

Plan participant to re-allocate an existing account balance in a Commingled Fund managed by GMIMCO or to withdraw assets from a Commingled Fund; or (DD) an increase in the value of the assets of the Add-On Plan held in such Commingled Fund due to investment earnings or appreciation;

(E) GMIMCO maintains that failure to satisfy the 25% Test should only cause the exemption to become unavailable for the Add-On Plans in a Commingled Fund but should not cause the exemption to be unavailable for the entire Commingled Fund.

In response to this comment, it is the position of the Department that other than, as set forth, above, in Section II(e)(3)(iii) of this exemption, the 25% Test is to be satisfied each time assets of an Add-On Plan are transferred to or invested in a Commingled Fund. Failure to satisfy the 25% Test or any other condition of this exemption would cause the exemption immediately to become unavailable for Add-On Plans. The Department notes that, if as a result of a decision by an employer or a sponsor of a plan (described in Section II(e)(1)–(2) of the exemption), the assets of such plan are withdrawn from a Commingled Fund, and if as a result of such withdrawal the 25% Test is no longer satisfied with respect to any Add-On Plan in the Commingled Fund, then it is the Department's position that the exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund. Accordingly, the Department has decided to clarify the language of the exemption by adding the following new sub-paragraph (iv) to Section II(e)(3) of the exemption:

(iv) if, as a result of a decision by an employer or a sponsor of a plan described in Section II(e)(1)–(2) of the exemption to withdraw some or all of the assets of such plan from a Commingled Fund, the 25% Test is no longer satisfied with respect to any Add-On Plan in such Commingled Fund, then the exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund;

(F) Questions have arisen whether the inclusion of the assets of plans, other than plans described in Section II(e) of this exemption, in a Commingled Fund would result in the exemption being unavailable for assets of plans described in Section II(e) of this exemption which are held in such Commingled Fund.

It is the Department's view that, under the circumstances described above, the inclusion of the assets of other plans in a Commingled Fund will not result in the exemption being unavailable for assets of Transition Plans, described in Section II(e) of this exemption, held in such Commingled Fund, provided that

the assets of such other plans are disregarded for purposes of applying the 25% Test to any Add-On Plan whose assets are held in such Commingled Fund. Accordingly, for purposes of clarification, the Department has decided to amend Section II(e)(3) of the exemption to include a new sub-paragraph (v) as follows:

(v) where the assets of a Commingled Fund include assets of plans other than Transition Plans, as defined in Section II(e), above, of this exemption, the 25% Test will be determined without regard to the assets of such other plans in such Commingled Fund.

After giving full consideration to the entire record, including the written comment from the applicant, the Department has decided to grant the exemption, as amended by the Department, herein. The comment letter submitted by the applicant has been included as part of the public record of the exemption application. The complete application file, including the supplemental submission received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on August 17, 2000, at 65 FR 50232.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (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, D.C., this 19th day of January, 2001.

**Ivan Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10856, et al.]

#### Proposed Exemptions; Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis Professional Association Section 401(k) Profit Sharing Plan (the Plan)

**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 restrictions 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 requests 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.

**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 the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 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, 5 U.S.C. App. 1 (1996), 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.

#### **Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis Professional Association Section 401(k) Profit Sharing Plan (the Plan) Located in Tampa, Florida**

[Application No. D-10856]

#### *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 section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sales by the individually directed accounts of certain participants (the Participants) in the Plan of certain limited partnership units (the Units) to the Participants, provided the following conditions are satisfied: (a) Each sale is a one-time transaction for cash; (b) no commissions are charged in connection with the sales; (c) the Plan receives not less than the fair market value of the Units at the time of the transactions; and (d) the fair market value of the Units is determined by a qualified entity independent of the Plan and the Participants.

#### *Summary of Facts and Representations*

1. The Plan is a 401(k) profit sharing plan which is sponsored by Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis Professional Association (Trenam), a law firm in Tampa, Florida. The Plan has 183 participants and had total assets of \$10,688,388 as of September 30, 1999. Until June 18, 1999, the date of the most recent Plan amendment, the Plan was designed to allow for almost unlimited flexibility and choice by its participants to direct the Plan's trustee to invest the vested portion of their accounts in various investments, in which case the Plan provided for separate individual accounting of the participants' accounts. Therefore, each participant bore the sole risk of loss attributable to his or her investment decision. As of June 30, 1999, approximately one-third of the Plan's participants were choosing to self-direct at least some of their individual accounts.

2. Recently, SouthTrust Asset Management Company of Florida, N.A., the Plan's custodian and directed trustee (the Trustee) advised Trenam that it was no longer willing to perform

its current function, unless the Plan provisions allowing unlimited flexibility and choice of self-directed investment options for Plan participants were modified. The Trustee felt that the administration and record-keeping of the Plan had become far too complex. Trenam accordingly amended the self-directed investment provision of the Plan so that participants will still be able to direct their investments, but among a more limited universe of investment options. This change was also intended to alleviate the difficulty that certain of the investments cause in fully complying with the Department's reporting requirements.

3. In order to accomplish this necessary change in Plan design, all participants must liquidate their directed investments that they have "earmarked" to their accounts. This Plan change created no problems in relation to those participants that held marketable investments in their "earmarked" accounts; however, it does present a problem for the Participants, who hold non-marketable or worthless investments. Thus, the applicant has requested an exemption to permit these Participants to buy these investments from their accounts in the Plan for cash at an amount equal to their independently determined fair market value on the date of sale.

4. The limited partnerships involved in the proposed transactions are as follows: (a) Fishhawk Investment Fund, Ltd. Real Estate Florida Limited Partnership (Fishhawk); (b) Florida Crossroads, Ltd., Real Estate Florida Limited Partnership (Crossroad); and (c) Williams Road Investment Fund, Ltd., Real Estate Florida Limited Partnership (Williams). The Units were acquired from each limited partnership in connection with the original syndication thereof. The arrangement usually called for payments of the cost of the Units to be provided in installments on a specified payment schedule. The terms were the same for all investors, and the Participants were only a few of the investors. In some instances, additional funds were requested at a later date as a result of a capital call to all partners, and in some instances the Participant's account provided the extra funds, but in other cases the Participant's account's ownership was diluted for failure to respond to the capital call (as permitted under the Partnership Agreement). The following chart describes the Participants involved in the subject transactions and provides information concerning the Units:

Participant	Partnership	No. of units	Directed account value (9/30/99)	Total account value	Percent of participants total account
Marvin Barkin .....	Fishhawk .....	1.357	53,407	548,468	13.4
	Crossroad .....	.951	19,972		
William Frye .....	Fishhawk .....	.905	35,618	659,303	8.4
	Crossroad .....	.952	19,993		
Harold Mullis, Jr .....	Fishhawk .....	.587	17,238	570,708	12.0
	Crossroad .....	.453	9,513		
	Williams .....	1.0	42,000		
K. Rounsaville .....	Fishhawk .....	.360	14,168	95,123	14.9
Richard Sollner .....	Fishhawk .....	.307	6,415	132,958	4.8
William Zewadski .....	Fishhawk .....	.145	5,707	96,625	5.9

5. The specific terms of the transaction are as follows: (a) Marvin E. Barkin, a shareholder in and Vice President of Trenam, will purchase 1.357 Units of Fishhawk for \$53,407 and 0.951 Units of Crossroad for \$19,972 from his individual account in the Plan. Mr. Barkin's account has had a cost for the Units of Fishhawk of \$225,000, and a cost of \$34,191 for the Units of Crossroad;

(b) William C. Frye, a shareholder in and Treasurer of Trenam, will purchase 0.905 Units of Fishhawk for \$35,618, and 0.952 Units of Crossroad for \$19,993 from his individual account in the Plan. Mr. Frye's account has had a cost for the Units of Fishhawk of \$150,000, and a cost of \$34,191 for the Units of Crossroad;

(c) Harold W. Mullis, Jr., a shareholder in and President of Trenam, will purchase 0.587 Units of Fishhawk for \$17,238, 0.453 Units of Crossroad for \$9,513, and 1.0 Unit of Williams for \$42,000 from his individual account in the Plan. Mr. Mullis's account has had a cost for the Units of Fishhawk of \$97,143, a cost of \$42,000 for the Unit of Williams, and a cost of \$16,281 for the Units of Crossroad;

(d) Keith E. Rounsaville, a former shareholder in Trenam, will purchase 0.360 Units of Fishhawk for \$14,168 from his individual account in the Plan. Mr. Rounsaville's account has had a cost for the Units of Fishhawk of \$60,000;

(e) Richard H. Sollner, a shareholder in Trenam who heads up the Real Estate Department, will purchase 0.307 units of Fishhawk for \$12,082 from his individual account in the Plan. Mr. Sollner's account has had a cost for the Units of Fishhawk of \$60,000; and

(f) William K. Zewadski, a shareholder in Trenam who works in the Litigation Department, will purchase 0.145 units of Fishhawk for \$5,707 from his individual account in the Plan. Mr. Zewadski's account has had a cost for the Units of Fishhawk of \$24,286.

6. The proposed sales prices for the Units were determined by the general partners (the GPs) of each of the

partnerships involved. The GPs will update their appraisals as of the dates of the sales so that the Plan will receive not less than the fair market value of the Units as of the dates of the sales.

Mr. Glen E. Cross (Mr. Cross) is the GP of both Fishhawk and Crossroad. Mr. Cross represents that as of September 9, 1999, a one (1) percent interest in Fishhawk would have a fair market value of \$35,000. Mr. Cross also represents that as of September 9, 1999, a one (1) percent interest in Crossroad would have a fair market value of \$21,000. Mr. Cross, who serves as a general partner in other Florida limited partnerships involved in the ownership and development of land, has been in the real estate development business since 1965.

