

Hospital	Commission percentages based on hospital-paid premiums %		Commission percentages based on participant-paid premiums %	
	Life	LTD	Life	LTD
	23.18	61.51	15.30	0.00

- Step 5—Allocate the amount available for the Patronage Dividend based upon the Step 4 percentages.

Hospital	Life	LTD	Allocation of patronage dividends to participant-paid premiums	
			Life	LTD
A .....	\$4,851	\$0	\$4,116	\$0
B .....	13,083	20,937	2,247	0
C .....	9,345	33,664	18,334	0
D .....	9,345	22,428	9,345	0
E .....	14,952	59,830	0	0
	51,576	136,042	34,042	0

(To compute the Patronage Dividend amount that is attributable to Participant-Paid Premiums for Life Insurance, under Hospital A, the \$5,500 commission attributable to Participant-Paid Premiums for Life Insurance is divided by the \$297,500 Total Commission payable to CHCA. The quotient, 1.85%, is then multiplied by the \$222,500 amount available for the Patronage Dividend to arrive at the product, \$4,116. The amounts for Hospitals B–E are also similarly calculated.)

• *Step 6*—CHCA will send a check to the insurance carrier for \$34,042 with instructions to allocate the amount on a per Hospital basis that will be applied against the employee Participants' premium rate schedule. CHCA will also request written confirmation from the insurer that the Premium Adjustment has been made.

**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 6th day of August, 2002.

**Ivan Strasfeld,**

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

[FR Doc. 02-20205 Filed 8-8-02; 8:45 am]

**BILLING CODE 4510-29-P**

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**[Prohibited Transaction Exemption 2002-35; Exemption Application No. D-10987]**

**Grant of Individual Exemptions; Metropolitan Life Insurance Company (MetLife)**

**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.

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

[Prohibited Transaction Exemption 2002–35; Exemption Application No. D–10987]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and section 407(a) of the Act (or ERISA) 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; 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 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:** This exemption is effective from January 20, 2000 until May 18, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 22, 2002 at 67 FR 36034.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

**The Banc Funds Company, LLC (TBFC) Located in Chicago, IL**

[Prohibited Transaction Exemption 2002–36; Exemption Application No. D–11083]

**Exemption**

*Section I. Covered Transactions*

The restrictions of sections 406(a) and 406(b) 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,<sup>1</sup> shall not apply, effective June 19, 2002, to (1) the purchase or redemption of interests in the Banc Fund VI L.P. (the Partnership) by employee benefit plans (the Plans) investing in the Partnership, where TBFC, a party in interest with respect to the Plans, is the general partner of MidBanc VI, L.P., which is, in turn, the general partner (the General Partner) of the Partnership; (2) the sale, for cash or other consideration, by the Partnership of certain securities that are held as Partnership assets to a party in interest with respect to a Plan participating in the Partnership, where the party in interest proposes to acquire or merge with the portfolio company (the Portfolio Company) that issued

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

such securities; and (3) the payment to the General Partner, by Plans participating in the Partnership, of an incentive fee (the Performance Fee) which is intended to reward the General Partner for the superior performance of investments in the Partnership.

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

*Section II. General Conditions*

(a) Prior to a Plan's investment in the Partnership, a Plan fiduciary which is independent of TBFC and its affiliates (the Independent Fiduciary) approves such investments on behalf of the Plan.

(b) Each Plan investing in the Partnership has total assets that are in excess of \$50 million.

(c) No Plan may invest more than 10 percent of its assets in the Partnership, and the interests held by the Plan may not exceed 25 percent of the assets of the Partnership.

(d) No Plan may invest more than 25 percent of its assets in investment vehicles (*i.e.*, collective investment funds or separate accounts) managed or sponsored by TBFC and/or its affiliates.

(e) Prior to investing in the Partnership, each Independent Fiduciary contemplating investing therein receives a Private Placement Memorandum and its supplement containing descriptions of all material facts concerning the purpose, structure and the operation of the Partnership.

(f) An Independent Fiduciary which expresses further interest in the Partnership receives a copy of the Partnership Agreement describing the organizational principles, investment objective and administration of the Partnership, the manner in which the Partnership interests may be redeemed, the manner in which Partnership assets are to be valued, the duties and responsibilities of the General Partner, the rate of remuneration of the General Partner, and the conditions under which the General Partner may be removed.

(g) If accepted as an investor in the Partnership, the Independent Fiduciary is—

(1) Furnished with the names and addresses of all other participating Plan and non-Plan investors in the Partnership;

(2) Required to acknowledge, in writing, prior to purchasing an interest in the Partnership as a limited partner (the Limited Partner) that such Independent Fiduciary has received copies of such documents; and

(3) Required to acknowledge, in writing, to the General Partner that such fiduciary is independent of TBFC and its affiliates, capable of making an

independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Partnership.

(h) Each Plan receives the following written disclosures from the General Partner with respect to its ongoing participation in the Partnership:

(1) Within 90 days after the end of each fiscal year of the Partnership as well as at the time of termination, an annual financial report containing a balance sheet for the Partnership as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual reports will also disclose the remuneration that has accrued or is paid to the General Partner.

(2) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the Partnership, an unaudited quarterly financial report consisting of at least a balance sheet for the Partnership as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the remuneration that is actually paid or accrued to the General Partner.

(3) Such other written information as may be needed by the Plans (including copies of the proposed exemption and grant notice describing the exemptive relief provided herein).

