

progit; Not-for-profit institutions;  
Federal Government.

*Total Respondents:* 185,550.

*Frequency:* On occasion.

*Total Responses:* 185,550.

*Time per Response:* 6–10.5 minutes.

*Estimated Total Burden Hours:*

30,430.

*Total Burden Cost (capital/startup):*  
\$0.

*Total Burden Cost (operating/  
maintenance):* \$6,665.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 29, 2000.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–34; Exemption Application No. D–10712, et al.]

### Grant of Individual Exemptions; The Fidelity Mutual Life Insurance Company (In Rehabilitation) (FML)

**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 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.

### The Fidelity Mutual Life Insurance Company (In Rehabilitation) (FML) Located in Radnor, PA

[Prohibited Transaction Exemption 2000–34; Exemption Application No. D–10712]

### 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 receipt of certain stock (the Plan Stock) issued by Fidelity Insurance Group, Inc. (Group), a wholly owned subsidiary of FML, or (2) the receipt of plan credits (the Plan Credits), by or on behalf of a mutual member (the Mutual Member) of FML, which is an employee benefit plan (the Plan), other than the Employee Pension Plan of Fidelity Mutual Life Insurance Company, in exchange for such Mutual Member's membership interest (the Membership Interest) in FML, in accordance with the terms of a plan of rehabilitation (the Third Amended Plan of Rehabilitation), approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and a

rehabilitator (the Rehabilitator) appointed by the Pennsylvania Insurance Commissioner (the Commissioner).

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

#### Section II. General Conditions

(a) The Third Amended Plan of Rehabilitation is approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and is subject to review and/or supervision by the Commissioner and the Rehabilitator. The Court determines whether the Third Amended Plan of Rehabilitation—

(1) Properly conserves and equitably administers the assets of FML in the interests of investors, the public and others in accordance with the legislatively-stated purpose of protecting the interests of the insureds, creditors and the public; and

(2) Equitably apportions any unavoidable loss through improved methods for rehabilitating FML.

(b) Each Mutual Member has an opportunity to comment on the Third Amended Plan of Rehabilitation at hearings held by the Court after full written disclosure of the terms of the Plan is given to such Mutual Member by FML.

(c) Participation by all Mutual Members in the Third Amended Plan of Rehabilitation, if approved by the Court, is mandatory, although Mutual Members may disclaim Plan Stock.

(d) The decision by a Mutual Member which is a Plan to receive or disclaim Plan Stock or Plan Credits allocated to such Mutual Member is made by one or more independent fiduciaries of such plan and not by FML, Group or Fidelity Life Insurance Company (FLIC). Consequently, neither FML nor any of its affiliates will exercise investment discretion nor render "investment advice" within the meaning of 29 CFR 2510.3–21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim Plan Stock or Plan Credits.

(e) Twenty percent of the Plan Stock is allocated to a Mutual Member based upon voting rights and eighty percent is allocated to a Mutual Member on the basis of the contribution of the Mutual Member's insurance or annuity contract (the Contract) to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (*i.e.*, the net earnings) of FML. The actuarial

formulas are approved by the Court and the Commissioner.

(f) The value of Plan Stock or Plan Credits that will be received by a Mutual Member will reflect the aggregate price paid by an independent investor (the Investor) to Group for common Stock (the Common Stock) and for plan credit shares (the Plan Credit Shares) in convertible preferred stock (the Preferred Stock) issued by Group.

(g) All Mutual Members that are Plans participate in the transactions on the same basis as all other Mutual Members that are not Plans.

(h) No Mutual Member pays any brokerage commissions or fees in connection with the receipt of Plan Stock or Plan Credits.

(i) The Third Amended Plan of Rehabilitation does not affect the rights of a contractholder of the company (the Contractholder), which is a Mutual Member. In this regard, FML's obligations to a Contractholder are discharged and terminated upon their endorsement and assumption by FLIC, thereby making FLIC liable for the obligations under such Contract.

### Section III. Definitions

For purposes of this exemption:

(a) The term "FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML as defined in paragraph (c) of this Section III.

(b) The term "FLIC" means Fidelity Life Insurance Company and any affiliate of FLIC as defined in paragraph (c) of this Section III.

