

the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

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

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify the following individual Prohibited Transaction Exemptions (PTEs), as set forth below: PTE 89-88, 54 FR 42582 (October 17, 1989); PTE 89-89, 54 FR 42569 (October 17, 1989); PTE 89-90, 54 FR 42597 (October 17, 1989); PTE 90-22, 55 FR 20542 (May 17, 1990); PTE 90-24, 55 FR 20548 (May 17, 1990); PTE 90-28, 55 FR 21456 (May 24, 1990); PTE 90-29, 55 FR 21459 (May 24, 1990); PTE 90-30, 55 FR 21461 (May 24, 1990); PTE 90-32, 55 FR 23147 (June 6, 1990); PTE 90-36, 55 FR 25903 (June 25, 1990); PTE 90-39, 55 FR 27713 (July 5, 1990); PTE 90-59, 55 FR 36724 (September 6, 1990); PTE 90-83, 55 FR 50250

(December 5, 1990); PTE 90-84, 55 FR 50252 (December 5, 1990); PTE 90-88, 55 FR 52899 (December 24, 1990); PTE 91-14, 55 FR 48178 (February 22, 1991); PTE 91-22, 56 FR 03277 (April 18, 1991); PTE 91-23, 56 FR 15936 (April 18, 1991); PTE 91-30, 56 FR 22452 (May 15, 1991); PTE 91-62, 56 FR 51406 (October 11, 1991); PTE 93-31, 58 FR 28620 (May 5, 1993); PTE 93-32, 58 FR 28623 (May 14, 1993); PTE 94-29, 59 FR 14675 (March 29, 1994); PTE 94-64, 59 FR 42312 (August 17, 1994); PTE 94-70, 59 FR 50014 (September 30, 1994); PTE 94-73, 59 FR 51213 (October 7, 1994); PTE 94-84, 59 FR 65400 (December 19, 1994); PTE 95-26, 60 FR 17586 (April 6, 1995); PTE 95-59, 60 FR 35938 (July 12, 1995); PTE 95-89, 60 FR 49011 (September 21, 1995); PTE 96-22, 61 FR 14828 (April 3, 1996); PTE 96-84, 61 FR 58234 (November 13, 1996); PTE 96-92, 61 FR 66334 (December 17, 1996); PTE 96-94, 61 FR 68787 (December 30, 1996); PTE 97-05, 62 FR 1926 (January 14, 1997); PTE 97-28, 62 FR 28515 (May 23, 1997); PTE 98-08, 63 FR 8498 (February 19, 1998); PTE 99-11, 64 FR 11046 (March 8, 1999); PTE 2000-19, 65 FR 25950 (May 4, 2000); PTE 2000-33, 65 FR 37171 (June 13, 2000); PTE 2000-41, 65 FR 51039 (August 22, 2000); and PTE 2000-55 (November 13, 2000), each as subsequently amended by PTE 97-34 and PTE 2000-58.

In addition, the Department notes that it is also proposing individual exemptive relief for: Deutsche Bank A.G., New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97-03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97-21E (September 10, 1997); ABN AMRO Inc., FAN 98-08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99-31E (December 20, 1999); and William J. Mayer Securities, FAN 01-25E (October 15, 2001), which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96-62.

The first sentence of section II.A.(4) of these exemptions is amended to read:

The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter.

If granted, the amendment will be effective as of March 13, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant the Underwriter Exemptions, refer to the proposed exemptions and the grant notices that are cited above.

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

Ivan L. Strasfeld,

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

[FR Doc. 02-12831 Filed 5-21-02; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D-11000]

Prohibited Transaction Exemption 2002-26; Grant of Individual Exemptions; Holt Fleck & Free P.A. Profit Sharing Plan (the Plan), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Holt, Fleck & Free P.A. Profit Sharing Plan (the Plan) Located in Noblesville, Indiana

[Prohibited Transaction Exemption No. 2002-26; Exemption Application No. D-11000]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan to a Plan fiduciary of two parcels of improved real property (the Parcels). This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The Sales price is the greater of \$165,000 or the fair market value of the Parcels as of the date of the Sale;

(c) The fair market value of the Parcels has been determined by an independent, qualified appraiser;

(d) The Sale is a one-time transaction for cash; and

(e) The Plan does not pay any commissions, costs or other expenses in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on March 18, 2002 at 67 FR 12064.

FOR FURTHER INFORMATION CONTACT:

Khalif Ford of the Department, telephone (202) 693-8540 (this is not a toll-free number).

Prudential Insurance Company of America and Its Affiliates (collectively, Prudential) Located in Newark, NJ

[Prohibited Transaction Exemption 2002-27; Exemption Application No. D-11051]

Exemption

Section I. Exemption for the Acquisition, Holding and Disposition of Prudential Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) and (E) of the Code,¹ shall not apply, effective December 13, 2001, to the acquisition, holding and disposition of common stock issued by Prudential Financial, Inc. (the Prudential Financial Stock) and/or common stock issued by a Prudential affiliate (the Prudential Affiliate Stock; together, the Prudential Stock), by Index and Model-Driven Funds that are managed by Prudential, in which client plans of Prudential invest, provided that the following conditions and the General Conditions of Section II are met:

(a) The acquisition or disposition of Prudential Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring Prudential Stock which is intended to benefit Prudential or any party in which Prudential may have an interest.

