

employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of May, 2002.

**Ivan Strasfeld,**

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

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**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10987]

### Proposed Exemption; Metropolitan Life Insurance Company (MetLife)

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

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemption 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 requests 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 requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), 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. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "moffittb@pwba.dol.gov", or by FAX to (202) 219-0204 by the end of the scheduled comment period. 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-1513, 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.

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

[Application No. D-10987]

### Proposed Exemption

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). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and section 407(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 (E) of the Code, shall not apply, effective January 20, 2000 until May 18, 2000, to (1) the holding, by MetLife Separate Account R.I. (the Separate Account), an index fund managed by MetLife which holds plan assets, of 523 shares of common stock (the Common Shares), issued by the Conning Corporation (Conning), an affiliate of MetLife; (2) the acquisition, by MetLife, of certain certificates, representing 523 shares of cancelled Conning Common Shares (the Cancelled Conning Shares), from the Separate Account, pursuant to the terms of a tender offer (the Tender Offer) and merger agreement (the Merger Agreement); and (3) the delivery of the certificates representing the 523 Cancelled Conning Shares to ChaseMellon Shareholder Services, LLC (the Disbursing Agent), in exchange for certain cash consideration.

This proposed exemption is subject to the following conditions:

(a) The decision by a Plan to invest in the Separate Account was made by a Plan fiduciary which was independent of MetLife and its affiliates.

(b) At all times, the Conning Common Shares represented less than one percent of the assets of the Separate Account and less than one percent of the value of the assets of the ERISA-covered Plans investing therein.

(c) The exchange of the Cancelled Conning Shares by the Separate Account was a one-time transaction for cash.

(d) The Separate Account and the Plans received the fair market value for each Cancelled Conning Share on the date of the exchange.

(e) The consideration received by the Separate Account for its Cancelled Conning Shares was the same consideration that was received by (i) all shareholders who validly tendered their Conning Common Shares pursuant to a Tender Offer and (ii) all holders of Cancelled Conning Shares.

(f) The Separate Account paid no commissions, fees or other expenses with respect to the exchange of the Cancelled Conning Shares for cash.

(g) After the expiration of the Tender Offer and the consummation of the Merger, the Separate Account delivered certificates representing the Cancelled Conning Shares to the Disbursing Agent to exchange with MetLife and its affiliates for cash.

(h) The terms of the exchange were no less favorable to the Separate Account and the Plans than those obtainable in an arm's length transaction engaged in by other similarly-situated holders of the Cancelled Conning Shares.

*Effective Date:* If granted, this proposed exemption will be effective from January 20, 2000 until May 18, 2000.

#### *Summary of Facts and Representations*

1. The parties to the transactions are described as follows:

a. *MetLife*, which maintains its principal executive offices at One Madison Avenue, New York, New York, is a New York corporation that is subject to supervision and examination by the Superintendent of Insurance of the State of New York. MetLife is a wholly owned subsidiary of MetLife, Inc., a Delaware corporation. Through its subsidiaries and affiliates, MetLife, Inc. is a leading provider of insurance and other financial services to individual and group customers. MetLife and its affiliates serve approximately 9 million households in the U.S. and companies and institutions with 33 million employees and members.

MetLife also has international insurance operations in 12 countries. Among the variety of insurance products and service it offers, MetLife and certain of its affiliates provide funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act.

MetLife maintains pooled and single customer separate accounts in which Title I pension, profit sharing, welfare benefit plans and thrift plans invest. MetLife and/or its affiliates manage all or a portion of the assets of such separate accounts. Additionally, MetLife has a number of subsidiaries and affiliates that provide a variety of financial services, including investment management and brokerage services to Plans.

In their capacities as fiduciaries of Plans, MetLife and its affiliates may be either directed by an independent Plan fiduciary or a Plan participant that has the ability to direct investments in his or her Plan account under the Plan

document. Alternatively, in those cases in which a MetLife affiliate manages investments, such as the Separate Account described herein, MetLife represents that the affiliate does not exercise any discretionary authority over the decision to invest the Plan's assets in the Separate Account. Instead, an independent Plan fiduciary is responsible for such investment decisions.

b. *Conning*, a Missouri corporation located in St. Louis, Missouri, provides asset management services primarily to insurance companies and institutional investors. In addition, Conning manages private equity funds investing in insurance and insurance-related companies and it conducts in-depth research on the insurance industry. On April 19, 2000, as a result of a merger, Conning became an indirect, wholly owned subsidiary of MetLife and a privately-held corporation.