Mr. David A. Kennedy (Mr. Kennedy) is the GP of Williams. Mr. Kennedy represents that as of June 30, 1999, a one Unit interest in Williams would have a fair market value of \$42,000. Mr. Kennedy, who serves as a general partner in other limited partnerships involved in the ownership and development of land, has been in the real estate development business since 1970. The applicant represents that Mr. Cross and Mr. Kennedy (and/or their respective business enterprises) are clients of Trenam, but the combined fees paid by the two of them together, and all business interests of either, constitute less than 1% of Trenam's total gross fee income for any fiscal year. The applicant further represents that neither has any relationship to Trenam, the Plan or the Participants, other than as GP for the partnerships and clients as described above.

7. The applicant represents that the proposed transactions are in the best interests of the Plan and the affected participants and beneficiaries. Each of the Participants' individual accounts in the Plan (the Accounts) will receive an amount in cash equal to the fair market value of the Units which it owns, as determined by an independent, qualified appraiser at the time of the transaction. The Accounts will be able

to sell the Units without having to pay any commissions or other expenses for the transactions. The proposed transactions will enable the plan to effectively modify the current self-directed investment options of the Plan in order to simplify the Plan's administrative and record-keeping requirements. Thus, the proposed transactions will help reduce the Plan's expenses and enable the Plan to continue to utilize the services of the Trustee.<sup>1</sup>

8. In summary, the applicant represents that the proposed transactions will satisfy the criteria contained in section 408(a) of the Act because: (a) the sales are one-time transactions for cash; (b) no commissions or other fees will be charged in connection with the transactions; (c) the sales prices for the Units will be at fair market value at the time of the sale based on the appraisals of the Units performed by the GPs of the respective partnerships.

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

**Indianapolis Life Insurance Company (Indianapolis Life) Located in Indianapolis, IN**

[Application No. D-10930]

*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 (or ERISA) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).<sup>2</sup>

<sup>1</sup> The Department is providing no opinion in this proposed exemption as to whether the current arrangement by the Plan with the Trustee, or the proposed new arrangement for more limited investment options for Plan participants, is appropriate for the Plan at this time.

<sup>2</sup> For purposes of this proposed exemption, references to provisions of Title I of the Act, unless

### 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 (1) the receipt of common stock (Common Stock) issued by AmerUs Group Co. (AmerUs Group), the parent of Indianapolis Life, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of a policyowner of Indianapolis Life (the Eligible Member), which is an employee benefit Plan, including an employee benefit plan that is sponsored by Indianapolis Life and its affiliates for their own employees (the Indianapolis Life Plans; collectively, the Plans), in exchange for such Eligible Member's membership interest in Indianapolis Life, in accordance with the terms of a plan of conversion (the Plan of Conversion), implemented under Indiana law.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt or holding, by the Indianapolis Life Insurance Company Group Term Life Insurance Plan for Employees, Plan No. 505 (the IL Group Term Life Insurance Plan), of employer securities in the form of excess AmerUs Group Common Stock, in accordance with the terms of the Plan of Conversion.

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

### Section II. General Conditions

(a) The Plan of Conversion is subject to approval, review and supervision by the Commissioner of Insurance of the Indiana Department of Insurance (the Commissioner) and is implemented in accordance with procedural and substantive safeguards imposed under Indiana law.

(b) The Commissioner reviews the terms and options that are provided to Eligible Members as part of such Commissioner's review of the Plan of Conversion, and the Commissioner approves the Plan of Conversion following a determination that such Plan is fair and equitable to Eligible Members.

(c) Each Eligible Member has an opportunity to vote to approve the Plan of Conversion after full written disclosure is given to the Eligible Member by Indianapolis Life.

(d) Any determination to receive Common Stock, Cash or Policy Credits by an Eligible Member which is a Plan, pursuant to the terms of the Plan of Conversion, is made by one or more Plan fiduciaries which are independent of Indianapolis Life and its affiliates and neither Indianapolis Life nor any of its affiliates exercises any discretion or provides "investment advice" within the meaning of 29 CFR 2510.3-21(c), with respect to such decisions.

(e) After each Eligible Member entitled to receive shares of AmerUs Group Common Stock is allocated at least 12 shares, additional consideration is allocated to Eligible Members who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus and asset valuation reserve of Indianapolis Life, which formulas have been approved by the Commissioner.

(f) In the case of the Indianapolis Life Plans, the independent fiduciary—

(1) Votes on whether to approve or not to approve the proposed restructuring process (the Restructuring);

(2) Elects between consideration in the form of AmerUs Group Common Stock or Cash;

(3) Determines how to apply the Cash or AmerUs Group Common Stock received for the benefit of the participants and beneficiaries of the Indianapolis Life Plans;

(4) Votes shares of AmerUs Group Common Stock held by the IL Group Term Life Insurance Plan and disposes of such stock exceeding the limitation of section 407(a)(2) of the Act as reasonably as practicable, but in no event later than six months after the effective date of the Plan of Conversion.

(5) Provides the Department with a complete and detailed final report as it relates to the Indianapolis Life Plans prior to the effective date of the Restructuring; and

(6) Takes all actions that are necessary and appropriate to safeguard the interests of the Indianapolis Life Plans and their participants and beneficiaries.

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

(h) No Eligible Member pays any brokerage commissions or fees in connection with their receipt of AmerUs Group Common Stock or Policy Credits or in connection with the implementation of the commission-free purchase and sale program.

(i) All of Indianapolis Life's policyholder obligations remain in force

and are not affected by the Plan of Conversion.

### Section III. Definitions

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

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

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

(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) A "policy" is defined as (1) any contract of insurance, annuity contract, or supplemental contract in each case, that has been issued by Indianapolis Life; (2) each certificate issued under any of Indianapolis Life's group annuity contracts as part of a custodial 403(b) or IRA arrangement, or as part of a non-ERISA 403(b) arrangement (the custodian or employer-sponsor holding such group annuity contracts shall not be considered the Eligible Member or owner); and (3) each certificate issued under the group plan established as a convenience by Indianapolis Life to provide life insurance to self-employed agents and under which all premiums were paid by such agents. The following policies and contracts are deemed not to be policies for purposes of the Plan of Conversion: (1) A certificate issued to an individual pursuant to a group life insurance policy (except as set forth in the preceding sentence); (2) a certificate issued under a group annuity contract (except as set forth in the preceding sentence); and (3) any reinsurance assumed on an indemnity basis (but certificates of assumption constitute policies).

(d) The term "Eligible Member" means a policyholder whose name appears on Indianapolis Life's records as the owner of one or more policies issued by Indianapolis Life on both the date the Board of Directors adopts the Plan of Conversion and the effective date of the Plan of Conversion.

(e) A "supplemental contract" is a policy or contract that has been issued pursuant to a Plan participant.

(f) "Policy Credits" will consist of an increase in the dividend accumulation on an Indianapolis Life policy or

contract (to which no sales, surrender, or similar charges will be applied), an increase in the accumulation account value of the Indianapolis Life policy or contract (to which no sales, surrender, or similar charge will be applied), an increase in the premium deposit fund under the Indianapolis Life policy or contract, an increase in the amount of the payments distributed under an Indianapolis Life policy or contract that is a supplemental contract, or an extension of the expiry date on an Indianapolis Life policy or contract that is in force as extended term life insurance pursuant to a non-forfeiture provision of a life insurance policy.

#### *Summary of Facts and Representations*

1. Indianapolis Life, which maintains its principal place of business in Indianapolis, Indiana, is a mutual life insurance company that was organized in 1905 under the laws of the State of Indiana. Indianapolis Life owns a majority interest in Indianapolis Life Group of Companies, a stock holding company, which wholly owns four operating subsidiaries—IL Annuity and Insurance Company, Bankers Life Insurance Company of New York, Western Security Life Insurance Company, and IL Securities, Inc. All of the operating subsidiaries are involved in the business of providing life insurance or in related financial services. Indianapolis Life and its affiliates are licensed to transact business in all 50 states and the District of Columbia. As of June 30, 2000, Indianapolis Life had approximately \$1.8 billion in assets. Currently, Indianapolis Life has the following “financial-strength” ratings: A.M. Best Company “A”; Fitch “AA”; Moody’s Baa1; and Standard & Poor’s “A”.

2. As a mutual insurance company, Indianapolis Life does not have stockholders. Instead, it has mutual members who are owners of insurance policies and contracts it has issued. As mutual members, Indianapolis Life’s policyholders have the right to vote in the election of its Board of Directors and to vote on any proposition that the Board submits to a vote of the members in accordance with Indiana law, including the right to vote on the conversion of Indianapolis Life from a mutual life insurance company to a stock company. The voting rights of members are equal, with each member having only one vote regardless of the number or size of policies owned by that member. Indianapolis Life’s policyholders also have the right to participate in the voluntary dissolution or liquidation of the insurer and to

receive consideration in the event of such insurer’s demutualization.

3. Indianapolis Life’s principal products include life insurance and annuity contracts. Some of these contracts are sold to Plans subject to ERISA and to other Plans described in section 4975(e)(1) of the Code. The Plans include defined benefit pension plans, defined contribution pension and profit sharing plans (including 401(k) plans and Keogh plans); individual retirement accounts (IRAs) described in section 408 of the Code (including simplified employee pensions); Roth IRAs described in section 408A of the Code; tax-sheltered annuities described in section 403(b) of the Code; and welfare benefit plans.

Indianapolis Life currently has approximately 5,500 outstanding contracts held in connection with Plans. As Indianapolis Life policyholders, the Plans have membership interests in Indianapolis Life. In certain cases, Indianapolis Life or one of its affiliates may provide limited administrative or recordkeeping services to the Plans. These services include the preparation of tax forms (e.g., IRS Forms 1099-R and 5498), the tracking of regular contributions made to IRAs or Roth IRAs, and, in prior years, the provision of prototype plan documents.

