

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration**

[Application No. D-10940, et al.]

**Proposed Exemptions; Principal Mutual Holding Company (PMHC) et al.****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, NW., Washington, DC 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, NW., Washington, DC 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.

**Principal Mutual Holding Company (PMHC), Located in Des Moines, IA**

[Application No. D-10940]

**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 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).<sup>1</sup>

**Section I. Covered Transactions**

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of shares of common stock (Common Stock) issued by Principal Financial Group, Inc. (PFG), the successor entity to PMHC,<sup>2</sup> or (2) the receipt of cash (Cash) or policy credits (Policy Credits) by any eligible policyholder (the Eligible Policyholder) of Principal Life Insurance Company (Principal), a subsidiary of PMHC,

<sup>1</sup> For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

<sup>2</sup> For purposes of this proposed exemption, references to PMHC will generally include references to PFG unless noted, or unless the context requires otherwise.

which is an employee benefit plan (the Plan), including a Plan sponsored by Principal and its affiliates (the Principal Plan), in exchange for such Eligible Policyholder's mutual membership interest in PMHC, pursuant to a plan of conversion (the Plan of Conversion) adopted by PMHC and implemented in accordance with Iowa Insurance Law.

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

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

**Section II. General Conditions**

(a) The Plan of Conversion is implemented in accordance with procedural and substantive safeguards that are imposed under Iowa Insurance Law and is subject to review and approval by the Iowa Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of PMHC as part of such Commissioner's review of the Plan of Conversion, and only approves the Plan following a determination that such Plan is fair and equitable to all Eligible Policyholders. The New York Superintendent of Insurance (the Superintendent) may object to the Plan of Conversion if he or she finds that such Plan of Conversion is not fair and equitable to all Eligible Policyholders.

(c) As part of their separate determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Conversion.

(d) Each Eligible Policyholder has an opportunity to vote at a special meeting to approve the Plan of Conversion after receiving full written disclosure from PMHC and/or Principal.

(e) One or more independent fiduciaries of a Plan that is an Eligible Policyholder elects to receive Common Stock, Cash or Policy Credits pursuant to the terms of the Plan of Conversion and neither PMHC nor any of its affiliates exercises any discretion or provides "investment advice," within the meaning of 29 CFR 2510.3-21(c) with respect to such acquisition.

(f) If Policy Credits are elected by a Plan policyholder holding a group annuity contract, the policyholder may elect to have the policy value increased by the amount of compensation allocated or to have the policy enhanced with an interest in a separate account

(the Separate Account), which is maintained by Principal.

(1) If no election is made by a Plan policyholder, the "default" consideration for the policyholder is Policy Credits (in the form of an interest in the Separate Account), unless the contract or regulatory concerns preclude this form of compensation.

(2) Principal allocates the Policy Credit compensation received, on a *pro rata* basis, among the participants of the Plan that is invested in the Separate Account, in accordance with their account balances, unless the policyholder directs otherwise, and neither PMHC nor its affiliates provides investment advice or recommendations to the policyholder on which option to choose or with respect to the default consideration, in the event no choice is made.

(3) No purchases or sales of assets are made between Principal or its affiliates and the Separate Account.

(4) Upon receiving a notice of withdrawal from a Plan policyholder, Northern Trust Company (NTC), the custodian for shares of Common Stock that are held in the Separate Account, sells such shares of Common Stock on the open market at fair market value.

(5) Northern Trust Investments, Inc. (NTI), the independent trustee for the Separate Account, (i) votes at the direction of the Plan policyholders on routine matters (e.g., the appointment of accountants); (ii) in the absence of receiving Plan policyholder direction, causes the affected shares in the Separate Account to be voted in the same proportion as shares for which specific instructions have been received from other Plans holding interests in the Separate Account; and (iii) exercises discretion on major issues (e.g., proxy contests) involving the Separate Account.

(g) In the case of a Principal Plan, U.S. Trust, N.A. (U.S. Trust), the independent fiduciary appointed to represent the Principal Plans—

(1) Votes on whether to approve or not to approve the proposed demutualization;

(2) Elects between consideration in the form of Common Stock, Cash or Policy Credits on behalf of such Plans;

(3) Determines how to apply the Common Stock, Cash or Policy Credits received for the benefit of the participants and beneficiaries of the Principal Plans;

(4) Votes on shares of Common Stock that are held by the Principal Plans and disposes of such stock held by a Plan exceeding the limitation of section 407(a)(2) of the Act as soon as it is reasonably 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 Principal Plans prior to the Effective Date of the demutualization; and

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

(h) Each Eligible Policyholder entitled to receive Common Stock is allocated at least 100 shares and additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of Principal, which formulas have been reviewed by the Commissioner.

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

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

(k) All of Principal's policyholder obligations remain in force and are not affected by the Plan of Conversion.

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

### Section III. Definitions

For purposes of this proposed exemption:

(a) The term "PMHC" means Principal Mutual Holding Company, its successor in interest, Principal Financial Group, Inc. and any of their affiliates as defined in paragraph (b) of this Section III, unless noted, or unless the context requires otherwise.

(b) An "affiliate" of PMHC includes—

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

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

(c) The "Effective Date" refers to the date on which the closing of the initial public offering (the IPO) occurs, which will be a date occurring after the approval of the Plan of Conversion by voting policyholders and the Commissioner, provided that in no event will the Effective Date be more than 12 months after the date on which

the Commissioner has approved or has conditionally approved the Plan of Conversion, unless such period is extended by the Commissioner. The Plan of Conversion will be deemed to become effective at 12:01 a.m., Central Time, on the Effective Date.

(d) The term "Record Date" means the date that is one year prior to the Adoption Date.

(e) The "Adoption Date" refers to the date that PMHC's Board of Directors adopted the Plan of Conversion. This date was March 31, 2001.

(f) The term "Eligible Policyholder" means a person who, on the Record Date, is the owner of one or more policies and who, as reflected in PMHC's or Principal Life's records, has a continuous membership interest in PMHC through ownership of one or more policies from the Record Date until and on the Effective Date. Members of PMHC who were issued policies before April 8, 1980 and transferred ownership rights of such policies on or before April 8, 1980 are Eligible Policyholders so long as such policies remain in force on the Record Date.

(g) The term "Policy Credit" means consideration to be paid in the form of an increase in cash value, account value, dividend accumulations, face amount, extended term period or benefit payment, as appropriate, depending upon the policy. If the policy is owned by a qualified plan customer (the Qualified Plan Customer) [i.e., an owner of a group annuity contract issued by Principal, which contract is designed to fund benefits under a retirement plan which is qualified under section 401(a) and section 403(a) of the Code (including a plan covering employees described in section 401(c) of the Code, provided such plan meets the requirements of Rule 180 promulgated under the Securities Exchange Act of 1933, as amended) or which is a governmental plan described in section 414(d) of the Code, excluding (1) group annuity contracts that fund only guaranteed deferred annuities or annuities in the course of payments and (2) group annuity contracts for which Principal does not perform retirement plan recordkeeping services and whose group annuity contracts do not provide for investments in Principal's pooled unregistered separate accounts], the Policy Credit may take the form of a Separate Account Policy Credit or an Account Value Policy Credit. If the policy is owned by a Non-Rule 180 Qualified Plan Customer, the Policy Credit will take the form of an Account Value Policy Credit.