c. *CC Merger Sub, Inc. (CC Merger Sub)*, a Missouri corporation, was an indirect, wholly owned subsidiary of MetLife. Through CC Merger Sub, MetLife offered to purchase all of the outstanding Conning Common Shares that were not owned by MetLife or its affiliates under the terms of a Tender Offer and Merger described in detail below. On April 19, 2000, CC Merger Sub was merged with and into Conning. As a result of the merger, CC Merger Sub ceased to exist.

d. *ChaseMellon Shareholder Services, LLC*, otherwise referred to in this proposed exemption as the "Disbursing Agent," was appointed by MetLife and Conning for purposes of receiving certificates representing Cancelled Conning Shares and transmitting cash payments to the holders of the surrendered certificates.

2. MetLife is the investment manager of the Separate Account, which is an insurance company pooled separate account that seeks to replicate the performance of the Russell 2000 Index and is available for investment by Plans subject to the Act. The Separate Account is passively-managed in that the choice of stocks purchased and sold, and the volume purchased and sold, are made according to the Russell 2000 Index rather than according to the active evaluation of investments.

MetLife represents that the process for the establishment and operation of the Separate Account is disciplined in that objective rules are established. Moreover, MetLife states that the Separate Account is managed utilizing an analytical computer program that determines the appropriate rebalancing necessary to meet the investment objective.

3. At the time of the transactions described herein, nine ERISA-covered Plans (none of which were sponsored by MetLife and its affiliates) invested in the Separate Account, along with certain municipal plans that were not subject to ERISA. These Plans held undivided, *pro rata* interests in the Separate Account's assets, including the Conning Common Shares, which were acquired by the Separate Account on January 20, 2000 in an open market transaction. As of April 19, 2000, the Separate Account had total assets of approximately \$45.6 million. Of the total assets, the Conning Common Shares represented 0.014 percent of the assets in the Separate Account and 0.075 percent of the value of the ERISA-covered Plans that were invested in such account.

4. The Separate Account acquired the Conning Common Shares in a Nasdaq transaction that was executed by the program trading desk at Credit Suisse First Boston, which acted as broker. The Conning Common Shares were purchased on the same day as part of the regular portfolio rebalance occurring on that day. Of the 73,400 shares of Conning Common Shares traded on January 20, 2000, the Separate Account purchased 523 shares of stock for an acquisition price of \$11.239 per share or an aggregate acquisition price of \$5,877.98.

MetLife represents that the Conning Common Shares were purchased by the Separate Account in order to avoid a tracking error and to conform the Separate Account with the Russell 2000 Index. MetLife also represents that at no time did the Conning Common Shares represent more than 5 percent of the value of the Russell 2000 Index.

5. MetLife requests an administrative exemption from the Department with respect to the holding of 523 Conning Common Shares (and subsequently, 523 Cancelled Conning Shares) by the Separate Account. As discussed below, MetLife also requests exemptive relief with respect to the delivery of certificates representing 523 Cancelled Conning Shares to the Disbursing Agent in exchange for cash consideration of \$12.50 per Cancelled Conning Share, resulting in the acquisition of such shares by MetLife. If granted, the exemption will be effective from January 20, 2000 until May 18, 2000.

MetLife believes that retroactive exemptive relief is appropriate given the beneficial nature of the exchange, the fact that the transaction could not be avoided if applicable provisions of the Federal securities laws and relevant provisions of the Act that are the subject of this application were complied with, and the fact that the Conning Common

Shares held by the Separate Account constituted a *de minimus* portion of the exchange transaction.

6. Prior to the Separate Account's acquisition of the Conning Common Shares, MetLife acquired control of 8.3 million Conning Common Shares when it purchased all of the issued and outstanding shares of capital stock of GenAmerica Corporation from General American Mutual Holding Company, a Missouri mutual holding company. The transaction took place on January 6, 2000. At the time of the transaction, GenAmerica Corporation owned all of the issued and outstanding shares of capital stock of General American Life Insurance Company, which owned all of the issued and outstanding shares of capital stock of GenAm Holding Company, the record owner of the 8.3 million Conning Common Shares. The Conning Common Shares acquired by MetLife represented approximately 60.4 percent of the outstanding Conning Common Shares.