(c) An "affiliate" of FML or FLIC includes—

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

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

(c) The term "Mutual Member" means a Contractholder whose name appears on FML's records as an owner of an FML Contract on the Record Date of the Third Amended Plan of Rehabilitation.

(d) The term "Investor" means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to be the purchaser under the Investment Agreement.

(e) The term "Group Stock" refers to shares of Group Common Stock and to Group Preferred Stock, which will have a cumulative, annual dividend equal to

7 percent of its liquidation value. The Preferred Stock will be Series A stock having a par value of \$0.01 per share and a liquidation preference and a redemption value of \$25 per share.

(f) The term "Plan Stock" means the 3 million shares of Group Common Stock and the 2.8 million of Group Preferred Stock that will be allocated to Mutual Members.

(g) The term "Plan Credit" means either (1) additional paid up insurance for a traditional life policy or (2) credits to the account values for Contracts that are not traditional (such as a flexible premium policy). Under FML's Third Amended Plan of Plan of Rehabilitation, Plan Credits are to be allocated to certain Mutual Members in lieu of Plan Stock.

(h) The term "Plan Credit Shares" includes those shares of Plan Stock (i.e., the 15,000 to 180,000 shares of Group Common Stock) and any shares of Group Preferred Stock to be issued and sold by Group to the Investor to fund Plan Credits.

(i) The term "Policyholder Stock" means those shares of Group Common or Group Preferred Stock that will be issued and distributed to Mutual Members, consisting of Plan Stock plus any shares of Group Stock (in excess of Plan Stock) issued for purposes of correcting errors in the allocation of Plan Stock, less Plan Credit Shares and any disclaimed shares.

(j) The term "Investor Stock" means the 3.1 million shares of Group Common Stock (other than Plan Stock) and the Plan Credit Shares which, under the Third Amended Plan of Rehabilitation, are sold to the Investor pursuant to bid procedures and the Investment Agreement.

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 April 7, 2000 at 65 FR 18359.

### Written Comments

The department received two written comments with respect to the Notice. The comments were submitted by FML for the purpose of clarifying certain statements made in the Notice and to provide additional information regarding specific issues raised therein. As discussed below, a majority of FML's concerns relate to the general conditions (the General Conditions) set forth in Section II of the Notice while other areas of concern relate to the Summary of Facts and Representations (the summary) of the Notice.

Concerns About the General Conditions

1. *Standard of Review by the Court.* Paragraph (a) of Section II of the Notice states that the Court will determine " \* \* \* whether the Third Amended Plan of Rehabilitation is fair and equitable to Mutual Members." FML states that although this General Condition may convey a broad description of the court's review, "fair and equitable" is a technical standard of review in some states but it is not a statutory requirement under Pennsylvania law. According to FML, the Pennsylvania Supreme court has stated in *Foster v. Mutual Fire, Marine & Inland Insurance Co.*, 614 A2d 1086, 1094 (PA 1992) that a rehabilitation plan must "properly conserve and equitably administer the assets of the involved corporation in the interests of investors, the public and others" in accordance with the "legislatively stated purpose [of] 'the protection of the interests of the insureds, creditors and the public generally \* \* \* and the 'equitable apportionment of any unavoidable loss' through \* \* \* 'improved methods for rehabilitating insurers \* \* \*'"

In response to this comment, the Department has revised Section II(a) of the exemption, as follows, to reflect the decision of the Pennsylvania Supreme Court:

The Third Amended Plan of Rehabilitation is approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and is subject to review and/or supervision by the Commissioner and the Rehabilitator. The Court determines whether the Third Amended Plan of Rehabilitation—

(1) Properly conserves and equitably administers the assets of FML in the interests of investors, the public and others in accordance with the legislatively-stated purpose of protecting the interests of the insureds, creditors and the public; and

(2) Equitably apportions any unavoidable loss through improved methods for rehabilitating FML.

2. *Non-Voting by Mutual Members.* Paragraph (b) of Section II of the Notice states, in part, that "[e]ach Mutual Member has an opportunity to vote and comment on the Third Amended Plan of Rehabilitation." FML points out that each Mutual member has received, and will continue to receive, full written disclosure of the terms of such Plan and each Mutual Member also has the opportunity to comment on the Plan by filing written objections to the Court or providing testimony at the hearings for such Plan.