In general, neither Indianapolis Life nor any of its affiliates is in the business of providing administrative, recordkeeping, or fiduciary services to Plans, other than serving as a fiduciary for four Indianapolis Life Plans. However, as a service provider, Indianapolis Life may still be considered a party in interest with respect to one or more Plans that are its policyholders.

4. The Plans maintained by Indianapolis Life and its affiliate, Bankers Life Insurance Company of New York, for their own employees are all policyholders of Indianapolis Life. These Plans include the—

(a) *Indianapolis Life Insurance Company Salary Reduction Plan, Plan No. 007 (the IL Salary Reduction Plan)*. The IL Salary Reduction Plan is a defined contribution plan. As of June 20, 2000, the IL Salary Reduction Plan had total assets of approximately \$18 million and 457 participants. The trustees make investment decisions for this Plan.

(b) *Indianapolis Life Insurance Company Employees Pension Plan, Plan No. 001 (the IL Employees Pension Plan)*. The IL Employees Pension Plan is a defined benefit plan. As of January 1, 2000, the IL Employees Pension Plan had total assets of approximately \$27.8 million and 774 participants.

Indianapolis Life, acting through the Investment Committee of its Board of Directors, makes investment decisions on behalf of this Plan.

(c) *IL Group Term Life Insurance Plan*. The IL Group Term Life Insurance Plan is a welfare plan that is fully insured. As of September 12, 2000, the IL Group Term Life Insurance Plan had 381 participants.

(d) *Bankers Life Insurance Company of New York Profit Sharing and Salary Deferral Plan, Plan No. 001 (the BL Profit Sharing/Salary Deferral Plan)*. The BL Profit Sharing/Salary Deferral Plan is a defined contribution plan. As of June 30, 2000, the BL Profit Sharing/Salary Deferral Plan had total assets of approximately \$3.3 million and 105 participants. The trustees make investment decisions for this Plan.

5. AmerUs Group is a corporation that resulted from the recent conversion of American Mutual Holding Company (AMHC), an Iowa mutual insurance holding company, into an Iowa stock business corporation.<sup>3</sup> Upon its conversion, AMHC changed its name to “AmerUs Group Co.” AmerUs Group is a publicly-held company, with its common capital stock registered under the Securities Exchange Act of 1934, as amended. As described herein below, Indianapolis Life and its affiliates will become wholly owned subsidiaries of AmerUs Group upon Indianapolis Life’s conversion.

#### The Indianapolis Life Restructuring

6. On September 18, 2000, Indianapolis Life’s Board of Directors adopted a Plan of Conversion under which Indianapolis Life will convert to a stock life insurance company. The Plan of Conversion is part of a larger transaction involving the combination of Indianapolis Life with AmerUs Group in a “sponsored demutualization.” The steps involved in this process are collectively referred to as the “Restructuring.”

The principal purpose of the Restructuring is to enhance Indianapolis Life’s financial strength and access to capital through an affiliation with AmerUs Group that will result in a larger combined organization. Indianapolis Life represents that access to capital markets will enable it to invest in new technology, improve customer service, and develop new products and new channels of distribution.

In addition, Indianapolis Life asserts that the Restructuring will allow it to

<sup>3</sup> For a discussion of AMHC’s demutualization, see Prohibited Transaction Exemption 2000–53 (65 FR 65332, November 1, 2000).

obtain more financial flexibility with which to maintain its ratings and financial stability. In this regard, Indianapolis Life anticipates that the flexibility to pay compensation in the form of stock options, in the same manner as do other publicly-held companies, will enhance the insurer's ability to attract and retain qualified officers and directors. Further, Indianapolis Life explains that its combination with AmerUs Group will create an opportunity to leverage its corporate capacity and strength and to reduce expenses through economics of scale.

7. The Restructuring will provide Eligible Members with shares of AmerUs Group Common Stock (which will be traded on the New York Stock Exchange<sup>4</sup>, Cash, or Policy Credits in exchange for their otherwise illiquid policyholders' membership interests. Thus, Eligible Members will realize economic value from their membership interests that is not currently available to them as long as Indianapolis Life remains a mutual company. The demutualization, however, will not in any way reduce the benefits, values, guarantees, or dividend eligibility of existing policies or contracts issued by Indianapolis Life.

As part of the Restructuring, Indianapolis Life and its affiliates will become subsidiaries of AmerUs Group. In exchange, AmerUs Group has agreed that upon Indianapolis Life's conversion to a stock company, it will pay policyholders, in exchange for their mutual membership interests in Indianapolis Life, the equivalent of 9.3 million shares of AmerUs Group Common Stock. Such consideration will be in the form of AmerUs Group Common Stock, Cash or Policy Credits. Following the Restructuring, Indianapolis Life's base of operations will remain in Indianapolis.

The Restructuring and the terms of the Plan of Conversion are subject to the approval of the Commissioner and the members of Indianapolis Life who are entitled to vote on such Plan.<sup>5</sup> However, market conditions, regulatory requirements, and business considerations may also influence the final sequence of events.

8. Accordingly, Indianapolis Life requests, on behalf of itself, its

<sup>4</sup> On December 11, 2000, the closing price for AmerUs Group Common Stock was \$30.88 per share.

<sup>5</sup> According to the Plan of Conversion, those members eligible to vote are members of Indianapolis Life both (a) as of the date Indianapolis Life's Board of Directors adopts the Plan of Conversion and (b) the record date of the special members' meeting will be held.

subsidiaries, and its future parent company, AmerUs Group, an administrative exemption from the Department that will permit certain of its Plan policyholders to engage in certain transactions relating to its proposed conversion. Specifically, Indianapolis Life requests an exemption that will cover the receipt of AmerUs Group Common Stock, Cash or Policy Credits by Eligible Members that are Plans, including the aforementioned Indianapolis Life Plans, in exchange for such Eligible Member's membership interest in Indianapolis Life.<sup>6</sup> Indianapolis Life represents that the receipt of AmerUs Group Common Stock, Cash, or Policy Credits by a Plan can be viewed as a prohibited sale or exchange of property between it (or AmerUs Group) and a Plan, or as a transfer or use of plan assets by or for the benefit of a party in interest in violation of section 406(a)(1)(A) and (D) of the Act.

In addition, Indianapolis Life has requested that the exemption apply to distributions of AmerUs Group Common Stock to the IL Group Term Life Insurance Plan. Indianapolis Life recognizes that there may be an "excess" holding problem with respect employer stock that is received and held by this Plan which would be in violation of section 406(a)(1)(E) and (a)(2) of the Act and section 407(a)(2) of the Act, in addition to section 406(a)(1)(A) and (D) of the Act.<sup>7</sup>

<sup>6</sup> With respect to the Indianapolis Life Plans, Indianapolis Life represents that no Policy Credits will be paid to such Plans as a result of the Restructuring. Instead, as described in Representation 23, the Indianapolis Life Plans will receive consideration in the form of either Cash or shares of AmerUs Group Common Stock. Indianapolis Life is of the view that the AmerUs Group Common Stock that will be issued to certain of the Indianapolis Life Plans would constitute "qualifying employer securities" within the meaning of sections 407(d)(5) of the Act and that section 408(e) of the Act would apply to such distributions. (The Department however, expresses no opinion herein on whether such stock would constitute qualifying employer securities and whether such distributions would satisfy the terms and conditions of section 408(e) of the Act.) Nevertheless, Indianapolis Life has requested that the Department expand the scope of the exemption to include the distribution of both forms of consideration to the Indianapolis Life Plans.

<sup>7</sup> Section 406(a)(2)(E) of the Act prohibits the acquisition by a plan of any employer security which would be in violation section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or discretion to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the act. Section 407(a)(1) of the Act prohibits the acquisition by a plan of any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act provides that a plan may not acquire any qualifying employer security, if immediately after such acquisition, the aggregate

Although the IL Group Life Insurance Plan is fully-insured and its sole asset is an insurance policy through which it is funded, Indianapolis Life states that if this Plan were to accept AmerUs Group Common Stock as demutualization consideration, the fair market value of such stock would cause the aforementioned violations of the Act. To avoid this problem, Indianapolis Life represents that U.S. Trust Company, N.A. (U.S. Trust), the independent fiduciary for the Indianapolis Life Plans, fully expects to elect Cash consideration for the IL Group Term Life Insurance Plan. However, to the extent the IL Group Term Life Insurance Plan is required to accept AmerUs Group Common Stock, Indianapolis Life requests that the exemption be expanded to cover this acquisition.

Finally, Indianapolis Life has confirmed that the shares of AmerUs Group Common Stock that are issued to the Indianapolis Life Plans will not violate the provisions of section 407(f) of the Act.<sup>8</sup> Therefore, no further exemptive relief is required.

The requested exemption is based on a number of procedural and substantive protections that Indiana state insurance law provides to all policyholders of a mutual life insurance company that is converting to a stock life insurance company. At present, the Indianapolis Life's conversion is scheduled to become effective in the first quarter of 2001, thereby making the time frame for distributing policyholder consideration as early as August 31, 2001. In the event the Department is unable to grant the final exemption by the statutory deadline described in Representation 16, Indianapolis Life requests that the Department issue the exemption retroactively and that the exemption be made effective as of the effective date of the Plan of Conversion.