**Summary of Facts and Representations**

*The Parties*

1. PMHC, a mutual insurance holding company organized under Iowa law, maintains its principal place of business at 711 High Street, Des Moines, Iowa. Its indirect subsidiary, Principal, is authorized to sell life and health insurance policies throughout the United States. Specifically, Principal provides group annuities and group life and health insurance to employers and life insurance and annuities to individuals.<sup>3</sup> As of December 31, 1999, Principal had total assets of approximately \$82 billion (on a statutory accounting basis) and had more than \$163 billion of life insurance in force. In addition, Principal has received the following financial strength ratings from firms which specialize in assessing insurance companies' performance: an "A+" (or Superior) rating from the A.M. Best Company, as of November 1999; an "AA+" (or Very High) rating from Fitch, as of June 2000; an "Aa2" (or Excellent) rating from Moody's Investors Service, as of June 2000; and an "AA" (or Very Strong) rating from Standard & Poor's, as of July 2000.

2. As a mutual holding company, PMHC does not have capital stock. Instead, it has members who are owners of policies and contracts issued by Principal. PMHC was organized in 1998 as a part of the conversion of Principal Mutual Life Insurance Company, then an Iowa mutual life insurance company,

to a stock life insurance company subsidiary indirectly owned by a mutual insurance holding company under a plan of reorganization approved by the Commissioner and by the members of Principal Mutual Life Insurance Company.<sup>4</sup> As required under Section 521A.14 of the Iowa Code, and as provided in such plan of reorganization, Principal policyholders ceased to have membership interests in Principal and became members of PMHC instead.

A policyholder's membership interest in PMHC includes the right to vote, and to participate in the distribution of PMHC's surplus in the event of PMHC's voluntary dissolution or liquidation. Each member has one vote.

3. Pursuant to Section 521A.14(5) of the Iowa Code, PMHC is treated as a mutual entity and may be converted to a stock company (i.e., demutualized) under Chapter 508B of the Iowa Code, the same statutory provisions that govern the demutualization of mutual life insurance companies. In the event of such a demutualization, Eligible Policyholders may receive consideration in the form of stock, cash, or such other consideration permitted under Section 508B.3 of the Iowa Code and approved by the Commissioner. A demutualization will not affect the rights of Principal policyholders under their insurance and annuity contracts.

4. Principal provides a variety of insurance products to ERISA-covered employee benefit plans and to other plans described in section 4975(e)(1) of the Code. Principal has actively

marketed its products to Plans, and had, as of December 31, 1999, approximately 44,000 in force policies and contracts held on behalf of employee pension and profit sharing (including section 401(k) plans) and over 92,000 contracts providing welfare benefit plan coverage such as group life, short-and long-term disability, accidental death and dismemberment, and group health coverage.

In addition, Principal provides certain administrative services and recordkeeping services to many of the pension and profit sharing plans. These services include the preparation of required tax forms, tracking of contributions made to the various plans, provision of prototype plan documents, and providing testing services to ensure plan compliance with Code requirements. Although Principal is not a party in interest with respect to any of its Plan policyholders merely because it has issued an insurance policy to such Plans, its provision of the foregoing services to the Plans may cause it to be considered a party in interest under section 3(14)(A) and (B) of the Act.

5. Besides issuing insurance policies and providing services to certain client Plans, Principal and its subsidiaries sponsor several pension and welfare benefit plans which are expected to receive consideration in connection with the Plan of Conversion described herein. A description of each of the affected Principal Plans is summarized in the following table:

Name of plan and type	Approximate number of participants (as of 10/10/00)	Total assets (as of 12/31/00)	Coverage
The Principal Welfare Benefit Plan for Employees (Welfare).	13,468	\$95,101,000	Employees of Principal and its affiliates*.
The Principal Long Term Disability Plan for Employees (Welfare).	11,276	6,707,000	Employees of Principal and its affiliates*.
The Principal Welfare Benefit Plan for Individual Field (Welfare).	1,239	51,551,000	Agents, Managers, Brokerage General Agents and Managing Directors.
The Principal Long Term Disability Plan for Individual Field (Welfare).	1,042	2,483,000	Agents, Field Managers, Brokerage General Agents and Managing Directors.
The Principal Welfare Benefit Plan for Select Subsidiaries Field (Welfare).	605	0	Employees of Two Principal Affiliates.
The Principal Pension Plan (Defined Benefit) .....	18,932	989,797,000	Employees of Principals and Its Affiliates*.
The Principal Select Savings Plan for Employees (Defined Contribution).	17,398	524,017,000	Employees of Principal and Its Affiliates*.
The Principal Select Savings Plan for Agents, General Managers and Management Assistants (Defined Contribution).	1,921	114,358,000	Agents, Field Managers and Their Assistants
Principal Health Care, Inc. Select Savings Plan (Defined Contribution)*.	0	0	Employees of Principal Health Care, Inc.
	989,797,000		
	524,017,000		

<sup>3</sup>Principal was originally organized in 1879 as Bankers Life Association (Bankers Life). On October 26, 1911, Bankers Life was converted to a mutual company called "Bankers Life Company." In 1986, Bankers Life changed its name to "Principal Mutual

Life Insurance Company." In 1998, Principal was converted to a stock company called "Principal Life Insurance Company." All of the stock of Principal is owned indirectly by PMHC.

<sup>4</sup>At the time of the 1998 conversion, no demutualization consideration was issued to policyholders who were previously mutual members of Principal Mutual Life Insurance Company.

Name of plan and type	Approximate number of participants (as of 10/10/00)	Total assets (as of 12/31/00)	Coverage
Principal Health Care, Inc. Pension Plan (Defined Benefit)*.	0	0	Employees of Principal Health Care, Inc.

\* These Plans were terminated by Principal in 1998, so that as of December 31, 2000, each Plan had no assets or participants. Single premium annuity contracts were purchased to fund benefits for participants at the time of each Plan's termination. The single premium contracts may receive demutualization consideration.

Each of the Principal Plans has three trustees, all of whom are officers of Principal. Investment decisions for each Principal Plan are made by the Pension Plan Investment Committee, whose members also consist of officers of Principal and its affiliates.

#### *The PMHC Restructuring*

6. On August 21, 2000, PMHC's Board of Directors authorized PMHC's management to develop a plan of demutualization (i.e., the Plan of Conversion) pursuant to which PMHC will be converted from a mutual holding company to a stock holding company. Currently, PMHC owns Principal Financial Group, Inc. (PFG), which owns all of the stock of Principal Financial Services Inc. (PFS). These two subsidiaries will be merged and the surviving company will be PFS. After PMHC is converted into a stock company, it will be merged with and into PFS, which, in turn, will merge into PFG, a publicly-traded holding company whose common stock will be distributed to Eligible Policyholders and listed on the New York Stock Exchange. Principal will then be a wholly owned subsidiary of PFG.

As part of the demutualization process, Eligible Policyholders of Principal will receive Common Stock of PFG, or, in certain cases, Cash or Policy Credits. In return for such consideration, the membership interests and rights in surplus of the Principal policyholders will be extinguished.

7. An IPO, in which shares of Common Stock will be sold for cash, is expected to occur on the Effective Date of the demutualization. Under such circumstances, PFG will contribute a portion of the proceeds from the IPO to Principal, within a reasonable period of time after receipt, in an amount at least equal to the amount needed by Principal to fund the payment and crediting (by Principal) of mandatory Cash payments and Policy Credits to Eligible Policyholders, including the expenses of the restructuring that will be borne by Principal and allocated to PFG.