7. In accordance with the terms of the Merger Agreement by and between Conning, MetLife and CC Merger Sub, on March 20, 2000, MetLife (through CC Merger Sub) commenced the Tender Offer to acquire the remaining 39.6 percent of the outstanding Conning Common Shares that MetLife did not control. The purchase price was established at \$12.50 per Conning Common Share and the consideration was payable in cash. April 17, 2000 was fixed as the expiration date of the Tender Offer. However, this date could be extended by MetLife.

Under the Merger Agreement, MetLife's acceptance of and payment for all of the Conning Common Shares tendered and not validly withdrawn in the Tender Offer were subject to the condition that Conning shareholder approval of the Merger would be ensured if the number of tendered Conning Common Shares, when combined with the Conning Common Shares that MetLife already controlled, exceeded two-thirds of the outstanding Conning Common Shares. Thus, the objective of the Tender Offer and the Merger was to make Conning an indirect, wholly owned subsidiary of MetLife.

8. MetLife and CC Merger Sub believed that the consideration to be received in the Tender Offer and the Merger was fair (both in terms of price and procedure) to the Conning stockholders that were unaffiliated with MetLife for the following reasons:

- The Conning Special Committee, which concluded that the Tender Offer and the Merger were fair to, advisable and in the best interests of Conning and

its stockholders, had approved the Tender Offer and the Merger Agreement, following a thorough review with independent financial and legal advisers.

- Based upon the recommendation of the Conning Special Committee and other considerations, the Conning Board of Directors determined that the Tender Offer and the Merger were fair to, advisable and in the best interests of Conning stockholders and unanimously approved the Tender Offer and the Merger Agreement.

- On March 9, 2000, the Conning Special Committee received a written fairness opinion from Salomon Smith Barney to the effect that, subject to the various assumptions and limitations set forth in that opinion, as of the date thereof, the cash consideration of \$12.50 per Conning Common Share which was to be received by Conning stockholders in the Tender Offer and the Merger was fair to Conning stockholders (other than MetLife or Conning and their respective wholly owned subsidiaries) from a financial point of view.

- The Merger Agreement was negotiated at arm's length for over six weeks with the Conning Special Committee, which acted independently, with the assistance of financial and legal advisers and on behalf of Conning stockholders unaffiliated with MetLife.

- Conning's historical financial performance and MetLife's projections of Conning's future financial performance took into account MetLife's assumption of investment management responsibility over the general account assets of General American Life Insurance Company.

- Conning's business and earnings prospects, near- and long-term business risks, the competitive business environment in which Conning operated and business and valuation trends in Conning's business industry were considered.

- The cash consideration of \$12.50 per share to be paid in the Tender Offer and the Merger for the Conning Common Shares would represent (a) a premium of approximately 30.7 percent above the closing price of Conning Common Shares on the last trading day before MetLife announced its initial proposal to acquire Conning; (b) a premium of approximately 44 percent above the average of the closing prices for Conning Common Shares over the 20 trading days immediately before MetLife publicly announced the proposal to acquire Conning; and (c) a premium of approximately 48.1 percent above the closing price for Conning Common Shares on each of December 14, 15 and 16, 1999, approximately one month

before MetLife announced its initial proposal to acquire Conning.

- The structure of the transaction was designed to result in Conning stockholders, other than MetLife and its affiliates, receiving the consideration in the Tender Offer and the Merger at the earliest possible time; and

- MetLife's internally-prepared financial analysis was considered. This analysis included the development of projections, a review of Credit Suisse First Boston's review of comparable current market prices and historical transaction prices of Conning's peer group, and a discounted cash flow analysis to determine the value of Conning Common Shares as supporting the fairness of the Tender Offer and the Merger to stockholders that were not affiliated with MetLife.

9. At the expiration date of the Tender Offer on April 17, 2000, 5.3 million Conning Common Shares were validly tendered and not withdrawn. When combined with the 8.3 million Conning Common Shares that MetLife already controlled, such shares then gave MetLife control of approximately 98 percent of the outstanding Conning Common Shares. Accordingly, pursuant to the Merger Agreement and Missouri law, on April 19, 2000, MetLife acquired all remaining Conning Common Shares that were the subject of the Tender Offer by consummating the Merger. In this regard, all outstanding Conning Common Shares that were the subject of the Tender Offer (except for those shares where the shareholders asserted their dissenters' rights under Missouri law) were automatically cancelled, retired and converted into the right to receive cash consideration equivalent to \$12.50 per former Conning Common Share. (Such cancelled shares are referred to as the "Cancelled Conning Shares.") Also, the separate corporate existence of CC Merger Sub was terminated and Conning, as the surviving corporation in the Merger, became an indirect, wholly owned subsidiary of MetLife.