#### Indiana Insurance Law

9. Indianapolis Life anticipates that the following steps of the Restructuring will occur pursuant to the Plan of Conversion:

- AmerUs Group will form a new Indiana corporation under Indiana's business corporation laws, as a wholly-owned subsidiary. The new corporation

fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

<sup>8</sup> Section 407(f) of the Act, which is applicable to the holding of a qualifying employer security by a plan other than an eligible individual account plan, requires that (a) immediately following its acquisition by a plan, no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan; and (b) at least 50 percent of the stock be held by persons who are independent of the issuer.

will serve as the "Indiana parent corporation" of Indianapolis Life upon its conversion to a stock company for purposes of Indiana law.

- Indianapolis Life will convert from a mutual company to a stock company under Indiana law. Under the Plan of Conversion, and as provided by Indiana law, the policyholder's membership interests in Indianapolis Life will be extinguished, and Eligible Members will receive shares of AmerUs Group Common Stock, Cash, or Policy Credits as compensation for termination of their membership interests.

- Concurrently with Indianapolis Life's conversion, CLA Assurance Company (CLA Assurance), a wholly owned subsidiary of AmerUs Group, will merge with and into Indianapolis Life. Indianapolis Life will be the surviving company and will continue its existence as an Indiana-domiciled insurer. By operation of law, all of the stock of CLA Assurance will be converted into all of the stock of Indianapolis Life, thereby making Indianapolis Life a wholly owned stock subsidiary of AmerUs Group.

- To satisfy Indiana law, immediately upon Indianapolis Life's conversion, AmerUs Group will transfer all of the stock of Indianapolis Life to the Indiana parent corporation as a capital contribution.

#### Procedural Requirements Under Indiana Demutualization Law

10. Indiana Code 27-15 *et seq.* (the Indiana Demutualization Law), establishes an approval process for the demutualization of domestic mutual insurance companies. In this regard, the conversion of a mutual insurance company to a stock company must be initiated by the board of directors of the mutual insurance company. The board of directors may adopt a plan of conversion only upon a finding that the proposed conversion is in the best interests of the converting mutual insurance company, the Eligible Members, and the other policyholders of the company. Once the plan of conversion is adopted by the company's board of directors, the company must submit an application for the approval of the plan of conversion with the Commissioner. The application must include the following information:

- The plan of conversion and a certificate of the secretary of the converting mutual insurance company certifying the adoption of the plan by the company's board of directors.
- A statement of the reasons for the proposed conversion and why the conversion is in the best interests of the converting mutual insurance company,

the eligible members, and the other policyholders. The statement must include an analysis of the risks and benefits to the converting mutual insurance company and its members of the proposed conversion and a comparison of the risks and benefits of the conversion with the risks and benefits of reasonable alternatives to a conversion.

- A five year business plan and at least two years of financial projections of the former mutual insurance company and any parent company.
- Any plans that the former mutual insurance company or parent company may have to—

- Raise additional capital through the issuance of stock or otherwise;
- Sell or issue stock to any person, including any compensation or benefit plan for directors, officers, or employees under which stock may be issued;
- Liquidate or dissolve any company or sell any material assets;
- Merge or consolidate or pursue any other form of reorganization with any person; or
- Make any other material change in investment policy, business, corporate structure, or management.

- A plan of operation for a closed block, if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends.

- Copies of the amendment to the articles of incorporation proposed by the board of directors and the proposed bylaws of the former mutual insurance company and copies of the existing and any proposed articles of incorporation and bylaws of any parent company.
- A list of all individuals who are or have been selected to become directors or officers of the former mutual insurance company and any parent company, or the individuals who perform or will perform duties customarily performed by a director or officer, as well as specific biographical information about those individuals.

- An actuarial opinion as to the following:
  - The reasonableness and appropriateness of the methodology or formulas used to allocate consideration among eligible members, consistent with the statute.
  - The reasonableness of the plan of operation and the sufficiency of the assets allocated to the closed block, if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends.

- A copy of the form of trust agreement to be used in connection with a trust to be established to hold assets that are the subject of a claim described in Ind. Code 27-15-12-1 until that claim has been resolved. (In the present case, to the extent that such a claim is filed, the trust would hold consideration payable to Plan policyholders until the Department issues the requested exemption. See also Representation 16.)

- Any additional information, documents, or materials that the converting mutual insurance company determines to be necessary.

- Any other additional information, documents, or materials that the Commissioner requests in writing.

11. Upon determining that the application is complete, the Commissioner must conduct a public hearing on the plan of conversion. The purpose of the hearing is to receive comments and information to aid the Commissioner in considering and approving or disapproving the application for approval of the plan of conversion. The converting mutual insurance company must provide at least 30 days prior written notice of the hearing to its members and policyholders. Persons wishing to make comments and submit information may submit written statements before or at the public hearing and may also appear and be heard at the public hearing.

12. The converting mutual insurance company must also cause notice of the public hearing to be published in a newspaper of general circulation in the city where the principal office of the converting mutual insurance company is located and in any other city specified by the Commissioner. Both the written notice and the form and content of the published notice must be pre-approved by the Commissioner.

The Commissioner must fully consider any comments received at the public hearing consistent with Indiana's Administrative Rules and Procedures Act before making a determination on the Plan of Conversion. After the public hearing, the Commissioner must approve the application and permit the conversion under the plan of conversion if the Commissioner finds the following:

- That the amount and form of consideration are fair in the aggregate and to each member class;
- That the Plan of Conversion and the amendment to the articles of incorporation:

- Comply with the Indiana Demutualization Law and other applicable laws;
- Are fair, reasonable, and equitable to the eligible members; and

- Will not prejudice the interests of the other policyholders of the converting mutual insurance company; and

- That the total consideration provided to eligible members upon the extinguishing of the converting mutual's membership interests is equal to or greater than the surplus of the converting mutual.

A person who is aggrieved by an agency action of the Commissioner under the Indiana Demutualization Law may petition for judicial review of the action.

13. The Indiana Demutualization Law permits the Commissioner to employ accountants, actuaries, attorneys, financial advisers, investment bankers and other experts that are necessary to assist the Commissioner in reviewing all matters under the Indiana Demutualization Law. In the case of Indianapolis Life's proposed demutualization, the Commissioner has retained an actuarial firm, legal advisers and an investment banking firm as consultants.

14. In addition to being approved by the Commissioner, the plan of conversion must be approved by the converting mutual insurance company's policyholders. The policyholders must be provided with notice of the meeting called for the purpose of voting on the Plan of Conversion.

The converting mutual insurance company must also provide explanatory information about the conversion to policyholders. The form of the meeting notice, explanatory information, and any proxy solicitation materials must be approved in advance by the Commissioner. Further, the Plan of Conversion must be approved by at least two-thirds of the policyholders voting at the meeting.

15. As noted in Representation 6, the Indianapolis Life Board of Directors adopted Indianapolis Life's Plan of Conversion on September 18, 2000 following review and the receipt of comments by the Commissioner. In addition, on September 21, 2000, Indianapolis Life filed an application for approval of such Plan and amendments to its Articles of Incorporation with the Commissioner. On November 2, 2000, Indianapolis Life filed a revised version of the Plan of Conversion with the Commissioner to reflect changes requested by the Commissioner.

As for the policyholder meeting, Indianapolis Life indicates that the notice of the meeting was tentatively scheduled to be mailed on or about December 18, 2000. However, Indianapolis Life explains that the mailing did not occur due to delay in

the regulatory process. Indianapolis Life also points out that the regulatory delay has moved back the date of the policyholder meeting, which was originally scheduled to occur on February 16, 2001. Once approval is obtained, Indianapolis Life states that the mailing and the meeting will be rescheduled.

Whenever the policyholder meeting occurs, approximately 152,000 Indianapolis Life policyholders (including 5,500 Plan policyholders) which are Eligible Members will be eligible to vote on the Plan of Conversion. Each Eligible Member will be entitled to only one vote regardless of the number of policies or certificates held by such Eligible Member.

Indianapolis Life expects that the Commissioner will approve the Plan of Conversion by mid-February 2001 and that the demutualization will become effective between March 15 and March 31, 2001. However, delays in the regulatory process could push these dates back further.

#### Trust Requirement

16. Indianapolis Life explains that Indiana Demutualization Law imposes unique and stringent time constraints on the distribution of consideration to policyholders in connection with a demutualization. In this regard, unless a special, very narrow exception applies, all consideration must be distributed within six months after the effective date of the insurer's conversion to a stock life insurance company. The exception applies in the event that, prior to the effective date of the demutualization, a claim is filed that meets certain requirements. In this event, a trust (the Trust) will be established to hold disputed or affected assets until the claim is resolved, even if the resolution occurs after the six month deadline.

According to Indianapolis Life, the Commissioner has indicated that the Trust exception will apply in the present exemption request to the extent that a claim is filed by or on behalf of one or more policyholders. The claim must assert, to the satisfaction of the Commissioner, that (a) irreparable harm will result if distribution occurs before the Department issues the requested exemption, and (b) a Trust should be established to hold consideration payable to Plan policyholders until the exemption is granted by the Department.

None of the trustees (the Trustees) of the Trust will be related to Indianapolis Life or its affiliates. Indianapolis Life will pay for all costs and expenses of the Trust and the Trustees. All

consideration held in the Trust for the benefit of Plan policyholders will be placed in interest-bearing accounts. The interest generated from these investments will also be held in the Trust for the benefit of the Plan policyholders. Any earnings on the AmerUs Group Common Stock that is held in the Trust, which is in the form of cash or stock dividends, will similarly be held in the Trust.