8. PMHC represents that the environment in which Principal operates has changed in a number of ways since the mutual insurance

holding company structure was adopted in 1998. For example, the passage of the Gramm-Leach-Bliley Act in 1999 has increased the number, size and financial strength of Principal's potential competitors. Moreover, PMHC points out that because other life insurance companies of Principal's size have not adopted the mutual insurance holding company structure, there is uncertainty about the receptivity and valuation of the stock offered to the public by a company with this structure. While Principal is presently financially stronger than it has been in the past, PMHC states that this strength has led the PMHC's Board of Directors and PMHC's management to conclude that achievement of the organization's strategy will be enhanced through a demutualization.

PMHC represents that the flexibility to raise additional capital and diversify into global financial services is maximized in a demutualization. In this regard, a demutualization will benefit Principal's policyholders by increasing the company's financial resources and its ability to invest in new technology, products and markets and improved customer service. In addition, PMHC states that the conversion will provide Eligible Policyholders with an opportunity to receive shares of Common Stock, Cash or Policy Credits in exchange for their illiquid membership interests, which will be extinguished in the conversion. Further, PMHC explains that Eligible Policyholders will realize economic value from their membership interests that is not currently available to them so long as the company remains a mutual insurance company. Finally, PMHC states that all of Principal's policyholder obligations will remain in force and will not be affected by the Plan of Conversion.

9. Accordingly, PMHC requests an administrative exemption from the Department which, if granted, will permit the receipt of Common Stock, Cash, or Policy Credits, by an Eligible Policyholder that is a Plan, including a Principal Plan,<sup>5</sup> in exchange for Eligible

Policyholder's membership interest in PMHC, in accordance with the terms of the Plan of Conversion adopted by PMHC and implemented pursuant to Section 521A.14(5)(b) and Chapter 508B of Title XIII of the Code of Iowa (1999).

PMHC represents that the receipt of the demutualization consideration pursuant to the Plan of Conversion by an Eligible Policyholder which is a Plan may be viewed as a prohibited sale or exchange of property between the Plan and Principal or PMHC in violation of section 406(a)(1)(A) of the Act. Moreover, PMHC states that the transaction may also be construed as a transfer of plan assets to, or a use of plan assets by or for the benefit of, a party in interest in violation of section 406(a)(1)(D) of the Act.

In addition to the above, PMHC is requesting that the exemption apply, for a period of up to 6 months following the Effective Date, to the holding, by a Principal Plan, of Common Stock whose fair market value exceeds 10 percent of the Principal Plan's assets, in violation of sections 406(a)(1)(E) and (a)(2) and 407(a)(2) of the Act.<sup>6</sup>

meaning of section 407(d)(5) of the Act, and that section 408(e) of the Act would apply to such distributions. Nevertheless, PMHC has specifically requested that the exemption apply to the receipt of Common Stock by an of the Principal Plans, if applicable, regardless of the ability by such Plan to utilize section 408(e) of the Act. (The Department, however, expresses no opinion herein on whether the Common Stock would constitute a "qualifying employer security" within the meaning of section 407(d)(5) of the Act and whether section 408(e) of the Act would apply to such distributions.) PMHC believes that this expanded type of exemptive relief will provide the greatest flexibility for U.S. Trust, the independent fiduciary for the Principal Plans, to select suitable types of consideration.

<sup>6</sup> Section 406(a)(1)(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 fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

In addition to the above, section 407(f) of the Act, which is applicable to the holding of a qualifying

<sup>5</sup> PMHC represents that is aware that the Common Stock would constitute "qualifying employer securities" within the meaning of section the

The proposed exemption is conditioned upon a number of substantive safeguards. Among the safeguards is the requirement that distributions to Plans pursuant to the exemption must be on terms no less favorable to the Plans than Eligible Policyholders that are not Plans. In this regard, Plans that are Eligible Policyholders must participate in the demutualization transaction on the same basis and within their class groupings as Eligible Policyholders that are not Plans.

In addition, to represent the interests of the Principal Plans with respect to such activities as voting, the election of demutualization consideration, or the disposition of Common Stock, PMHC has retained U.S. Trust, to act as the independent fiduciary.

#### *Procedural Requirements Under Iowa Law for Restructuring*

10. Pursuant to Section 521A.14(5)(b) of the Iowa Code, PMHC, as a mutual insurance holding company, is treated, under Iowa Insurance Law, as a mutual life insurance company for purposes of demutualization and is, thus, subject to the demutualization provisions of Chapter 508B of the Iowa Code. Chapter 508B, which applies to the Plan of Conversion, sets forth procedural and substantive requirements to ensure that the restructuring will be fair and equitable to all Principal policyholders. In this regard, Section 508B.2 of the Iowa Code generally provides that a mutual life insurance company may become a stock life insurance company under a plan of conversion established and approved in the manner provided by Chapter 508B. Section 508B.2 and Section 508B.3 also provide that, in lieu of selecting a plan of conversion provided for in Chapter 508B, a mutual company may convert to a stock company pursuant to a plan approved by the Commissioner. The restructuring of PMHC will be conducted pursuant to these latter provisions.

Under Section 508B.3 of the Iowa Code, the Commissioner must determine the fairness and equity of a plan of conversion with respect to policyholders of a company undergoing demutualization. More specifically,

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. PMHC has confirmed to the best of its knowledge that none of the shares of Common Stock which are issued to the Principal Plans will violate the provisions of section 407(f) of the Act.

Section 508B.7 of the Iowa Code requires that the Commissioner review the plan of conversion to determine whether it complies with all provisions of law and is fair and equitable to the mutual company and its policyholders and whether the reorganized company will have the amount of capital and surplus deemed by the Commissioner to be reasonably necessary for its future solvency. Additionally, this provision permits the Commissioner to order a hearing on the fairness and equity of the terms of the plan of conversion after giving written notice of the hearing to the mutual company, its policyholders, and other interested persons, all of whom have a right to appear at the hearing.

Section 508B.6 of the Iowa Code requires that a plan of conversion be approved by two-thirds of the policyholders of the mutual company who vote on it.<sup>7</sup> The statute requires notice to be given to the policyholders and permits voting by ballot, in person, or by proxy. The notice of meeting and election must contain a copy of the plan of conversion or a summary of the plan of conversion.

Finally, Section 508B.9 of the Iowa Code provides that, after the plan of conversion has been approved by the Commissioner and the policyholders, the reorganized company will be a continuation of the mutual company and that the conversion will not annul or modify any of the mutual company's existing suits, contracts, or liabilities except as provided in the plan of conversion. Furthermore, all rights, franchises, and interests of the mutual company in and to property, assets, and other interest will be transferred to and vest in the reorganized company, and the reorganized company will assume all obligations and liabilities of the mutual company.

11. Consistent with the requirements of Chapter 508B, the Plan of Conversion adopted by PMHC provides for PMHC to file an application with the Commissioner under Section 508B.2 of the Iowa Code to reorganize as a stock holding company. The Commissioner will hold a public hearing on the fairness and equity of the terms of the Plan of Conversion and on whether PMHC will have the amount of capital and surplus necessary for its future solvency. The Plan of Conversion also provides for PMHC members to be able to comment on the Plan of Conversion

<sup>7</sup>In this regard, Section 508B.4 of the Iowa Code defines the class of policyholders entitled to receive notice and to vote on the plan of conversion as generally including policyholders whose policies or contracts are in force on the date of adoption of the plan of conversion.

at the hearing, for the voting policyholders to vote on the Plan of Conversion at a members' meeting and for PMHC to provide notice to its voting policyholders of both the public hearing and the members' meeting.

