20-95; 8:45 am]

BILLING CODE 4510-29-P

## NATIONAL SCIENCE FOUNDATION

### Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by October 15, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone

(703) 306-1243. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

*Title:* Survey of Industrial Research and Development, 1995-96

*Affected Public:* Businesses or other for-profit institutions

*Respondents/Reporting Burden:* 23,300 respondents, 61,300 total burden hours.

*Abstract:* This survey measures the amount and indicates the direction of R&D expenditures by U.S. industry. Government agencies, corporations, academic researchers, trade associations, research organizations, and others use the statistics produced from the survey to analyze and forecast technological growth, investigate productivity determinants, formulate tax policy, and compare individual company performance with industry averages. Companies with known R&D activity and samples of companies are selected industries which may conduct R&D are included.

Dated: September 15, 1995.

Herman G. Fleming,

*Reports Clearance Officer.*

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BILLING CODE 7555-01-M

## Advisory Panel for Biochemistry and Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name:* Advisory Panel for Biochemistry and Molecular Structure and Function—(1134) (Panel A).

*Date and Time:* Wednesday, Thursday, and Friday, October 11, 12, and 13, 1995, 8:30 a.m. to 5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Persons:* Drs. Jack Cohen and Valerie Hu, Program Directors for Molecular Biochemistry, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306-1443).

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate research proposals submitted to the Molecular Biochemistry Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a