The Trust will terminate when all claims with respect to the Trust assets have been resolved and all of the Trust assets have been distributed. If a claim remains unresolved three years after the effective date of the Trust, the Trust will contain a mechanism for (a) distributing the remaining Trust assets to a court of competent jurisdiction to make all decisions regarding the distribution; or (b) to the beneficiary, as long as the beneficiary agrees to accept any liability associated with the distribution. At that point, the Trustee will be discharged from all responsibility under the Trust, and the Trust will be terminated.<sup>9</sup>

#### Distributions to Indianapolis Life's Policyholders

17. Indianapolis Life's Plan of Conversion provides for Eligible Members to receive AmerUs Group Common Stock, Cash, or Policy Credits as consideration for giving up their membership interest in the mutual insurance company, which interests will be extinguished as a result of the demutualization.<sup>10</sup> For this purpose, an

<sup>9</sup> If the exemption requested herein is granted before the effective date of the demutualization, Indianapolis Life states that the Trust requirement will be moot.

<sup>10</sup> Indianapolis Life represents that in accordance with chapter 15 of the Indiana Insurance Code, the Plan of Conversion generally provides that the policyholder eligible to participate in the distribution of AmerUs Group Common Stock, Cash or Policy Credits resulting from the Plan of Conversion (*i.e.*, the Eligible Member) is the person whose name appears on Indianapolis Life's records as owner or holder of the policy. Indianapolis Life 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 or holder of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, Indianapolis Life represents that it is required under the Plan of Conversion to make distributions resulting from the Plan of Conversion to the employer or trustee as owner of the policy.

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, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3-3) at the time when Indianapolis Life incurs the obligation to distribute AmerUs Group Common Stock, Cash or Policy Credits, then such consideration would constitute an asset of such Plan. Under these circumstances,



“Eligible Member” is a policyholder whose name appears on Indianapolis Life’s records as the owner of one or more policies issued by Indianapolis Life as of both the date the Board of Directors adopts the Plan of Conversion and the effective date of the Plan of Conversion. Distributions under Indianapolis Life’s Plan of Conversion will be made to Eligible Members that are Plans on the same basis as all Eligible Members which are not Plans.

As stated above, the total consideration to be distributed to Eligible Members will be equal in value to 9.3 million shares of AmerUs Group Common Stock<sup>11</sup>. Under Indiana law, this value will at least be equal to the value of Indianapolis Life’s surplus. In this regard, each Eligible Member will be allocated a fixed component of consideration equal to 12 shares of AmerUs Group Common Stock. The remaining shares of AmerUs Group Common Stock will then be allocated to the Eligible Members based on the actuarial contribution that each Eligible Member’s policy has made (and is expected to make) to Indianapolis Life’s statutory surplus. The Plan of Conversion contains a detailed description of how the actuarial contribution of each policy or contract will be determined.

18. After shares of AmerUs Group Common Stock have been allocated to each Eligible Member, actual consideration will be paid as soon as practicable after the conversion date. As noted above, such consideration will be in the form of AmerUs Group Common Stock, Cash or Policy Credits. For each affected policy, combinations of different forms of consideration will not be permitted. The decision as to the form of consideration to be received in exchange for Indianapolis Life membership interests will be made by one or more independent Plan fiduciaries which is independent of Indianapolis Life and its affiliates. In this regard, neither Indianapolis Life nor its affiliates will provide a Plan with

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.

<sup>11</sup> If the aggregate value of 9.3 million shares of AmerUs Group Common Stock is less than \$186 million (with the stock price determined by averaging the daily closing price of the AmerUs Group Common Stock over the five trading days ending ten business days before the effective date of the Plan of Conversion), then Indianapolis Life will not be obligated to consummate the Plan of Conversion, unless AmerUs Group promptly agrees to increase the number of shares of AmerUs Group Common Stock allocable to Eligible Members or otherwise provide additional consideration so that the aggregate value of the shares is equal to \$186 million.

“investment advice,” within the meaning of 29 CFR 2510.3–21(c) of the Act or exercise discretion with respect to such decision.

19. In general, AmerUs Group Common Stock or Cash will be paid to an Eligible Member who affirmatively elects to receive such consideration. An Eligible Member electing to receive consideration in this form must complete a card, which will be included in the notice of the members’ meeting, and return such card to Indianapolis Life prior to the date specified by Indianapolis Life for the receipt of proxies to be used at the members’ meeting.

Some Eligible Members who own specific types of policies may not have a choice as to the form of consideration to be received. For example, an Eligible Member will receive consideration in the form of Policy Credits if such Eligible Member is the owner of a policy that is—

- An individual retirement annuity within the meaning of section 408 or 408A of the Code or a tax sheltered annuity within the meaning of section 403(b) of the Code; or
  - An individual annuity contract, individual life insurance policy or a supplemental contract that has been issued directly to a plan participant pursuant to a plan qualified under section 401(a) or 403(b) of the Code.
- In addition, each owner of a policy that is identified prior to the distribution as part of a tax-qualified plan will receive consideration in the form of Policy Credits if the receipt of Cash or AmerUs Common Stock would affect the tax-favored status accorded to the policy or result in penalties or any other adverse federal income tax consequences to the holders of such policies under the Code.

Further, Indianapolis Life’s Plan of Conversion provides that an Eligible Member will receive consideration in the form of Cash if (a) the receipt of AmerUs Group Common Stock would, in the judgment of Indianapolis Life, fail to comply with the securities registration requirements (or applicable exemptions) of the state of domicile of the Eligible Member; or (b) the Eligible Member’s mailing address, as shown on such insurer’s records is located outside of the United States.

The amount of Policy Credits or Cash will be determined by multiplying the number of shares of AmerUs Group Common Stock allocated to the Eligible Member by the “stock price” of such stock. The “stock price” will be the greater of closing price per share of AmerUs Group Common Stock on the effective date of the Plan of Conversion

or the average of the closing price per share of such stock for each of the first ten trading days beginning with the effective date of the Plan of Conversion.

20. Cash will also be paid to an Eligible Member who fails to make any election as long as certain “special rules” in the Plan of Conversion for satisfying the Cash and Common Stock preferences of Eligible Members are satisfied. In this regard, the Plan of Conversion requires that the maximum amount of Cash distributed, together with the value of Policy Credits and the costs and expenses to be paid by AmerUs Group or Indianapolis Life for the benefit of Eligible Members, allow for the merger between CLA Assurance and Indianapolis Life to qualify as a tax-free reorganization under section 368(a)(2)(E) of the Code.<sup>12</sup>

The Plan of Conversion requires that at least 10 percent of all Eligible Members receive Cash. Indianapolis Life and AmerUs Group may agree to distribute Cash to more than 10 percent of all Eligible Members as long as the maximum amount of Cash under section 368(a)(2)(E) of the Code is not exceeded.

Further, the Plan of Conversion provides for the payment of Cash to those Eligible Members (other than those who are required to receive Cash) based on the number of shares of AmerUs Group Common Stock allocated to Eligible Members in increasing order until the total amount of available Cash has been fully distributed. Eligible Members with the least number of allocable shares will be paid in Cash first.<sup>13</sup>

21. AmerUs Group will issue shares of AmerUs Group Common Stock to an Eligible Member entitled to receive such consideration in book-entry form as uncertificated shares. AmerUs Group will also mail a notice to the Eligible Member, thereby informing the Eligible Member, that a designated number of shares of AmerUs Group Common Stock

<sup>12</sup> The distribution by AmerUs Group of its Common Stock to former members of Indianapolis Life is intended to be tax-free. Accordingly, the transaction must comply with the provisions of section 368(a)(2)(E) of the Code. Among other things, these requirements limit the extent to which the consideration paid to former Indianapolis Life members may be in a form other than AmerUs Group Common Stocks.

<sup>13</sup> If there are two or more Eligible Members having the same number of allocable shares of AmerUs Group Common Stock and there is insufficient Cash to pay all such Eligible Members, the Plan of Conversion provides, in relevant part, that the remaining available Cash will be distributed “first to those Eligible Members with the earliest Policy Date.” Therefore, in the event the allocation of Cash among Eligible Members results in a “tie” between two or more Eligible Members having the same number of allocable shares, Cash will be distributed to the Eligible Member with the earliest policy date.

has been registered in such Eligible Member's name. If an Eligible Member requests, AmerUs Group will mail the Eligible Member a stock certificate representing the shares. No Eligible Member will pay a brokerage commission or fee in connection with the receipt of AmerUs Group Common Stock.

#### *Commission-Free Sales and Purchase Program*

22. AmerUs Group will, within 12 months after the closing date of the combination of AmerUs Group with Indianapolis Life, offer a commission-free sales and purchase program to shareholders holding less than 100 shares of stock. The shareholders may sell their shares (or round up to 100 shares by purchase) without paying any brokerage commissions. The program will be made available for a minimum of 60 days.

#### *Role of the Independent Fiduciary for the Indianapolis Life Plans*

23. As noted above, the decision to vote for or against the Plan of Conversion and the decision as to the form of consideration to be received in exchange for Indianapolis Life membership interests will be made by one or more independent Plan fiduciaries. Pursuant to a letter agreement dated September 18, 2000, Indianapolis Life has appointed U.S. Trust to act as the independent fiduciary on behalf of each of the Indianapolis Life Plans with respect to certain aspects of Indianapolis Life's Plan of Conversion. Such transactions over which U.S. Trust will exercise investment discretion may result in the acquisition, holding or disposition of AmerUs Group Common Stock by the Indianapolis Life Plans. U.S. Trust has acknowledged and accepted the duties, responsibilities and liabilities, required of an independent fiduciary and it agrees to act on behalf of the Indianapolis Life Plans. In return for services rendered, Indianapolis Life will compensate U.S. Trust.

U.S. Trust is the principal subsidiary of U.S. Trust Corporation, which was founded in 1853 and is subject to regulation as a trust company by the State of New York. U.S. Trust is a member of the Federal Reserve System and the Federal Deposit Insurance Corporation. As of December 31, 1999, U.S. Trust had approximately \$5 billion in assets and over \$75 billion in assets under management. Of those assets under management, a significant portion consisted of the assets of ERISA-covered Plans. U.S. Trust has served as an independent fiduciary for a number of

Plans that have acquired or held employer securities and it has managed over \$20 billion in employer securities held by such Plans. In managing such investments, U.S. Trust has exercised discretionary authority over many transactions involving the acquisition, retention and disposition of employer securities.