It is anticipated that the Commissioner will engage the services of experts (e.g., actuaries, investment bankers and outside counsel) to assist in determining whether the Plan of Conversion meets the requirements of the law. In this regard, the Commissioner has retained the law firm of Baker & Daniels as legal counsel, Arthur Andersen as actuarial advisors and The Blackstone Group as financial advisors.

A final order by the Commissioner to approve an application pursuant to the Iowa demutualization statute is subject to judicial review in the Iowa courts in accordance with the Iowa Administrative Procedure Act, Chapter 17A, Iowa Code.

In addition to the Iowa regulatory requirements, PMHC has agreed to file a copy of the Plan of Conversion with the New York Superintendent of Insurance.<sup>8</sup> The Superintendent may object to the Plan of Conversion if he finds that it is not fair and equitable to New York Eligible Policyholders. If the Superintendent opines unfavorably on the Plan of Conversion, PMHC, as a practical matter, would either amend the Plan of Conversion or work out a satisfactory solution with the Superintendent. If the Superintendent were to require changes unacceptable to the Commissioner, PMHC would, have to work with both regulators to arrive at a satisfactory solution.

PMHC's Plan of Conversion was adopted by its Board of Directors on

<sup>8</sup>Specifically, section 1106(i) of the New York Insurance Law [Section 1106(i)] authorizes the Superintendent to review the demutualization plan of a foreign life insurer licensed in New York and to specify the conditions, if any, that the Superintendent would impose in order for the foreign insurer to retain its New York license following its demutualization. In this regard, Section 1106(i) requires that a foreign life insurer licensed in New York file with the Superintendent a copy of the demutualization plan at least 90 days prior to the earlier of (a) the date of any public hearing required to be held on the plan of reorganization by the insurer's state of domicile and (b) the proposed effective date of the demutualization.

If, after examining the plan of reorganization, the Superintendent finds that the plan is not fair or equitable to the New York policyholders of the insurer, the Superintendent must set forth the reasons for his findings. In addition, the Superintendent must notify the insurer and its domestic state insurance regulator of his findings and his reasons for such findings and advise of any requirements he considers necessary for the protection of current New York policyholders in order to permit the insurer to continue to conduct business in New York as a stock life insurer after the demutualization.

March 31, 2001. PMHC expects the special meeting of members will occur in July 2001, with notice having been mailed during May 2001 to approximately 130,000 Plan policyholders which are Eligible Policyholders. (Approximately 940,000 policyholders will be eligible to vote on the Plan of Conversion and each policyholder will be entitled to only one vote, regardless of the number or size of the policies owned.) Further, PMHC's hearing on the Plan of Conversion is expected to be held during July 2001 in Des Moines, Iowa.

As for the IPO and the actual conversion, PMHC expects these events will transpire during the fourth quarter of 2001. However, PMHC notes the timing of these events may be delayed due to prevailing market conditions, but they should occur within 12 months of approval of the Plan of Conversion by the Commissioner, unless this period is extended by PMHC, with the approval of the Commissioner.

#### *Distributions to Eligible Policyholders*

12. The Plan of Conversion provides for Eligible Policyholders, whose membership interests in the holding company will be extinguished in the demutualization, to receive Common Stock of PFG, Cash, or Policy Credits. For this purpose, an Eligible Policyholder generally is the owner of one or more policies in force on the Record Date (which is the date one year prior to the date that PMHC's Board of Directors adopts the Plan), and who maintains a membership interest in PMHC until and on the Effective Date. Elections as to the form of consideration received or as to any other matter in connection with the Plan of Conversion will be made by one or more plan fiduciaries independent of Principal. In this regard, neither PMHC nor its affiliates will exercise any investment discretion or provide "investment advice," as that term is defined in 29 CFR 2510.3-2(c), with respect to any election made by any Eligible Policyholder that is a Plan.<sup>9</sup>

<sup>9</sup> The proceeds of the demutualization will belong to the Plan if they would be deemed to be owned by the Plan under ordinary notions of property rights. See ERISA Advisory Opinion 92-02A, January 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary

In order to determine the amount of consideration to which each Eligible Policyholder is entitled (combinations of different forms of consideration will not be permitted), each Eligible Policyholder will be allocated (but not issued) a number of shares of Common Stock equal to the sum of (a) a fixed minimum number of shares<sup>10</sup> and (b) an additional number of shares based on actuarial formulas that take into account each policy's past and expected future contributions to the surplus of Principal.

13. In general, certain Eligible Policyholders will receive shares of Common Stock which will be distributed to such Eligible Policyholders without the payment of any brokerage fees or commissions. Certain other Eligible Policyholders will receive consideration in the form of Cash or Policy Credits, in lieu of Common Stock. The amount of Cash or Policy Credits will be determined by reference to the price per share at which the Common Stock of PFG is offered to the public in the IPO.

An Eligible Policyholder whose mailing address is outside the United States, or to whom mail is undeliverable at the address in Principal's records, or whose policy is known by Principal to be subject to a creditor lien will receive Cash in lieu of Common Stock, in an amount equal to the value of the Common Stock such policyholder would otherwise have received, based on the price of Common Stock in the IPO contemplated by the Plan of Conversion.

Certain other Eligible Policyholders, namely owners of individual retirement annuities, tax-sheltered annuities, individual life or annuity policies issued directly to plan participants in qualified pension or profit sharing plans, and certain group annuity policies issued to fund qualified pension or profit sharing plans will receive Policy Credits equal in value to the Common Stock allocated to such Eligible Policyholders.

knows or should know are relevant to the determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets." See ERISA Advisory Opinion 2001-02A, February 15, 2001.

<sup>10</sup> PMHC expects 100 shares of Common Stock will be allocated to the fixed component. However, the final number of shares thus allocated will be subject to regulatory approval.

In the case of a group annuity contract issued to fund a qualified plan (i.e., a Qualified Plan Customer), it is contemplated that the policyholder will be able to elect to receive Policy Credits instead of Common Stock or Cash. If Policy Credits are elected, the policyholder will be given a further election—to have the policy value increased by the amount of compensation involved or to have the policy enhanced with an interest in the Separate Account that will be maintained by Principal.<sup>11</sup> The assets of the Separate Account will be invested primarily in PFG Common Stock. Thus, in the absence of a policyholder election, PMHC states that the "default" consideration for the policyholder will be Policy Credits (in the form of an interest in the Separate Account), unless the contract or regulatory concerns preclude this form of compensation. As recordkeeper, Principal will allocate the Policy Credit compensation received, on a *pro rata* basis, among the participants of the Plan that is invested in the Separate Account, in accordance with their account balances and not on a *per capita* basis, unless the policyholder directs otherwise. In describing the default allocation alternative to Plan policyholders in policyholder materials, PMHC states that neither it nor its affiliates will be providing investment advice or recommendations to the policyholder on which option to choose.