However, FML notes that Mutual Members do not have an opportunity to

vote, as such, on the Third Amended Plan of Rehabilitation because there is no provision in the Pennsylvania rehabilitation statute requiring or allowing for a vote by such Mutual Members on the Third Amended Plan of Rehabilitation. Additionally, FML explains that Footnote 20 of the Summary states that the Rehabilitator has been advised that the Pennsylvania rehabilitation statute, which does require a vote in certain circumstances, is not applicable to this situation.

Moreover, in Representation 20(b) of the Summary, FML notes that the "Court will review the terms of the Third Amended Plan of Rehabilitation and will approve such Plan following \* \* \* a public hearing \* \* \*" Finally, FML notes that in Representation 20(c) of the Summary "[e]ach Mutual Member will have an opportunity to participate in any hearing or hearings before the Court regarding the approval of the Third Amended Plan of Rehabilitation."

On the basis of the foregoing clarifications, the Department has decided to revise Section II(b) of the exemption to read as follows:

Each Mutual Member has an opportunity to comment on the Third Amended Plan of Rehabilitation at hearings held by the Court after full written disclosure of the terms of the Plan is given to such Mutual Member by FML.

**3. Receipt of Consideration by Plan Mutual Members.** Paragraph (d) of Section II of the Notice states that —

Any determination by a Mutual Member which is a Plan to receive Plan Stock or Plan Credits is made by one or more independent fiduciaries of such plan and not by FML, Group or Fidelity Life Insurance Company (FLIC). Consequently, neither FML nor any of its affiliates will exercise investment discretion nor render "investment advice" within the meaning of 29 CFR 2510.3-21 (c) with respect to an independent Plan fiduciary's decision to elect Plan Stock or Plan Credits.

FML represents that it is accurate to state that the determination to receive Plan Stock or Plan Credits is not made by FML, Group or FLIC. However, FML points out that there is no "determination or decision" to be made by a Mutual Member because the Third Amended Plan of Rehabilitation provides for Plan Stock to go to all Mutual Members, except for Non-Trusteed Tax-Qualified Retirement Funding Contracts that are described in sections 401(a), 403(a) or (b) or 408 of the Code. FML represents that Non-Trusteed Tax-Qualified Retirement Funding Contracts will automatically receive Plan Credits.

In addition, FML explains that the Third Amended Plan of Rehabilitation

sets forth exactly who will receive Plan Stock or Plan Credits, with no option for an election between the two. FML further states that the only election that can be made by a Mutual Member is the disclaimer to receive Plan Stock or Plan Credits, and that decision cannot be made by FML, Group or FLIC.

In consideration of this comment, the Department has decided to revise Section II(d) of the exemption to read as follows:

The decision by a Mutual Member which is a Plan to receive or disclaim Plan Stock or Plan Credits allocated to such Mutual Member is made by one or more independent fiduciaries of such plan and not by FML, Group or Fidelity Life Insurance Company (FLIC). Consequently, neither FML nor any of its affiliates will exercise investment discretion nor render "investment advice" within the meaning of 29 CFR 2510.3-21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim Plan Stock or Plan Credits.

**4. FML's Obligations to Contractholders.** Paragraph (i) of Section II of the Notice states that "[a]ll of FML's obligations to contractholders (the Contractholders) of the company which are Mutual Members remain in force upon endorsement and transfer to FLIC and are not affected by the Third Amended Plan of Rehabilitation." Nevertheless, FML notes that while this General Condition is technically correct, it is somewhat misleading. In this regard, FML indicates that Representation 11 of the Summary states that "[e]ach Contractholder having a Contract in force on the Closing Date will have his or her Contract assumed and reinsured by FLIC as of the Closing Date." In addition, FML notes that Representation 19 of the Summary states that FML will discontinue its business operations after the Closing Date and will subsequently liquidate and dissolve. Consequently, FML represents that its obligations to the Contractholders will be discharged and terminated upon their assumption by FLIC rather than remaining in force. Under these circumstances, FML explains that FLIC will then be responsible for those contractual obligations under the endorsed or assumed contracts.