Moreover, on April 19, 2000, MetLife caused Conning's share transfer books to be closed and all Conning Common Shares to be de-listed from Nasdaq and de-registered under the Securities Exchange Act of 1934, as amended. As a result of these actions, there was no public market for any Conning Common Shares (all of which were now controlled by MetLife) or any Cancelled Conning Shares (523 of which were held by the Separate Account).

10. To comply with applicable provisions of the Federal securities laws, MetLife deemed it inappropriate for the Separate Account to sell its Conning Common Shares on the open

market. Instead, the Separate Account continued to hold its 523 Conning Common Shares and it did not tender these shares in the Tender Offer. Subsequently, the 523 Conning Common Shares held by the Separate Account were converted into 523 Cancelled Common Shares.

On May 18, 2000, the Separate Account delivered its 523 Cancelled Conning Shares to the Disbursing Agent in exchange for the same \$12.50 per share consideration that was received by all other Conning shareholders in the Tender Offer and the Merger. Thus, the Separate Account received \$6,538 in cash from MetLife.<sup>1</sup> The exchange caused the ERISA-covered Plans that were participating in the Separate Account to receive a premium for such shares. Had the Separate Account disposed of the Conning Common Shares on the open market at \$8.44 per share approximately one month before MetLife announced its initial proposal to acquire all of the outstanding shares of such stock, the Separate Account would have received only \$4,414. MetLife represents that this amount would have been further reduced by sales commissions.

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

(a) The decision by a Plan to invest in the Separate Account was made by a Plan fiduciary which was independent of MetLife and its affiliates.

(b) The Conning Common Shares represented less than one percent of the assets of the Separate Account and less than one percent of the assets of the ERISA-covered Plans investing therein.

(c) The exchange of the Cancelled Conning Shares by the Separate Account was a one-time transaction for cash.

(d) The Separate Account and the Plans received the fair market value for each Cancelled Conning Share on the date of the exchange.

(e) The consideration received by the Separate Account for its Cancelled Conning Shares was the same consideration received by (i) all shareholders who validly tendered their Conning Common Shares pursuant to a Tender Offer and (ii) all holders of Cancelled Conning Shares.

(f) The Separate Account paid no commissions, fees or other expenses in connection with the exchange of the

Cancelled Conning shares to MetLife and its affiliates for cash.

(g) After the expiration of the Tender Offer and the consummation of the exchange, the Separate Account delivered certificates to the Disbursing Agent representing the Cancelled Conning Shares.

(h) The terms of the exchange were no less favorable to the Separate Account and the Plans than those obtainable in an arm's length transaction engaged in by other similarly-situated holders of the Cancelled Conning Shares.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 693-8556. (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 17th day of May, 2002.

**Ivan Strasfeld,**

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

[FR Doc. 02-12828 Filed 5-21-02; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption (PTE) 2002-21; Exemption Application No. D-11005]**

#### **Pacific Investment Management Company LLC (PIMCO), Located in Newport Beach, CA; Employee Benefit Plans: Prohibited Transaction Exemptions**

**AGENCY:** Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

**ACTION:** Notice of technical correction.

On March 28, 2002, the Department published PTE 2002-21 in the **Federal Register** at 67 FR 14988. PTE 2002-21 permits an employee benefit plan (the Plan), whose assets are held by PIMCO, as trustee, investment manager or discretionary fiduciary, to purchase shares of one or more open-end management investment companies registered under the Investment Company Act of 1940, to which PIMCO or any affiliate of PIMCO serves as investment adviser and may provide other services, in exchange for securities held by the Plan in an account or sub-account with PIMCO. PTE 2002-21 is effective as of February 5, 2002.

On page 14989 of the notice granting PTE 2002-21, the Department hereby corrects the last sentence of Section I(g) to read as follows in order to reflect standard industry practice:

\* \* \* Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the Purchase Transaction determined on the basis of reasonable inquiry from at least two market makers or one pricing service that is independent of PIMCO.

<sup>1</sup> The Separate Account had also received \$26.15 in dividends from MetLife that were attributable to its ownership of the Conning Common Shares. This meant that the Separate Account's total net earnings with respect to the Conning Common shares was \$685.68 (6,537.50 - \$5,877.98 + \$26.15).