PMHC represents that no purchases or sales of assets will be made between Principal or its affiliates and the Separate Account. Withdrawals will be permitted at any time, subject to ordinary liquidity restraints. Upon receiving a notice of withdrawal from a Plan policyholder, NTC, the custodian for shares of Common Stock that are held in the Separate Account, will sell such shares of Common Stock on the open market at their fair market value. NTI, the independent trustee of the Separate Account and an affiliate of NTC, will vote, at the direction of the Plan policyholders. Where no direction is received from a Plan policyholder, NTI will use "mirror" voting for routine issues (e.g., the appointment of accountants). In effect, NTI will cause those shares in the Separate Account for which no instructions have been received from a particular Plan to be

<sup>11</sup> If the Qualified Plan Customer elects to have the policy value increased by the amount of compensation involved, the Policy Credits will be referred to as "Account Value Policy Credits." If the Qualified Plan Customer elects to have the policy enhanced with an interest in the Separate Account, or in the absence of policyholder election, the Policy Credits will be referred to as "Separate Account Policy Credits."

voted in the same proportion as shares for which specific instructions have been received from other Plan policyholders holding interests in the Separate Account. In addition, NTI will be authorized to exercise its own discretion on major issues, such as proxy contests.<sup>12</sup>

#### *Commission-Free Program*

14. The Plan of Conversion provides that PFG may establish a commission-free program that is to begin no earlier than the sixth month anniversary following the Effective Date of the demutualization and before the 12 month anniversary of such Effective Date at a time determined by the PFG's Board of Directors to be appropriate and in the best interests of the Holding Company and the Eligible Policyholders. The program, which will continue at least for three months, will be available to any Eligible Policyholder who receives fewer shares than 100 shares of Common Stock. Under the program, an Eligible Policyholder will be entitled to sell, at prevailing market prices, all the shares of Common Stock received by the Eligible Policyholder in the demutualization. No brokerage commissions, mailing charges, registration fees or other administrative or similar expenses will be charged.

In addition, the commission-free program will afford an Eligible Policyholder the opportunity to purchase additional shares of Common Stock in order that the Eligible Policyholder may round-up his or her holdings to 100 shares, again without the payment of any fees, charges or commissions.

#### *Independent Fiduciary*

15. As noted above, U.S. Trust will serve as independent fiduciary for all of the Principal Plans in connection with the implementation of PMHC's Plan of Conversion. Generally, such transactions over which U.S. Trust will exercise investment discretion may result in the acquisition, holding or disposition of Common Stock by the Principal Plans. U.S. Trust states that it is familiar with the Department's independent fiduciary requirements and has acknowledged and accepted such duties, responsibilities and liabilities to act on behalf of the Principal Plans. In return for services rendered, U.S. Trust

will be compensated by either PMHC, a successor, or an affiliate.

U.S. Trust is the principal subsidiary of U.S. Trust Corporation, a member of the Federal Reserve System and the Federal Deposit Insurance Corporation, and an entity having approximately \$5 billion in assets. The parent corporation, U.S. Trust Corporation, was founded in 1853 in New York and is subject to regulation as a trust company in the State of New York. As of December 31, 1999, U.S. Trust Corporation had approximately \$5 billion in assets and over \$75 billion in assets under management, a significant portion of which consisted of the assets of ERISA-covered Plans. In addition, U.S. Trust Corporation is a wholly owned subsidiary of the Charles Schwab Corporation. 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 PMHC 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 PMHC and its affiliates. Further, U.S. Trust represents that it derives less than one percent of its annual income from PMHC and its affiliates.

As the independent fiduciary for the Principal Plans, U.S. Trust will be required to (a) vote on whether to approve or not to approve the proposed demutualization; (b) elect between consideration in the form of Common Stock, Cash or Policy Credits on behalf of such Plans; (c) determine how to apply the Common Stock, Cash or Policy Credits received for the benefit of the participants and beneficiaries of the Principal Plans; (d) vote on shares of Common Stock that are held by the Principal Plans and dispose of such stock held by a Plan exceeding the limitation of section 407(a)(2) of the Act as soon as it is reasonably 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 Principal 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 Principal Plans prior to the Effective Date of the demutualization.

Finally, U.S. Trust states that it has conducted a preliminary review of PMHC's Plan of Conversion and it sees nothing in the Plan that would preclude the Department from proposing the requested exemption.

16. 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 in accordance with stringent procedural and substantive safeguards that are imposed under Iowa law and will be subject to review and supervision of the Commissioner and the Superintendent.

(b) The Commissioner will review the terms and options that are provided to Eligible Policyholders as part of such Commissioner's review of the Plan of Conversion and the Commissioner will approve the Plan of Conversion following a determination that such Plan is fair and equitable to Eligible Policyholders (including Plans).

(c) The Superintendent will object to the Plan of Conversion if he or she finds that such Plan is not fair and equitable to all New York Eligible Policyholders.

(d) As part of their separate determinations, both the Commissioner and the Superintendent must concur on the terms of the Plan of Conversion.

(e) One or more independent Plan fiduciaries will have an opportunity to vote to approve the terms of the Plan of Conversion (or to comment on such Plan), and will be solely responsible for all such decisions after receiving full and complete disclosure from PMHC and/or Principal.

(f) The Plan of Conversion will provide Principal and PMHC with access to new sources of capital that should help sustain Principal's financial strength, increase its ability to conduct its business efficiently and improve Principal's competitive position in the insurance industry.

(g) The proposed exemption will allow Eligible Policyholders that are Plans to receive shares of Common Stock, Cash or Policy Credits, in exchange for their membership interests in PMHC and neither PMHC nor any of its affiliates will exercise investment discretion or provide "investment advice," within the meaning of 29 CFR 2510.3-21(c), with respect to such decisions, options given, or the default consideration, in the event no Plan policyholder choice is made.

(h) Each Eligible Policyholder 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

<sup>12</sup> The Department would expect that NTI, in implementing the "mirror voting" procedure under the Separate Account, to act "prudently, solely in the interests of Plan participants, and for the exclusive purpose of providing benefit to participants and beneficiaries," within the meaning of section 404(a)(1) of the Act.

Conversion regarding the form of consideration to be received in the demutualization.

(i) All Plans that are Eligible Policyholders will participate in the transactions and on the same basis as Eligible Policyholders that are not Plans.

(j) No Eligible Policyholder will pay any brokerage commissions or fees in connection with the receipt of Common Stock or Policy Credits or in connection with the implementation of the commission-free program.

(k) The demutualization will not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of Principal to its policyholders and contractholders.

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

**Anthem Insurance Companies, Inc. (Anthem), Located in Indianapolis, IN**

[Application No. D-10979]

### 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 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).<sup>13</sup>

### Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the receipt, by an employee benefit plan (the Plan) or by a Plan participant (the Plan Participant) that is a member of Anthem (together, the Eligible Members) by reason of the ownership of an insurance policy or contract issued by Anthem, of common stock (Common Stock) issued by Anthem, Inc. (the Parent Company), a newly-formed holding company or cash (Cash), in exchange for such Plan's or Plan Participant's mutual membership interest in Anthem, in accordance with a plan of conversion (the Plan of Conversion) adopted by Anthem and implemented under Indiana law.

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, reasonable 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 Anthem.

(d) Any determination to receive Common Stock or Cash 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 Anthem and its affiliates and neither Anthem 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) Any determination to receive Common Stock or Cash by an Eligible Member which is a Plan Participant, pursuant to the terms of the Plan of Conversion, is made by such participant and neither Anthem 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.

(f) After each Eligible Member entitled to receive shares of Common Stock is allocated at least 21 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 Anthem's statutory surplus, which formulas are subject to review and approval by the Commissioner.

(g) All Eligible Members that are Plans or Plan Participants participate in the transactions on the same basis and within their class groupings as all Eligible Members that are not Plans or Plan Participants.

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

(i) All of Anthem's policyholder obligations remain in force and are not affected by the Plan of Conversion.

### Section III. Definitions

For purposes of this proposed exemption,

(a) The term "Anthem" means Anthem Insurance Companies, Inc. and any affiliate of Anthem, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Anthem includes—

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

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

(c) A "policy" is defined as (1) any individual insurance policy or health care benefits contract that has been issued by Anthem and under which the holder thereof has membership interests in Anthem; (2) any certificate issued by Anthem under a group insurance policy or health care benefits contract under which certificate the holder thereof has membership interests in Anthem; or (3) certificates of membership issued by Anthem in or under guaranty policies under which certificate the holder thereof is a member of Anthem with membership interests.