U.S. Trust represents that it is independent of Indianapolis Life and its affiliates. In this regard, U.S. Trust asserts that it has no business, ownership or control relationship, nor is it otherwise affiliated with Indianapolis Life. Further, U.S. Trust represents that it derives less than one percent of its annual income from Indianapolis Life.

As the independent fiduciary for the Indianapolis Life Plans, U.S. Trust will be required to (a) vote on whether to approve or not to approve the proposed Restructuring; (b) elect between consideration in the form of AmerUs Group Common Stock or Cash; (c) determine how to apply the Cash or AmerUs Group Common Stock received for the benefit of the participants and beneficiaries of the Indianapolis Life Plans; (d) vote on shares of AmerUs Group Common Stock that are held by the IL Group Term Life Insurance Plan and dispose of such stock exceeding the limitation of section 407(a)(2) of the Act as reasonably as practicable, but in no event later than six months after the effective date of the Plan of Conversion; and (e) take all actions that are necessary and appropriate to safeguard the interests of the Indianapolis Life Plans and their participants and beneficiaries. In addition, U.S. Trust will provide the Department with a complete and detailed final report as it relates to the Indianapolis Life Plans prior to the effective date of the Restructuring. Finally, U.S. Trust states that it has conducted a preliminary review of Indianapolis Life's Plan of Conversion and it sees nothing in the Plan that would preclude the Department from proposing the requested exemption.

24. 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 Plan of Conversion will be implemented pursuant to stringent procedural and substantive safeguards imposed under Indiana law and supervised by the Commissioner.

(b) The Commissioner will only approve the Plan of Conversion following a determination that, among other things, such Plan is fair, reasonable, and equitable to all Eligible Members.

(c) One or more independent fiduciaries of each Plan (including the Indianapolis Life Plans) will have an opportunity to determine whether to vote to approve the terms of the Plan of Conversion and will also be solely responsible for any decisions that may be permitted under the Plan of Conversion regarding the form of consideration to be received in return for their respective membership interests.

(d) Because of all of the protections afforded the plans under Indiana law, no ongoing involvement by the Department will be required in order to safeguard the interests of the employee benefit plan policyholders.

(e) The Plan of Conversion will enable Plans to convert their illiquid membership interests in Indianapolis Life into AmerUs Group Common Stock, Cash, or Policy Credits.

(f) The insurance and annuity contracts affected by the Plan of Conversion will remain in force and there will be no changing of premiums or compromising any of the benefits, values, guarantees, or other policy obligations of Indianapolis Life to its policyholders and contractholders.

(g) Each Eligible Member that is a Plan policyholder will have an opportunity to comment on the Plan of Conversion and, if such Plan is a voting member, to vote for or against the Plan of Conversion after full disclosure by Indianapolis Life of the terms of the Plan of Conversion.

#### *Notice to Interested Persons*

Indianapolis Life will provide, by first-class mail, notice of the proposed exemption to all Plans that would be entitled to receive AmerUs Group Common Stock, Cash or Policy Credits under the Plan of Conversion, as determined on the basis of Indianapolis Life's review of its policyholder records. The notice will be provided to interested persons within 14 days after publication of a notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2) which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the proposed exemption are due within 44 days after the date of publication of this pendency notice 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.)

**The Amalgamated Cotton Garment & Allied Industries Fund-Retirement Fund Located in New York, New York**

[Exemption Application No.: D-10947]

*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 C.F.R. part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).<sup>14</sup> If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the proposed purchase by the Amalgamated Cotton Garment & Allied Industries Fund-Retirement Fund (the Cotton Pension Fund) from the Amalgamated Insurance Fund-Insurance Fund (the Clothing Welfare Fund), a party in interest with respect to the Cotton Pension Fund, of 100 percent (100%) of the outstanding shares of non-publicly traded common stock (the Common Stock) of ALICO Services Corporation (ASC), a service provider to the Cotton Pension Fund; provided that prior to the proposed transaction: (a) an independent fiduciary (the I/F), acting on behalf of the Cotton Pension Fund determines that the proposed transaction is feasible, in the interest of, and protective of the Cotton Pension Fund and its participants and beneficiaries; (b) the I/F determines, on behalf of the Cotton Pension Fund, that the ASC Common Stock should be purchased by the Cotton Pension Fund; (c) the I/F reviews, negotiates, and approves the terms of the purchase of the ASC Common Stock; (d) the I/F monitors the terms of the purchase of the ASC Common Stock and ensures that the Cotton Pension Fund and the Clothing Welfare Fund comply with the approved terms; (e) the I/F determines that the terms of the purchase of the ASC Common Stock are no less favorable to the Cotton Pension Fund than terms negotiated at arm's length with an unrelated third party under similar circumstances; (f) the I/F determines, as of the date the transaction is entered, that the purchase price for the ASC Common Stock paid by the Cotton Pension Fund is the fair market value of such stock, not to exceed \$30 million; (g) an independent,

qualified appraiser issues a fairness opinion as to the price of the ASC Common Stock and determines, as of the date the transaction is entered, that the Clothing Welfare Fund is receiving fair market value for such stock; (h) the Cotton Pension Fund incurs no fees, commissions, or other charges or expenses as a result of its participation in the proposed transaction other than the following: (1) the fees incurred in making this exemption request, (2) the fee payable to the I/F, and (3) the fees payable to the parties representing the Cotton Pension Fund in the proposed transaction; (i) the proposed transaction is a one-time occurrence for cash; and (j) a committee composed of members of the Board of Trustees of the Clothing Welfare Fund determines that such fund should engage in the proposed transaction and, if so, such committee is authorized to set the terms and conditions under which the Clothing Welfare Fund will engage in such transaction.

**EFFECTIVE DATE:** This proposed exemption, if granted, will be effective on the date that the subject transaction closes, or March 15, 2001, whichever is earlier.

*Summary of Facts and Representations*

1. The Clothing Welfare Fund and Cotton Pension Fund are interrelated, in that some of the same employers contribute to both the Clothing Welfare Fund and the Cotton Pension Fund. In this regard, approximately 18% of the active participants in the Clothing Welfare Fund are also participants of the Cotton Pension Fund. The Cotton Pension Fund is an "employee pension benefit plan," as defined under section 3(2) of the Act. The Clothing Welfare Fund is an "employee welfare benefit plan," as defined under section 3(1) of the Act. Accordingly, the Cotton Pension Fund and the Clothing Welfare Fund are "employee benefit plans," as defined under section 3(3) of the Act. In this regard, there is jurisdiction under Title I of the Act with respect to both funds. It is also represented that the Cotton Pension Fund offers pension benefits covered under Title II of the Act. Accordingly, the Cotton Pension Fund is also subject to section 4975 of the Code.

2. The Cotton Pension Fund is a multiemployer pension plan jointly trustee by individuals selected by the Union of Needletrades, Industrial and Textile Employees (UNITE) and by individuals selected by various employers who contribute to the Cotton Pension Fund. The Cotton Pension Fund provides pension benefits

primarily to unionized workers in the cotton garment industry. As of December 31, 1999, the estimated number of participants and beneficiaries in the Cotton Pension Fund was approximately 72,105. The approximate aggregate fair market value of the total assets of the Cotton Pension Fund was \$682.1 million, as of June 30, 2000.

The trustees of the Cotton Pension Fund have appointed an independent committee (the Cotton Committee) comprised of four trustees from the total number of trustees. Aside from appointing the Cotton Committee, the trustees of the Cotton Pension Fund have no other participation in the proposed transaction.

Two members of the Cotton Committee are UNITE representatives and two members are employer representatives. It is represented that the members on the Cotton Committee are trustees only of the Cotton Pension Fund. The Cotton Committee is prepared to assist the I/F with the proposed transaction.

3. The Clothing Welfare Fund is a multiemployer welfare plan jointly trustee and administered by: (a) individuals selected by UNITE, and (b) individuals selected by the Clothing Manufacturing Association of the United States of America. The Clothing Welfare Fund provides health and life insurance benefits primarily to unionized workers of men's suit manufacturers. As of December 31, 1999, the estimated number of participants and beneficiaries in the Clothing Welfare Fund was approximately 39,910. The approximate aggregate fair market value of the total assets of the Clothing Welfare Fund was \$31.6 million, as of June 30, 2000.

The trustees of the Clothing Welfare Fund have appointed an independent committee (the Clothing Committee) comprised of four trustees from the total number of trustees. Aside from appointing the Clothing Committee, the trustees of the Clothing Welfare Fund have no other participation in the proposed transaction.

Two members of the Clothing Committee are UNITE representatives and two members are employer representatives. It is represented that the members of the Clothing Committee are trustees only of the Clothing Welfare Fund. The Clothing Committee is empowered to determine whether the Clothing Welfare Fund should engage in the proposed transaction, and if so, the committee is authorized to set the terms and conditions under which the Clothing Welfare Fund will engage in such transaction.

<sup>14</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

4. ASC is a holding company that is wholly-owned by the Clothing Welfare Fund. As a holding company, ASC wholly owns four (4) subsidiaries: (a) Amalgamated Life Insurance Company (ALICO); (b) Alicare Inc. (Alicare); (c) Alicare Medical Management, Inc. (AMM); and (d) Amalgamated Fund Administrators, Inc. (AFA) (collectively, the ASC Subsidiaries). All of the ASC Subsidiaries are operated for profit, with the exception of AFA.