Thus, on the basis of this comment, the Department has decided to revise paragraph (i) of Section II of the exemption to read as follows:

The Third Amended Plan of Rehabilitation does not affect the rights of a contractholder of the company (the Contractholder), which is a Mutual Member. In this regard, FML's obligations to a Contractholder are discharged and terminated upon their endorsement and assumption by FLIC, thereby making FLIC

liable for the obligations under such Contract.

#### Concerns About the Summary

**1. Possible Termination of the Moratorium.** Representation 3 of the Summary states, in pertinent part, that "[u]nder the Order of Rehabilitation, a moratorium was imposed on cash distributions, Contract surrenders, withdrawals and policy loans, except in certain hardship situations." The moratorium, which was imposed by the Court and which placed FML into rehabilitation, was intended to stop the outflow of cash and to afford the Rehabilitator time to stabilize FML's assets.

FML represents that it is currently considering eliminating this moratorium but it has not made a final decision nor has it determined when the end of the moratorium will occur. FML asserts that the Rehabilitator has petitioned the Court for five separate revisions of the moratorium based on FML's improved financial condition. FML notes that these revisions have generally allowed access to a percentage of cash value, included additional hardship criteria and have restored the exercise of various contractual obligations. None of the five petitions has been opposed by the Court.

FML states that although the Rehabilitator is considering a termination of the moratorium, much analysis has to be conducted before a decision can be made. In this regard, FML explains that actuarial information must be presented to the Court to explain the financial and economic effect of ending the moratorium. In addition, notice, an objection period, and possibly a hearing will be required.<sup>1</sup>

As for the effect of the termination of the moratorium on the amount of Plan Stock or Plan Credits a Mutual Member will be entitled to receive, FML states if Contractholders are permitted to surrender their Contracts prior to the Record Date, as defined in the Third Amended Plan of Rehabilitation,<sup>2</sup> and

<sup>1</sup> Although the notice has generally been sent only to FML's creditors and to the "Master Service List," FML states that it will most likely recommend the same scope of notice to the Court assuming the moratorium is to be terminated. However, once a revision of the moratorium is approved, FML explains that notice of the Court's order must also be sent to all Contractholders and this procedure will be followed in the event the moratorium is lifted. Because none of the previous petitions have been opposed, FML states that no hearing has been required. However, if objections are filed, the Court will decide whether to hold a hearing or make a decision based on the pleadings.

<sup>2</sup> According to the Third Amended Plan of Rehabilitation, the "Record Date" means the last day of the month immediately preceding the month

choose to do so, such Contractholders will be terminating their status as Mutual Members. If the Contracts of these Contractholders are not in force on the Record Date, FML explains that the Contractholders will not be entitled to receive Plan Stock or Plan Credits.

FML further represents that if the moratorium is terminated prior to the Record Date, the Contractholders will still have the option of voluntarily surrendering their Contracts. However, FML explains that it will be required to make significant disclosures to these Contractholders to inform them of the benefits they will be foregoing if they surrender their Contracts prematurely. Alternatively, FML states that the Contractholders may choose to hold onto their Contracts until after the Record Date. Under these circumstances, the Contractholders, who would then be considered Mutual Members of FML, would receive their allocable shares of Plan Stock or Plan Credits but without an increase in the amount of consideration.

In any event, FML states it will treat Plan Contractholders no differently from other Contractholders that are not Plans in regard to the decision to surrender a Contract or the effective date of terminating the moratorium, and requisite disclosures. In this regard, FML states that Plan Contractholders will be sent the same notice and disclosure information that is provided to all other Contractholders that are not Plans.

The Department has noted the foregoing clarifications to Representation 3 and the impact of the termination of the moratorium on a Mutual Member's receipt of Plan Stock or Plan Credits. In this regard, the Department notes that no relief is being provided by this exemption for the receipt of cash by a Mutual Member that is a Plan.

### 2. *Investor Qualifications.*

Representation 9 of the Summary sets forth the minimum qualifications for the Investor. FML states that while the substance of Representation 9 is accurate, the qualifications are actually contained in the Bid Procedures filed under the Third Amended Plan of Rehabilitation rather than in the Plan itself.

The Department has noted this clarification to the information contained in Representation 9 of the Summary.

### 3. *Plans Covered by the Exemption Request.* Representation 12 of the

in which the Preliminary Approval Order, approving such Plan, is entered by the Court. According to FML's counsel, the Record Date is projected for November 30, 2000.