(d) The term "membership interests" means (1) voting rights of Anthem's members as provided by law and Anthem's Articles of Incorporation and Bylaws, and (2) the rights of members to receive cash, stock, or other consideration in the event of conversion to a stock insurance company under Indiana Demutualization Law or a dissolution of Anthem as provided by Indiana insurance law and Anthem's Articles of Incorporation and Bylaws.

(e) The term "Eligible Member" means a person or entity (1) whose name appears on Anthem's records as the holder of one or more in force policies issued by Anthem as of both the date the Board of Directors adopts the Plan of Conversion and the effective date of the Plan of Conversion, and (2) who has had continuous health care benefits coverage with the same insuring company during the period between those two dates under any policy without a break of more than one day.

(f) The term "Parent Company" refers to a corporation organized and existing under the Indiana Business Corporation Law. Prior to the conversion, the Parent

<sup>13</sup> For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

Company will be a wholly owned subsidiary of Anthem. Upon the conversion of Anthem to a stock company, the Parent Company will serve as the "Indiana parent corporation" of Anthem for purposes of Indiana law. Upon the effective date of the Plan of Conversion, the Parent Company will complete an initial public offering (the IPO) of shares of Parent Company Common Stock for cash.

### Summary of Facts and Representations

#### *Description of the Parties*

1. Anthem, which maintains its principal place of business in Indianapolis, Indiana, is organized as a mutual insurance company under the laws of the State of Indiana. Together with its subsidiaries (collectively, the Company), Anthem is one of the nation's largest health benefits companies. As an independent licensee of the Blue Cross Blue Shield Association (BCBSA), the Company offers BCBSA-branded products throughout Indiana, Ohio, Kentucky, Connecticut, Colorado, Nevada, New Hampshire and Maine. The Company provides health care coverage or services to over 7 million people in these states. As of December 31, 2000, Anthem had approximately \$5.7 billion in assets, \$3.8 billion in liabilities and surplus of \$1.9 billion. Anthem's current financial strength ratings are as follows: A.M. Best Company, Inc., A-; Standard & Poor's Rating Service, A; Moody's Investors Service, Inc., A3; and Fitch, Inc., A+.

2. The Company offers a diversified mix of managed care products, including health maintenance organizations, preferred provider organizations, and point of service plans, as well as traditional indemnity products. In addition, the Company offers a full range of managed care services and partially-insured products for self-funded employer Plans, such as underwriting services, stop loss insurance, actuarial services, network access, medial cost management, claims processing, and administrative services. In nearly all cases, the Company provides administrative, recordkeeping and other support services to Plans that are funded by Anthem insurance policies. These services include claims processing, premium collection, billing, reporting, and managed care services (including medical case management and utilization review services). Moreover, the Company provides specialty products, including group life, disability, prescription management, workers compensation, administrative and claims management services, dental

and vision care services, and allows customers to choose from an array of funding alternatives.

3. As a mutual insurance company, Anthem does not have any stockholders. Instead, Anthem has members who are deemed holders of certain insurance policies and contracts which it has issued. As members, the policyholders have the right to vote in the election of Anthem's 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 Anthem from a mutual insurance company to a stock company. The voting rights of Anthem members are equal, with each member having only one vote regardless of the size, type, or number of policies owned by such member. As discussed herein, Anthem's members also have the right to vote and to receive consideration in the event of the Anthem's demutualization.

Unlike most insurance companies, Anthem generally treats individual certificate holders under its group contracts as members instead of as group contract holders. Thus, in most cases, employers that fund their Plans with Anthem group contracts are not members of Anthem. Instead, the participants in these Plans are the members. Currently, Anthem has approximately 1 million members who hold certificates under either group plans or individual policies. Of these members, approximately 650,000 have received their membership interests through participation in Plans.

However, in a small number of cases, Plan group contract holders, which are generally employers rather than certificate holders, are considered members of Anthem. The subject cases have arisen out of mergers into Anthem of three Blue Cross Blue Shield (BCBS) licensees, which were organized as mutual insurance companies prior to the mergers.<sup>14</sup> Currently, Anthem has approximately 7,000 members that are

<sup>14</sup> Specifically, the Kentucky BCBS licensee (Southeastern Mutual Insurance Company) merged into Anthem in 1993. Community Mutual Insurance Company, an Ohio Blue Cross Blue Shield licensee, merged into Anthem in 1995. The Connecticut BCBS licensee (Blue Cross & Blue Shield of Connecticut, Inc.) merged into Anthem in 1997. These "grandfathered" members are group policyholders that (a) held contracts issued by the Kentucky, Ohio and Connecticut companies before those companies merged into Anthem and (b) have continuous coverage that meets specific requirements through the Company since the merger. These group contract holders were "grandfathered" as members to preserve their membership interests in the merging mutual companies. For any new group contracts issued with respect to Plans by one of those companies since its merger with Anthem, however, the group contract holders, are members of Anthem.

Plan group policyholders. (These are generally employers that hold the policies to provide benefits to their employees.)

4. Anthem Holdings or the "Parent Company" will be a corporation organized and existing under the Indiana Business Corporation Law. Prior to the conversion, the Parent Company will be a wholly owned subsidiary of Anthem. Upon the conversion of Anthem to a stock company, the Parent Company will serve as the "Indiana parent corporation" of Anthem for purposes of Indiana law. Upon the effective date of the Plan of Conversion, the Parent Company will complete an IPO of shares of Parent Company Common Stock for cash.<sup>15</sup> It is anticipated that the Common Stock will be traded on the New York Stock Exchange.

#### *The Anthem Conversion*

5. On February 1, 2001, Anthem's Board of Directors announced the appointment of a special committee to work with Anthem's management to develop a Plan of Conversion, which with Amended and Restated Articles of Incorporation, is expected to be approved by the Board of Directors during June 2001. The principal purpose of the conversion is to benefit Anthem's members and other customers by enhancing Anthem's financial strength and flexibility and by distributing value to its Eligible Members in the form of marketable common stock issued by Anthem Holdings (i.e., the Parent Company) or Cash, in exchange for such member's 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 Anthem remains a mutual company. However, Anthem's conversion will not in any way change premiums or reduce or change insurance or other health care benefits or contractual obligations of Anthem to its members and policyholders. Further, the conversion will provide Anthem with access to additional capital that is not available under the mutual form of corporate organization.

The Plan of Conversion is subject to the approval of the Commissioner, the members of Anthem who are entitled to

<sup>15</sup> At the present time, Anthem does not know the number of shares of Parent Company Common Stock that will be issued at the IPO. Anthem states that the exact number will not be known for some time because the number of shares will depend, among other factors, on market conditions at the time of the IPO (which is not expected to occur until late October or early November 2001).

vote on the Plan of Conversion,<sup>16</sup> the other conditions set out in the Plan of Conversion, and other applicable state and federal regulatory approvals. Market conditions, regulatory requirements, and business considerations may also influence the final sequence of events.