ALICO, a New York life insurance company, was established in 1943 to serve as the non-profit administrative arm of the Clothing Welfare Fund. At the time of ALICO's formation, the Clothing Welfare Fund was a self-funded health plan sponsored by the Amalgamated Clothing Workers' Union of America (ACWA), a predecessor of UNITE. Over time, ALICO began to serve a similar administrative role for other ACWA funds. In 1991, the Clothing Welfare Fund formed ASC in order to sell products and services on a commercial for-profit basis. Subsequently, the not-for-profit administrative services were handled by AFA. Currently, ALICO provides life and disability insurance primarily to unions and union-sponsored trust funds. ALICO also provides fully retrospectively rated group life insurance to various jointly administered funds, including the Clothing Welfare Fund.

It is represented that the proposed transaction will not close until it is approved by the Superintendent of Insurance of the State of New York. In this regard, it is represented that the reserves of ALICO are adequate to cover all future policy liabilities. Accordingly, no additional reserves shall be required as a result of the proposed transaction. In addition, it is represented that following the proposed transaction, ASC and ALICO are and shall continue to be going concerns.

Alicare is a full-service third-party fund administrator focusing on the Taft-Hartley market. Alicare also provides computer services, insurance brokerage, and printing services. Alicare's services are delivered through its four (4) divisions: (a) Alicare, (b) Alicomp, (c) Aligraphics, and (d) Amalgamated Agency.

AMM provides medical cost management services, including utilization management, comprehensive claims cost containment, and a 24 Hour Nurse HelpLine to provide health information and education to patients.

AFA is a not-for-profit, tax-exempt enterprise. In this regard, AFA provides third-party administration for the Clothing Welfare Fund, the Cotton

Pension Fund, the Amalgamated Service and Allied Industries Fund, the Amalgamated Washable Clothing Sportswear and Allied Industries Fund, and the Amalgamated Retail Fund (collectively, the Patron Funds), on a cost allocation basis. The specific services provided by AFA include claims processing, distribution and preparation of plan documents, collections of contributions by employers, record retention, and reporting to government authorities.

5. ASC Subsidiaries provide services to the Cotton Pension Fund. If the proposed transaction is granted, certain ASC Subsidiaries also intend to continue to provide administrative services to the Clothing Welfare Fund. Accordingly, as service providers, the ASC Subsidiaries are or will be parties in interest with respect to the Cotton Pension Fund and the Clothing Welfare Fund under section 3(14)(B) of the Act. In addition, because the Clothing Welfare Fund currently owns all of the outstanding ASC Common Stock, the Clothing Welfare Fund is a party in interest with respect to the Cotton Pension Fund under section 3(14)(H) of the Act. The Clothing Welfare Fund may also be a disqualified person, pursuant to section 4975(e)(2) of the Code, because of its relationships to the Cotton Pension Fund.

6. The Clothing Welfare Fund has requested an individual exemption in order to sell to the Cotton Pension Fund all of the outstanding shares of ASC Common Stock. In this regard, the value of the ASC Common Stock constitutes a significant portion of the Clothing Welfare Fund's otherwise liquid investment portfolio. It is represented that the proposed transaction will provide the Clothing Welfare Fund with liquidity and allow for further diversification of its assets.

7. Absent an exemption, the proposed transaction would constitute a sale of property between a plan and a party in interest, and a transfer of assets from a plan to a party in interest in violation of section 406(a)(1)(A) and section 406(a)(1)(D) of the Act, respectively. Accordingly, the Cotton Pension Fund is seeking relief with respect to section 406(a)(1)(A) and 406(a)(1)(D) of the Act. Further, to the extent that the Clothing Welfare Fund is a disqualified person under the Code, the proposed transaction would also violate sections 4975(c)(1)(A) and 4975(c)(1)(D) of the Code, for which relief is requested.

The proposed transaction may also violate section 406(b)(2) of the Act, because certain trustees of the Clothing Welfare Fund are also trustees of the Cotton Pension Fund (the Overlapping

Trustees). In this regard, the Overlapping Trustees, as fiduciaries of the Clothing Welfare Fund, could be viewed as acting on behalf of the Cotton Pension Fund, an adverse party to the Clothing Welfare Fund in connection with the proposed transaction. The Cotton Pension Fund has represented that the Cotton Pension Fund and the Clothing Welfare Fund intended to avoid a violation of section 406(b)(2) of the Act by employing the Cotton Committee and the Clothing Committee as decision makers for each committee's respective fund. However, because of the concerns that may be raised as a result of the Overlapping Trustees, the Cotton Pension Fund has also requested relief with respect to section 406(b)(2) of the Act.

8. For the purpose of determining the fair market value of Common Stock, the Clothing Welfare Fund sought the opinion of Willamette Management Associates (WMA), as an independent, qualified appraiser. WMA is experienced in that it has prepared valuations of ASC for the Clothing Welfare Fund for approximately the past four (4) years. In addition, Scott D. Levine (Mr. Levine), a senior manager of WMA who signed the appraisal report is a certified public accountant, a member of the Maryland Society of Certified Public Accountants, a Chartered Financial Analyst of the Association for Investment Management and Research, and a candidate for the accredited senior appraiser designation in business valuation of the American Society of Appraisers. Mr. Levine's primary areas of expertise are the appraisal of closely held companies and business interests and the appraisal of fractional and nonmarketable security interests in private and public corporations.

WMA is independent in that the average percentage of WMA's annual income derived from work for the Clothing Welfare Fund over the past four (4) year period is less than one percent (1%). Further, WMA's professional fees were not contingent upon the opinion expressed in the valuation report, and WMA represents that other than the services provided attendant to the valuation, neither it nor any of its employees has a present or intended financial interest in ASC.

At the request of the Clothing Welfare Fund, WMA prepared a preliminary valuation report of the fair market value of the shares of ASC Common Stock, as of December 31, 2000. In preparing the valuation report, WMA was asked to assume that projected results for fiscal year 2000 are achieved. Since these projected results had not been realized, as of October 17, 2000, the date on the

valuation report, WMA represents that the conclusions expressed in the valuation report were of a hypothetical nature.

In developing the valuation analysis, WMA conducted interviews with officers of ASC, reviewed and analyzed, among other things: (a) The audited financial statements of ASC for the fiscal years ended December 31, 1995–1999; (b) the financial statement projections for ASC for the fiscal years ending December 31, 2000–2004; and (c) the company profile for ASC completed by management. Further, WMA researched and analyzed, among other things: (a) guideline industry data; (b) economic information; (c) information related to publicly traded companies considered suitable for comparison to ASC; and (d) capital market evidence regarding investment rates of return.

In the opinion of WMA the hypothetical fair market value of ASC Common Stock on a controlling ownership interest basis, as of December 31, 2000, is \$25.3 million. WMA represents that this conclusion was reached after giving proper consideration to the historical and prospective operating characteristics of ASC, as well as the after-tax expected cash flows and earnings attributable to ASC, the current and forecasted capital structure of ASC, the risk/return relationship reflected for comparable companies having securities traded in the public market, capital market and related industry macroeconomic evidence available as of the date of the report and other relevant factors.

In addition, it is represented that WMA will offer a fairness opinion as to the price of the ASC Common Stock and will determine that the Clothing Welfare Fund is receiving no less than the fair market value for its ASC Common Stock. WMA's fairness opinion will also assess whether the proposed transaction is fair and reasonable from a financial standpoint.

9. It is represented that the actual sale price for the Cotton Pension Fund's proposed purchase of the ASC Common Stock shall be negotiated by the I/F, ASA Fiduciary Counselors, Inc. (ASA Fiduciary), which is acting on behalf of the Cotton Pension Fund, and by George Cochran, (Mr. Cochran), a principal at Cochran, Caronia & Co. (Cochran), who is negotiating on behalf of the Clothing Welfare Fund. In this regard, the Clothing Welfare Fund engaged Mr. Cochran, an investment banker with significant experience in mergers and acquisitions in the insurance industry, to act as an investment advisor.

On behalf of the Clothing Welfare Fund, Cochran has conducted a

valuation of ASC. On behalf of the Cotton Pension Fund, ASA Fiduciary, with the aid of American Express Tax and Business Services (AmEx), a party independent of the Cotton Pension Fund, has conducted its own valuation of ASC. In this regard, AmEX has been retained by the Cotton Committee to assist ASA Fiduciary in evaluating the ASC Subsidiaries for the purpose of valuing the ASC Common Stock. Prior to the publication of the final exemption, it is represented that ASA Fiduciary will provide an oral report to the Department, containing ASA Fiduciary's determination of whether the ASC Common Stock should be purchased by the Cotton Pension Fund based on the final terms of such sale. Such report shall include, among other things, a summary of the activities ASA Fiduciary conducted on behalf of the Cotton Pension Fund in connection with its determination, as well as an affirmation that the purchase price for the ASC Common Stock paid by the Cotton Pension Fund is no greater than the fair market value of such stock on the date of the purchase. The applicant represents that a final written report will be provided to the Department by ASA Fiduciary following the completion of the transaction.

Using the WMA valuation (\$25.3 million, as of December 31, 2000) as an estimate, the percentage of the fair market value of the total assets of the Cotton Pension Fund expected to be involved in the proposed transaction will be approximately 3.71 percent (3.71%). The percentage of the fair market value of the total assets of the Clothing Welfare Fund expected to be involved in the proposed transaction will be approximately 70.67 percent (70.67%).

10. It is represented that the proposed transaction is feasible in that the sale of the ASC Common Stock by the Clothing Welfare Fund to the Cotton Pension Fund will be a one-time occurrence for cash with no ongoing oversight requirements.