Summary states, in part, that "[u]nder Section 4.05 of the Third Amended Plan of Rehabilitation, any Contract held in connection with a qualified retirement plan or an arrangement described in section[s] 401(a), 403(a) or 408 of the Code, \* \* \* will be allocated Plan Credits in lieu of Plan Stock, in exchange for the relinquishment of the Mutual Member's Membership Interest under such Contract." FML represents that although Section 4.05 of the Third Amended Plan of Rehabilitation references only sections 401, 403 and 408 of the Code, the exemption application specifies Contracts held in connection with a qualified retirement plan or an arrangement described in section 401(a), 403(a) or (b) or 408 of the Code.

The Department acknowledges this comment relating to the information contained in Representation 12 of the Summary.

For further information regarding FML's comment letters and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-10712) 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, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including FML's 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.)

### **Fortis, Inc. Employees' Uniform Profit Sharing Plan (the Fortis Plan) Located in New York, New York**

[Prohibited Transaction Exemption 2000-35; Exemption Application Number D-10789]

#### *Exemption*

The restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The restoration payment (the Restoration Payment) by Fortis, Inc. (Fortis), a party in interest with respect to the Fortis Plan, to the Fortis Plan with respect to a certain counterfeit certificate of

deposit (the Plan CD); and (2) the potential future payment to Fortis of recapture payments (the Recapture Payments) made to the Fortis Plan pursuant to proceedings involving the issuer of the counterfeit CD. This exemption is subject to the following conditions:

(A) The Restoration Payment consists of:

(i) \$501,125, an amount equal to the Plan CD's full face value at the time of the Plan CD's maturity; and

(ii) An amount in cash which is equal to:

(a) a 5.5% annual rate of return on the Plan CD's maturity value of \$501,125 for the period beginning October 30, 1997 and ending on December 31, 1998; and

(b) a rate of return on the amount described in (A)(ii)(a) above which is equal to the average annual rate of return of the Fortis Money Market Fund from January 1, 1999 until the date of the Restoration Payment (*i.e.*, the Interest Payment);

(B) The Restoration Payment is a one-time transaction for cash;

(C) The Fortis Plan pays no expenses with respect to the Restoration Payment;

(D) The Fortis Plan retains any amount in excess of the Restoration Payment that it collects in its attempts to recover monies due under the Plan CD; and

(E) Any Recapture Payments paid by the Fortis Plan to Fortis are limited to the amount of the Restoration Payment and are restricted solely to the amounts, if any recovered, by the Fortis Plan with respect to the counterfeit CD in litigation or otherwise.

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 May 4, 2000 at 65 FR 25954.

#### *Written Comments*

The Department received two written comments, both of which were in favor of granting the proposed exemption. Accordingly, after giving full consideration to the entire record, the Department has determined to grant the exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Martin Jara, telephone (202) 219-8881. (This is not a toll-free number).

### **Canada Life Assurance Company (Canada Life) Located in Toronto, Ontario, Canada**

[Prohibited Transaction Exemption 2000-36; Exemption Application No. D-10790]

*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, effective November 4, 1999, to the (1) receipt of common shares (Common Shares) of Canada Life Financial Corporation, the holding company for Canada Life, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of any eligible policyholder (the Eligible Policyholder) of Canada Life which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and and/or the Code, other than a Plan established by Canada Life or an affiliate for its own employees, in exchange for such Eligible Policyholder's membership interest in Canada Life, in accordance with the terms of a conversion proposal (the Conversion Proposal) adopted by Canada Life and implemented under the insurance laws of Canada and the State of Michigan.

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

## Section II. General Conditions

(a) The Conversion Proposal was implemented in accordance with procedural and substantive safeguards that were imposed under the insurance laws of Canada and the State of Michigan and was subject to review and/or approval in Canada by the Office of the Superintendent of Financial Institutions (OSFI) and the Minister of Finance (the Canadian Finance Minister) and, in the State of Michigan, by the Commissioner of Insurance (the Michigan Insurance Commission).