6. Accordingly, Anthem requests, on behalf of itself, its affiliates, and its future Parent Company, an administrative exemption from the Department that will permit Eligible Members which are Plans and Plan Participants to receive Common Stock issued by the Parent Company or Cash in exchange for their existing membership interests in Anthem. Anthem represents that although it and its affiliates generally provide administrative, record-keeping, or other support services to Plans in connection with the insurance policies and contracts sold to such Plans, the sales of the insurance products do not, in and of themselves, cause the insurer to be considered a party in interest. However, Anthem understands that, because of the services it or its affiliates provide to Plans that are funded through its insurance products, it or its affiliates may be considered parties in interest or even fiduciaries.

Therefore, Anthem represents that the receipt of Parent Company Common Stock or Cash by a Plan or a Plan Participant can be viewed as a prohibited sale or exchange of property between the insurer (or the Parent Company) and the Plan or the Plan Participant, or it can be construed 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. Therefore, Anthem has requested administrative exemptive relief from the Department in order to avoid any prohibited transactions that may occur inadvertently in the course of the conversion.

The requested exemption is based upon a number of procedural and substantive protections that Indiana insurance law provides to all policyholders of a mutual insurance company that is undergoing conversion to a stock company. In this regard, all Eligible Members that are Plans (and Plan Participants) with respect to which Anthem or any of its affiliates is a party in interest will participate on the same basis and within their class groupings as all Eligible Members that are not Plans or Plan Participants.

Anthem represents that neither it, the Parent Company, their subsidiaries, nor any of the employees, officers, and directors of Anthem, the Parent Company, or their subsidiaries are or will be Eligible Members under any Plan established or maintained by Anthem, the Parent Company, or their subsidiaries for the benefit of their employees, officers or directors. Therefore, Anthem does not request that the exemption apply to such Plans.

#### *Indiana Insurance Law*

7. Anthem anticipates that the following steps of the conversion will occur pursuant to the Plan of Conversion:

- Anthem will convert from a mutual company to a stock company under Indiana law and will issue to the Parent Company all of its outstanding Anthem capital stock.
- All membership interests in Anthem will be extinguished, and, in exchange, Eligible Members will receive shares of Parent Company Common Stock or Cash.
- The capital stock of the Parent Company owned by Anthem will be canceled and cease to exist.
- The effective date of the Plan of Conversion will be the closing date of the Parent Company's IPO.
- Eligible Members may elect to receive Parent Company Common Stock or Cash. The Parent Company will issue shares of Parent Company Common Stock to Eligible Members who affirmatively elect to receive shares of Common Stock. The Parent Company will pay Cash to Eligible Members who are deemed to elect Cash because they fail to make a stock election or who are required to receive Cash because their mailing address, as shown on Anthem's records, is outside of the United States or because their receipt of stock would, in Anthem's judgment, fail to comply with the securities registration requirements (or applicable exemptions) of the Eligible Member's state of domicile. To the extent that sufficient Cash is not available to pay Cash to all of these Eligible Members, the Parent Company will pay Cash first to those Eligible Members who are required to receive Cash because of their domicile and then to those Eligible Members with the smallest share allocations. Once the amount of Cash available is exhausted, the remaining Eligible Members will be issued shares of Parent Company Common Stock.

#### *Procedural Requirements Under Indiana Demutualization Law*

8. Indiana Demutualization Law (i.e., Indiana Code 27-15 *et seq.*), 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 approve 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 approved by the company's board of directors, the company must submit an application for the approval of the plan of conversion to the Commissioner. The application must contain the following information:

- The plan of conversion and a certificate of the secretary of the converting mutual insurance company certifying the approval 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 any 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.
    - Any plans for delayed distribution of consideration.
    - A plan of operation for a closed block,<sup>17</sup> if a closed block is used for the

<sup>16</sup> The members eligible to vote will be the members of Anthem as of the date Anthem's Board of Directors approves the Plan of Conversion. That date will be the record date for the special meeting of the members that will be held for purposes of voting on the Plan of Conversion.

<sup>17</sup> Indiana Demutualization Law defines the term "closed block" to mean an allocation of assets for

preservation of the reasonable dividend expectations of Eligible Members and other policyholders with policies that provide for the distribution of policy dividends. (Anthem represents that it does not have any policies for which there is a reasonable expectation of dividends and, accordingly, a closed block will not be established.)

- 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.

- A fairness opinion addressed to the board of directors of the converting mutual, from a qualified, independent financial advisor, asserting (a) that the provision of stock, cash, policy benefits, or other forms of consideration upon the extinguishing of the converting mutual's membership interests under the plan of conversion and the amendment to the articles of incorporation is fair to the Eligible Members, as a group, from a financial point of view; and (b) whether the total consideration under clause (a) is equal to or greater than the surplus of the converting mutual.

- 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. (Anthem represents that it does not have any policies for which there is a reasonable expectation of dividends and again emphasizes that, a closed block will not be established.)

- 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.

9. 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. 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. The converting mutual insurance company must provide at least thirty days prior written notice of the hearing to its members and policyholders. 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, in Indianapolis 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 is 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.

Indiana Demutualization Law also permits the Commissioner to employ accountants, actuaries, attorneys, financial advisors, investment bankers and other experts that are necessary to assist the Commissioner in reviewing all matters under the Indiana Demutualization Law.

In addition to receiving Commissioner approval, 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. The Plan of Conversion must be approved by at least two-thirds of the policyholders voting at the meeting.<sup>18</sup>

10. As noted in Representation 5, Anthem's Board of Directors approved Anthem's Plan of Conversion on June 18, 2001. As for the policyholder meeting, Anthem indicates that the notice is tentatively scheduled to be mailed beginning in mid- to late August 2001. When the meeting is held, approximately 1 million Eligible Members (including Plans and Plan Participants), will be able to vote on the Plan of Conversion. However, each Eligible Member will be entitled to only one vote. Anthem expects that the Commissioner will approve the Plan of Conversion (after a public hearing in September 2001 by late October 2001, and that the demutualization will become effective in late October (following Commissioner and member approvals) or during November 2001, although delays in the regulatory process could further affect these dates.

<sup>18</sup> It should be noted that Indiana law imposes stringent time constraints on the distribution of demutualization consideration to policyholders. Specifically, unless a very narrow exception applies, which is authorized by the Commissioner, all demutualization consideration must be distributed within six months after the insurer's conversion to a stock company. The exception, which Anthem states will not apply to the subject exemption request, would require that a claim be filed by, or on behalf of, one or more Anthem 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 by the insurer to hold the demutualization consideration until the exemption is granted. (For a discussion of the trust requirement imposed under Indiana Demutualization Law, see Representation 16 in the notice of proposed exemption for Indianapolis Life Insurance Company, 66 FR 7802, January 25, 2001, at 7807.)

a defined group of in force policies which, together with the premiums of those policies and related investment earnings, are expected to be sufficient to maintain the payments of guaranteed benefits, certain expenses, and continuation of the current dividend scale on the closed block, if experience does not change.

*Distributions to Anthem's Members*

11. As noted above, Anthem's Plan of Conversion provides for Eligible Members to receive Common Stock of the Parent Company or Cash 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>19</sup> Eligible Members may elect to receive Parent Company Common Stock or Cash.<sup>20</sup> The Parent Company will issue shares of Parent Company Common Stock to Eligible Members who affirmatively elect to receive such stock. The Parent Company will pay Cash to Eligible Members who are deemed to elect Cash because their mailing address, as shown on Anthem's records, is outside of the United States or the receipt of stock, would, in Anthem's judgment, fail to comply with the securities registration requirements (or applicable exemptions) of the Eligible Member's state of domicile, or they fail to make a stock election. To the extent that sufficient Cash is not available to pay Cash to all of these Eligible Members, the Parent Company will pay Cash first to those Eligible Members who are required to receive Cash because of their domicile and then to those Eligible Members with the smallest share allocations. Once the amount of Cash available is exhausted, the remaining Eligible Members will be issued shares of Parent Company Common Stock. The amount of Cash will be determined by multiplying the

<sup>19</sup> Because Anthem does not issue any policies to or in connection with individual retirement accounts, tax-deferred annuities, or tax-qualified plans, no consideration will be paid in the form of "policy credits."