(b) Whenever Prudential Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Prudential Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Prudential Stock occur either (i) on a recognized U.S. securities exchange (as defined in Section III(k) below), (ii) through an automated trading system (as defined in Section III(j) below) operated by a broker-dealer independent of Prudential that is registered under the Securities Exchange Act of 1934 (the 1934 Act), and thereby subject to regulation by the Securities and Exchange Commission (the SEC), which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section III(j) below) that is operated by a recognized U.S. securities exchange (as defined in Section III(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Prudential Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Prudential Stock, Prudential appoints a fiduciary which is independent of Prudential to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Prudential Stock to its specified weighting in the index or model pursuant to the restrictions described in Section I(b) above, all aggregate daily purchases of Prudential Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for Prudential Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous 5 business days, or

¹ For purposes of this exemption, references to provisions of the Act refer also to corresponding provisions of the Code.

(2) 15 percent of the trading volume for Prudential Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Prudential Stock not otherwise described above in Section I(b) are either—(i) entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Prudential and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section III(j) below) operated by a broker-dealer independent of Prudential that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section III(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined in Section III(k) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Prudential (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than 5 percent of the total amount of Prudential Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Prudential.

(g) Prudential Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A fiduciary of a plan which is independent of Prudential authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Prudential Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of the Prudential directs the voting of Prudential Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Prudential are required or permitted to vote.

Section II. General Conditions

(a) Prudential maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Prudential, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than Prudential shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section II and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section II are unconditionally available at their customary location for examination during normal business hours by —

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the SEC,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this Section II(b)(1) shall be authorized to examine trade secrets of Prudential or commercial or financial information which is considered confidential.

Section III. Definitions

(a) The term "Index Fund" means any investment fund, account or portfolio sponsored, maintained, trustee, or managed by Prudential, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section III(c) below, by either (i) replicating the same

combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which Prudential does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit Prudential or any party in which Prudential may have an interest.

(b) The term "Model-Driven Fund" means any investment fund, account or portfolio sponsored, maintained, trustee, or managed by Prudential, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of Prudential, to transform an independently maintained Index, as described in Section III(c) below;

(2) Which contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Prudential or any party in which Prudential may have an interest.

(c) The term "Index" means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of Prudential; and,

(3) The index is a generally-accepted standardized index of securities which

is not specifically tailored for the use of Prudential.

(d) The term "opening date" means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term "Buy-up" means an acquisition of Prudential Stock by an Index or Model-Driven Fund in connection with the initial addition of such stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such stock.

(f) The term "Prudential" refers to Prudential Insurance Company of America, its indirect parent and holding company, Prudential Financial, and any current or future affiliates, as defined below in paragraph (h).

(g) The term "Prudential Financial" refers to Prudential Financial, Inc., the indirect parent and holding company of Prudential Insurance Company of America.

(h) An "affiliate" of Prudential includes:

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

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term "automated trading system" means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an "alternative trading system" within the meaning of the SEC's Reg. ATS [17 CFR Part 242.300], as such definition may be amended from time to time, or an "automated quotation system" as described in Section 3(a)(51)(A)(ii) of the 1934 Act [15 USC 8c(a)(51)(A)(ii)].

(k) The term "recognized U.S. securities exchange" means a U.S. securities exchange that is registered as a "national securities exchange" under Section 6 of the 1934 Act (15 USC 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR Part 240.3b-16).

EFFECTIVE DATE: This exemption is effective as of December 13, 2001.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 18, 2002 at 67 FR 2692.

Written Comments

The Department received two written comments with respect to the proposed exemption and no requests for a public hearing. The comments, which were submitted by representatives of two Prudential client plans, expressed concern that allowing Index and Model-Driven Funds managed by Prudential to invest in Prudential Stock would create a conflict of interest for Prudential. One of the commenters also referred to the "Enron situation" and the general concerns of the public with respect to conflicts of interest in large company 401(k) plan investments.

In response to these comments, Prudential notes that it applied to the Department for exemptive relief because of the possibility of conflicts of interest where Prudential manages Index and Model-Driven Funds that invest in Prudential Stock. However, Prudential believes that the conditions imposed by the proposed exemption effectively protect investing plans from these conflicts. Prudential points out that at their core, the conditions of the proposed exemption are designed to eliminate any exercise of discretion by Prudential in determining when and how Prudential Stock is bought or sold in connection with Index or Model-Driven Funds. By operating in accordance with these conditions, Prudential states that it has none of the discretion that would permit it to engage in conflicts of interest.

Prudential also explains that in the first condition of the proposal, the sole purpose for the acquisition of Prudential Stock is to maintain "strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring Prudential Stock which is intended to benefit Prudential or any party in which Prudential has an interest." Further, Prudential states that the proposed exemption includes numerous other conditions that limit any potential for conflicts of interest.

In addition, Prudential notes that the Department has issued several exemptions to financial institutions permitting the purchase of their own stock by index and model-driven funds

they manage, subject to nearly identical conditions. Therefore, Prudential argues that it would be unfair if the Department were not to grant it the same exemptive relief its competitors have received.

Finally, Prudential notes that the proposed exemption does not raise Enron-type concerns because the proposal does not cover investments by Prudential's in-house plans in Prudential Stock. Also, Prudential explains that the proposal does not present the investment diversification issue that was raised in connection with Enron's 401(k) plan since Prudential Stock will always constitute a small portion of the stock held by the Index and Model-Driven Funds and Prudential Stock will always comprise a small fraction of the indexes these Funds track.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the clarifications described above. For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11051) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N-1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

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 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) 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.*

[FR Doc. 02-12829 Filed 5-21-02; 8:45 am]

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.