(b) OSFI, the Canadian Finance Minister, and the Michigan Insurance Commissioner reviewed the terms of the options that were provided to Eligible Policyholders of Canada Life as part of their separate reviews of the Conversion Proposal. In this regard,

(1) OFSI (i) Authorized the release of the Conversion Proposal and all information to be sent to Eligible Policyholders, (ii) oversaw each step of the conversion process (the Conversion), and (iii) made a final recommendation to the Canadian Finance Minister on the Conversion Proposal;

(2) The Canadian Finance Minister, in his sole discretion, could consider such factors as (i) Whether the Conversion Proposal was fair and equitable to Eligible Policyholders, (ii) whether the Conversion Proposal was in the best interests of the financial system in Canada, and (iii) if sufficient steps had

been taken to inform Eligible Policyholders of the Conversion Proposal and of the special meeting on Conversion;

(3) The Michigan Insurance Commission made a determination that the Conversion Proposal was (i) Fair and equitable to all Eligible Policyholders and (ii) consistent with the requirements of Michigan law; and

(4) Both the Canadian Finance Minister and the Michigan Insurance Commissioner concurred on the terms of the Conversion Proposal.

(c) Each Eligible Policyholder had an opportunity to vote to approve the Conversion Proposal after full written disclosure was given to the Eligible Policyholder by Canada Life.

(d) One or more independent fiduciaries of a Plan that was an Eligible Policyholder received Common Shares, Cash or Policy Credits pursuant to the terms of the Conversion Proposal and neither Canada Life nor any of its affiliates exercised any discretion or provided "investment advice," as that term is defined in 29 CFR 2510.3-21(C), with respect to such acquisition.

(e) After each Eligible Policyholder was allocated 100 Common Shares, additional consideration was allocated to such Eligible Policyholder who owned an eligible policy based on an actuarial formula that took into account such factors as the total cash value, the basic annual premium and the duration of such eligible policy. The actuarial formula was reviewed by the Canadian Finance Minister and the Michigan Insurance Commissioner.

(f) All Eligible Policyholders that were Plans participated in the transactions on the same basis within their class groupings as other Eligible Policyholders that were not Plans.

(g) No Eligible Policyholder paid or will pay any brokerage commissions or fees to Canada Life or its affiliates in connection with their receipt of Common Shares, in connection with the implementation of the secondary offering or the assisted sales program.

(h) All of Canada Life's policyholder obligations will remain in force and will not be affected by the Conversion Proposal.

## Section III. Definitions

For purposes of this exemption:

(a) The term "Canada Life" means the Canada Life Assurance Company and any affiliate of Canada Life as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Canada Life includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under

common control with Canada Life; (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.) or

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

(c) The term "Eligible Policyholder" means a policyholder who—

(i) Was the owner of a voting policy at any time on April 2, 1998 (the Eligibility Day);

(ii) Became the owner of a voting policy, if the voting policy was applied for by that person before the Eligibility Day, and the application was received by Canada Life on or before the close of business on June 30, 1998; or

(iii) Was the owner of a voting policy that lapsed before June 2, 1998 and, where the policy terms provided that, as of June 2, 1998, the owner was entitled to request that the policy be reinstated, the policy was reinstated by the person who was the owner at the time the policy lapsed in accordance with its terms (without regard to when the right to reinstate expired) during the period which began on April 2, 1998 and ended 90 days before the special meeting.

(d) The term "Policy Credit" means—

(1) For an individual life insurance policy with respect to which dividends may be paid, dividend deposits when the dividend deposit option has been selected under the policy and, in all other cases, dividend additions;

(2) For in individual life insurance policy other than a policy with respect to which dividends may be paid, an increase in the fund value (to which no sales or surrender or similar charges will be applied);

(3) For an individual deferred annuity policy with respect to which dividends may be paid, dividend additions;

(4) For an individual deferred annuity policy other than a policy with respect to which dividends may be paid, an increase in accumulation value (to which no sales or surrender or similar charges will be applied); and

(5) For a supplementary contract, settlement option or annuity in annuitization status, an increase in the periodic annuity payment amount. If the periodic annuity payment is on a life basis, the increase will be a life annuity with cash refund basis.

**EFFECTIVE DATE:** This exemption is effective as of November 4, 1999.

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 that was published on May 4, 2000 at 65 FR 25956.