<sup>20</sup> "The proceeds of the demutualization will belong to the Plan if they would be deemed to be owned by the Plan under ordinary notions of property rights. See ERISA Advisory Opinion 92-02A, January 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets." See ERISA Advisory Opinion 2001-02A, February 15, 2001.

number of shares of Common Stock allocated to the Eligible Member by the price at which such Common Stock is being offered to the public in the IPO.

The total consideration to be distributed to Eligible Members will be equal in value to a specified number of shares of Common Stock as determined by the Board of Directors. As required by Indiana law, this value is expected to be at least equal to the amount of Anthem's statutory surplus. Each Eligible Member will be allocated a fixed component of consideration, consisting of 21 shares of Parent Company Common Stock. The remaining shares of Common Stock will then be allocated to the Eligible Members based on the actuarial contribution that each Eligible Member has made to Anthem's statutory surplus.

After shares of Common Stock have been allocated, actual consideration will be paid as soon as practicable after the conversion date to Eligible Members. The decision as to the form of consideration to be received in exchange for membership interests in Anthem will be made by one or more independent Plan fiduciaries in the case of a Plan, or if applicable, by a Plan Participant. Under either circumstance, neither Anthem nor its affiliates will provide the Plan fiduciary or the Plan Participant with "investment advice" within the meaning of 29 CFR 2510.3-21(c) of the Act or exercise investment discretion with respect to such decision.

*Lock-Up Period and Commission-Free Sales and Purchase Program*

12. To allow Anthem to create and maintain an orderly market for, and improve the marketability of Parent Company Common Stock after the IPO, Anthem will institute a 6 month "lock-up" period. The lock-up period will also assure new investors who buy shares in the IPO that the Eligible Members who are given shares in the demutualization will not sell a large block of Parent Company Common Stock after the IPO. During the lock-up period, Parent Company Common Stock issued to an Eligible Member will be uncertified. The Eligible Member will have the right to vote and to receive dividends and any other distributions related to the stock. However, Eligible Members will not be able to liquidate their stock holdings until the lock-up period is over. The lock-up period will continue for 6 months after the effective date of the Plan of Conversion. As soon as practicable after the expiration of the lock-up period, Eligible Members will be entitled to receive a certificate for the Parent Company Common Stock that is registered in their name on the company

books. Upon the expiration of the lock-up period, the Parent Company Common Stock will be freely-tradeable and may be disposed of on a stock exchange or in any other manner the Eligible Member chooses, in compliance with securities laws.

13. Following the lock-up period, Anthem will establish a commission-free sales and purchase program, although the exact contours of such program have not yet been clearly-defined. Anthem, does, however, expect that the program will commence no sooner than the first business day after the 6 month anniversary, and no later than the last business day before the 30 month anniversary, of the effective date of the demutualization. Under the program, each shareholder owning 99 or fewer shares of Parent Company Common Stock on the record date of the program will have the opportunity, at any time during the term of the program, to sell all, but not less than all, of those shares in one transaction at prevailing market prices without paying brokerage or other similar expenses. Simultaneously and in conjunction with the commission-free sales program, Anthem will also offer each shareholder eligible to participate in such program, the opportunity to purchase additional shares of Parent Company Common Stock, as necessary, in order that the shareholder may increase such share holdings to 100 share round lots without paying brokerage commissions or other similar expenses.

14. In summary, it is represented that the proposed transaction 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 of Anthem's Eligible Members (including Plans and Plan Participants).

(c) One or more independent fiduciaries of each Plan that is an Eligible Member on the date the Plan of Conversion is adopted, and each Plan Participant/certificate holder who is an Eligible Member on the date the Plan of Conversion is adopted, will have an opportunity to vote whether 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 to Plans and Plan Participants under Indiana law, no ongoing involvement by the Department will be required in order to safeguard the interests of Eligible Members that are Plans or Plan Participants.

(e) The Plan of Conversion will enable Plans or Plan Participants to convert their illiquid membership interests in Anthem into Parent Company Common Stock or Cash.

(f) Anthem's insurance contracts will remain in force and will not be affected by the Plan of Conversion, and there will be no changing of premiums or compromising any of the benefits, values, guarantees, or other policy obligations of Anthem to its policyholders and contractholders.

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

#### Notice to Interested Persons

Pursuant to the requirements of Indiana Demutualization Law, during August, 2001, Anthem will provide its members, including Plans and Plan Participants, with an advance disclosure document relating to its conversion to a stock company. The document, known as "The Member Information Statement" (or MIS) will include, among other things, (a) a notice of the date, time, and place for voting on the Plan of Conversion; (b) a notice of the time, place, and purpose of a public hearing on the Plan of Conversion, at which members can express their views on the Plan of Conversion; (c) detailed information regarding Anthem's Plan of Conversion; and (d) business and financial information about Anthem and the Parent Company. The MIS will be provided in a form and manner approved by the Commissioner and will be sent to over 1 million Anthem members, including Plans and Plan Participants who hold certificates issued pursuant to their respective Plans. Anthem has deemed such Plans and Plan Participants to be "interested persons" for purposes of this exemption.

In connection with the exemption request, Anthem wishes to provide notice of the proposed exemption in a manner that takes into account (a) the costs and administrative burdens of providing a separate notice of the proposed exemption to all affected

members; (b) the notices required, and member protections accorded, under state law; and (c) the limited scope of exemptive relief that it has requested. In this regard, Anthem has incorporated the Department's required supplemental statement describing the exemption proceeding (see 29 CFR 2570.43) in a slightly modified form in the MIS under the special heading "Notice of Application for Prohibited Transaction Exemption" (hereinafter, the MIS Notice). The MIS Notice is intended to inform affected members of the anticipated publication of the proposed exemption in the **Federal Register** and their right to comment on the proposal. The MIS Notice states that an affected member may call a toll-free number maintained by Anthem (1-866-299-9628) or write to Anthem if the member wishes to be provided with a copy of the proposed exemption when it is published in the **Federal Register**. In addition, the MIS Notice indicates that the proposed exemption will be posted on Anthem's website ([www.anthem.com](http://www.anthem.com)) after publication.

Any Plan or Plan Participant requesting that Anthem provide a copy of the proposed exemption will be sent a copy of such document within 15 days of its publication in the **Federal Register**. The copy of the proposed exemption will be accompanied by another version of the supplemental statement, as required under the Department's regulations. In addition, the proposed exemption, together with a copy of the supplemental statement, will be posted on Anthem's website within 15 days of publication. Anthem will give Plan members 45 days to file comments with the Department. The comment period will commence on the date the proposed exemption is published 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.)

#### 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 31st day of July, 2001.

**Ivan Strasfeld,**

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

[FR Doc. 01-19489 Filed 8-2-01; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01-192)]

### Government-Owned Patent, Available for Licensing

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

**ACTION:** Notice of availability of a patent for licensing.

**SUMMARY:** The patent listed below assigned to the National Aeronautics and Space Administration is available for licensing on a nonexclusive basis.

**DATES:** August 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Harry Lupuloff, Patent Attorney, NASA Headquarters, Code GP, Washington, DC