11. It is represented that the proposed transaction is in the interest of the Cotton Pension Fund, because the ownership by such fund of the ASC Common Stock will ensure the continuity of the unique, highly specialized and low cost customized services provided by ASC Subsidiaries to the Cotton Pension Fund. In this regard, the allocation of overhead to profit making activities will benefit the Cotton Pension Fund directly by offsetting user fees and further will ensure that the low cost services continue to all of the Patron Funds.

It is represented that a significant part of the value of ASC is its niche in the Taft-Hartley and labor communities. This niche is enhanced by ASC being owned by an entity affiliated with the labor movement in general and with UNITE in particular. Were ASC to be controlled by other than an entity that is affiliated with labor, it is represented that the value of ASC might diminish significantly.

12. The proposed transaction is protective of the participants and beneficiaries of the Cotton Pension Fund. In this regard, it is represented that the proposed transaction is prudent, will be priced at fair market value, not to exceed \$30 million, and offers a limited risk of capital loss relative to most other equity investments.

Additional protections are provided to the Cotton Pension Fund by the appointment of ASA Fiduciary. In this regard, the Cotton Pension Fund has entered into an engagement letter, dated October 26, 2000, as amended (the Agreement) with ASA Fiduciary, a registered investment advisor, in order to retain ASA Fiduciary to provide independent fiduciary services in connection with the purchase of all of the outstanding shares of the ASC Common Stock. In this regard, ASA Fiduciary has acknowledged and agreed to serve as an I/F to the Cotton Pension Fund with respect to such fund's decision to purchase the ASC Common Stock. It is represented that the Cotton Pension Funds's obligation to pay ASA Fiduciary a fee for its services is not contingent upon either the completion of the contract for purchase of the ASC Common Stock or the close of the proposed transaction.

ASA Fiduciary has acknowledged and agreed that it is a fiduciary, under section 3(21) of the Act with respect to any actions taken pursuant to its Agreement with the Cotton Pension Fund. Further, ASA Fiduciary has represented that it is independent and unrelated to the parties to the proposed transaction.

Pursuant to the terms of the Agreement, ASA Fiduciary has undertaken the following duties and responsibilities: (a) To determine whether the purchase of the ASC Common Stock is a prudent private equity investment by the Cotton Pension Fund; (b) to negotiate and approve the terms of the purchase of all of the outstanding shares of ASC Common Stock; (c) to monitor the terms of the purchase of the ASC Common Stock and ensure that the Cotton Pension Fund and the Clothing Welfare Fund comply with the approved purchase terms; (d)

to determine that the purchase price for the ASC Common Stock is no less favorable to the Cotton Pension Fund than to any third party under similar circumstances; and (e) to affirm that the purchase price for the ASC Common Stock paid by the Cotton Pension Fund is no greater than the fair market value of such stock on the date of the purchase.

It is represented that Nell Hennessy, Esq., President of ASA Fiduciary, shall be the lead individual from ASA Fiduciary in the execution of the duties set forth above. Further, under the terms of the Agreement, ASA Fiduciary is responsible for maintaining records with respect to the performance of its duties for a period of six (6) years from the date on which the proposed transaction closes or ASA Fiduciary determines that the Cotton Pension Fund should not purchase the ASC Common Stock or the Clothing Welfare Fund will not sell such stock.

13. As an additional protection, the trustees of the Cotton Pension Fund will determine based on a written opinion from the Marco Consulting Group (Marco) whether the investment in ASC, as negotiated and approved by ASA Fiduciary, is consistent with the overall investment policies and overall portfolio composition of the Cotton Pension Fund and that with such an investment the Cotton Pension Fund will be sufficiently diversified to satisfy the requirements of the Act. In this regard, Marco, an independent investment consultant, has been providing consulting services for the Cotton Pension Fund for approximately the past four (4) years. It is represented that Marco will issue a written opinion as to whether the purchase of the Common Stock by the Cotton Pension Fund is consistent with the overall investment policies and portfolio composition of such fund, so that the investment portfolio will remain diversified to minimize the risk of large losses in accordance with section 404(a)(1)(C) of the Act.

14. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the Clothing Committee will determine whether the Clothing Welfare Fund will engage in the proposed transaction, and, if so, such committee will be authorized to determine the terms and conditions under which the Clothing Welfare Fund will engage in such transaction; (b) prior to entry into the proposed transaction, ASA Fiduciary, the I/F acting on behalf of the Cotton Pension Fund, will determine that such transaction is

feasible, in the interest of, and protective of the Cotton Pension Fund and its participants and beneficiaries; (c) ASA Fiduciary will determine, on behalf of the Cotton Pension Fund, whether the ASC Common Stock should be purchased by the Cotton Pension Fund; (d) the Cotton Committee will assist ASA Fiduciary; (e) ASA Fiduciary will review, negotiate, and approve the terms of the proposed transaction; (f) ASA Fiduciary will monitor the terms of the purchase of the ASC Common Stock and ensure that the Cotton Pension Fund and the Clothing Welfare Fund comply with the approved terms; (g) ASA Fiduciary will determine that the terms of the purchase of the ASC Common Stock are no less favorable to the Cotton Pension Fund than terms negotiated at arm's length with an unrelated third party under similar circumstances; (h) ASA Fiduciary will determine that the purchase price for the ASC Common Stock paid by the Cotton Pension Fund is no greater than the fair market value of such stock, as of the date the proposed transaction is entered; (i) an independent, qualified appraiser will issue a fairness opinion as to the price of the ASC Common Stock and will determine, as of the date the proposed transaction is entered, that the Clothing Welfare Fund is receiving no less than the fair market value for such stock; (j) the Cotton Pension Fund will incur no fees, commissions, or other charges or expenses as a result of its participation in the proposed transaction other than the fees incurred in making this exemption request, the fee payable to ASA Fiduciary, and the fees payable to the parties representing the Cotton Pension Fund in the proposed transaction; and (k) the proposed transaction is a one-time occurrence for cash.

#### *Notice to Interested Persons*

Those persons who may be interested in the pendency of the requested exemption include the trustees of the Cotton Pension Fund and the trustees of the Clothing Welfare Fund, all of the participants and beneficiaries of such funds, UNITE, whose members are participants in the Funds, all contributing employers of such funds, ASC, and the ASC Subsidiaries. These various classes of interested persons will be notified as follows. Notice will be provided to all participants and beneficiaries of the Cotton Pension Fund and the Clothing Welfare Fund, the trustees of the Cotton Pension Fund, the trustees of the Clothing Welfare Fund, UNITE, all contributing employers to such funds, and members of the board of ASC, and the ASC

Subsidiaries by sending a copy of the notice of pendency of this proposed exemption (the Notice) plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2). The Notice and the Supplemental Statement will be delivered by first class mail within fifteen (15) days of the publication of the Notice in the **Federal Register**. For the purpose of sending the Notice and Supplemental Statement by mail, current addresses maintained by the Cotton Pension Fund and the Clothing Welfare Fund will be used.

In addition, the Notice and the Supplemental Statement will be provided to all locals, joint boards, and regional offices of UNITE who represent members who are participants in either the Cotton Pension Fund or the Clothing Welfare Fund and to contributing employers which employ members who are participants in either the Cotton Pension Fund or the Clothing Welfare Fund. The Cotton Pension Fund shall request that such parties post the Notice and Supplemental Statement immediately upon receipt at their respective locations.

All written comments and requests for a hearing must be received by the Department no later than forty-five (45) days from the date that the Notice and the Supplemental Statement are published in the **Federal Register**.  
**FOR FURTHER INFORMATION CONTACT:** Angelena C. Le Blanc of the Department, telephone (202) 219-8883. (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 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 19th day of January, 2001.

**Ivan Strasfeld,**

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

[FR Doc. 01-2163 Filed 1-24-01; 8:45 am]

**BILLING CODE 4510-29-P**

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## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** 10:00 a.m., Wednesday, January 24, 2001.

**PLACE:** Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

**STATUS:** Closed [Pursuant to 5 U.S.C. 552B(C)(10)].

**MATTERS TO BE CONSIDERED:** It was determined by a majority vote of the Commission that the Commission consider and act upon the following in closed session:

1. Disciplinary Matter, Docket No. D 2000-1
2. Disciplinary Matter, Docket No. D 2001-1

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay / 1-800-877-8339 for toll free.

**Jean H. Ellen,**  
*Chief Docket Clerk.*

[FR Doc. 01-2382 Filed 1-23-01; 12:09 pm]

**BILLING CODE 6735-01-M**

## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #50

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on February 9, 2001 from 8:30 a.m. to approximately 1:30 p.m. The meeting will be held at the Dallas Museum of Art, 1717 N. Harwood, Dallas, TX 75201.

The Committee meeting will begin at 8:30 a.m. with opening remarks by Chairman Dr. John Brademas, a welcome from Mayor Roland Kirk, and an Executive Director's update from Bunny Cornell Burson. The Committee will hear presentations from the National Endowment for the Arts and from representatives of the Saguaro Institute, Harvard University. There will also be a presentation and discussion regarding National Arts and Humanities Day.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Georgianna Paul of the President's Committee in advance at (202) 682-5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Paul.

If you need special accommodations due to a disability, please contact Ms. Paul through the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Dated: January 19, 2001.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations,  
National Endowment for the Arts.*

[FR Doc. 01-2258 Filed 1-24-01; 8:45 am]

**BILLING CODE 7537-01-U**

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## NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50-354]

### PSEG Nuclear LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License (OL) No. NPF-57, issued to PSEG Nuclear LLC (the licensee), for operation of the Hope Creek Generating Station (Hope Creek), located in Salem County, New Jersey.

The proposed amendment would change the OL and Technical Specifications for Hope Creek to reflect an increase in the licensed core power level to 3339 megawatts (thermal), 1.4% greater than the current level.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 26, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in a proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the