**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 30th day of June, 2000.

**Ivan Strasfeld,**

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

[FR Doc. 00-17066 Filed 7-5-00; 8:45 am]

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## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 99-3 CARP DD 95-98]

#### Distribution of 1995, 1996, 1997, and 1998 Digital Audio Recording Technology Royalties

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Announcement of the schedule for the proceeding.

**SUMMARY:** The Copyright Office of the Library of Congress is announcing the schedule for the 180-day arbitration period for the Copyright Arbitration Royalty Panel ("CARP") proceeding to determine the distribution of the 1995-98 digital audio recording technology ("DART") royalties in the Musical Works Funds.

**DATES:** Filings must be submitted according to the announced schedule, except as otherwise provided by Order of the Copyright Arbitration Royalty Panel.

**ADDRESSES:** If hand delivered, parties shall deliver an original and five copies of all written filings concerning this proceeding to: Office of the Copyright General Counsel, James Madison Memorial Building, First and Independence Avenue, SE., Room LM-403, Washington, DC 20540. If sent by mail, filings should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel ("CARP"), PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On May 4, 1999, the Copyright Office published a notice in the **Federal Register** requesting comment as to the existence of a controversy concerning the distribution of the 1995, 1996, 1997, and 1998 DART royalty fees in the Musical Works Funds and consolidating the consideration of the distribution of the 1995-98 Musical Works Funds into a single proceeding. 64 FR 23875 (May 4, 1999). The following parties filed comments and Notices of Intent to Participate: Carl DeMonbrun/Polyphonic Music, Inc. ("DeMonbrun"); Broadcast Music, Inc. ("BMI"), the American Society of Composers, Authors and Publishers ("ASCAP"), SESAC, Inc. ("SESAC"), the Harry Fox Agency ("HFA"), the Songwriters Guild of America ("SGA"), and Copyright Management, Inc. ("CMI") (collectively the "Settling Parties"); James Cannings/Can Can Music ("Cannings"); Alicia Carolyn Evelyn ("Evelyn"); and Eugene "Lambchops" Curry/Tajai Music, Inc. ("Curry").

On September 21, 1999, the Office issued an Order announcing the

precontroversy discovery schedule for the proceeding, beginning on November 15, 1999. See Order in Docket No. 99-3 CARP DD 95-98 (September 21, 1999). Prior to commencement of the 45-day precontroversy discovery period, the Office was notified that Cannings and DeMonbrun had settled their respective controversies with the Settling Parties. Thus, the parties who will appear before the CARP in the current proceeding are the Settling Parties, Evelyn, and Curry.

The September 21, 1999, Order also set the initiation of the arbitration for February 28, 2000. However, the Office's duty to publish every two years a new list of arbitrators eligible to serve on a CARP rendered the February 28 initiation date unworkable. See 37 CFR 251.3. On January 14, 2000, in accordance with § 251.3(b), the Office published the list of arbitrators eligible to serve on a CARP initiated during 2000 and 2001. 65 FR 2439 (January 14, 2000). Because the time period between the publication of the arbitrator list and the February 28 initiation date was not sufficient to complete the selection of arbitrators for this proceeding, the Office reset the initiation of the arbitration to April 10, 2000. See Order in Docket No. 99-3 CARP DD 95-98 (March 14, 2000).

On April 10, 2000, the Office published a notice initiating the 180-day arbitration period for this proceeding. 65 FR 19025 (April 10, 2000). Once the arbitrators for this proceeding were selected, the Office scheduled the initial meeting between the arbitrators and the parties for May 16, 2000. However, the chairperson of the panel resigned out of concern that potential conflicts of interest, which were not known to the arbitrator at the time of selection, may exist under § 251.32. Because of these concerns, the Copyright Office canceled the May 16, 2000, meeting between the parties and the original panel of arbitrators. Pursuant to § 251.6(f), the remaining two arbitrators selected a new chairperson. On June 14, 2000, in accordance with § 251.6(f), the Office announced the suspension of the 180-day arbitration period from May 16, 2000, to June 16, 2000, the resumption of the 180-day period on June 16, 2000, the new chairperson of the panel, and the time and place of the rescheduled initial meeting, which took place on June 19, 2000. See 65 FR 37412 (June 14, 2000).

##### B. The Schedule

Section 251.11(b) of 37 CFR provides: "At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at