(i) At least annually, the General Partner will hold a meeting of the Partnership, at which time, the Independent Fiduciaries of the participating Plans will have the opportunity to decide on whether the Partnership and/or the General Partner should be terminated as well as discuss any aspect of the Partnership and the agreements promulgated thereunder with the General Partner.

(j) During each year of the Partnership, representatives of the General Partner will be available to confer by telephone or in person with Independent Fiduciaries of participating Plans to discuss matters concerning the Partnership.

(k) The terms of all transactions that are entered into on behalf of the Partnership remain at least as favorable to a Plan investing in the Partnership as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the Partnership that is done in connection with the distribution of any part of the General Partner's Performance Fee will be based upon independent market

quotations or (where the same are unavailable) determinations made by an independent appraiser.

(l) In the case of the sale by the Partnership of Portfolio Company securities to a party in interest with respect to a participating Plan that occurs in connection with the acquisition of a Portfolio Company represented in the Partnership's portfolio, the party in interest may not be the General Partner, TBFC, any employer of a participating Plan, or any affiliate thereof, and the Partnership receives the same terms as is offered to other shareholders of a Portfolio Company.

(m) As to each Plan, the total fees paid to the General Partner and its affiliates constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(n) Any increase in the General Partner's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses determined annually between the date the first contribution is made to the Partnership until the time the Partnership disposes of its last investment. In this regard,

(1) Except as provided below in Section II(o), no part of the General Partner's Performance Fee may be withdrawn before December 31, 2007, which represents the end of the Acquisition Phase for the Partnership, and not until Plans have received distributions equal to 100 percent of their capital contributions made to the Partnership.

(2) Prior to the termination of the Partnership, no more than 75 percent of the Performance Fee credited to the General Partner may be withdrawn by the Partnership.

(3) The debit account established for the General Partner to calculate the Performance Fee (the Performance Fee Account) is credited annually with a predetermined percentage of net realized gains minus net unrealized losses, minus Performance Fee distributions.

(4) No portion of the Performance Fee may be withdrawn if the Performance Fee Account is in a deficit position.

(5) The General Partner repays all deficits in its Performance Fee Account and it maintains a 25 percent cushion in such account prior to receiving any further distribution.

(o) During the Acquisition Phase of the Partnership only,

(1) The General Partner is entitled to take distributions with respect to the Performance Fee in the amount of any income tax liability it or its affiliates become subject to with respect to net

capital gains of the Partnership, provided such gains are based upon the sale of Portfolio Company securities that is initiated by a third party in connection with a merger, tender offer or acquisition, and does not involve the exercise of discretion by the General Partner.

(2) The tax distributions are deducted from the Performance Fee.

(3) The General Partner repays to the Partnership any tax refund received to the extent a distribution has been made to such General Partner.

(4) The General Partner provides the Plans with an annual report and accounting of all distributions and repayments attributable to income taxation of the General Partner and its affiliates, including written evidence that the distributions have been utilized exclusively to pay the income tax liability.

(p) The General Partner maintains, for a period of six years, the records necessary to enable the persons described in paragraph (q) 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 the General Partner, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the General Partner 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 (q) below.

(q)(1) Except as provided in section (q)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (p) of this Section II shall be unconditionally available at their customary location during normal business hours by:

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

(B) Any Independent Fiduciary of a participating Plan or any duly authorized representative of such Independent Fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(q)(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph shall be authorized to examine the trade secrets of the General Partner or TBFC or commercial or financial information which is privileged or confidential.

### Section III. Definitions

For purposes of this exemption,

(a) The term “TBFC” means The Banc Funds Company, LLC and any affiliate of TBFC as defined in paragraph (b) of Section III.

(b) An “affiliate” of TBFC includes —

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

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

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

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

(d) An “Independent Fiduciary” is a Plan fiduciary which is independent of TBFC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of the Limited Partner’s interest in the Partnership or an investment manager.

(e) The term “Portfolio Companies” include commercial banks and other depository institutions such as savings banks, savings and loan associations, holding companies controlling those entities, and companies providing financial services in the United States, which include, but are not limited to, consumer finance companies and demutualizing life insurance companies.

(f) The term “net realized gains” refers to the excess of realized gains over realized losses.

(g) The term “net realized losses” refers to the excess of realized losses over realized gains.

(h) The term “net unrealized losses” refer to the excess of unrealized losses over unrealized gains.

(i) The term “net unrealized gains” refers to the excess of unrealized gains over unrealized losses. For a gain or loss to be “realized,” an asset of the Partnership must be sold for more than or less than its acquisition price. For a gain or loss to be “unrealized,” the Partnership asset must increase or decrease in value but not be sold.

**EFFECTIVE DATE:** This exemption is effective as of June 19, 2002.

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 June 6, 2002 at 67 FR 39053.

### Written Comments

The Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The comment, which was submitted by TBFC, requests that the exemption be made effective as of June 19, 2002 since a preliminary closing occurred on that date. In response to the TBFC’s comment, the Department has made the final exemption effective as of the June 19, 2002 closing date.

Accordingly, after giving full consideration to the entire record, including the comment, the Department has determined to grant the exemption as modified above. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11083) the Department is maintaining in this case. The complete application file, as well as the comment and 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 of 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 6th day of August, 2002.

**Ivan Strasfeld,**

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

[FR Doc. 02–20204 Filed 8–8–02; 8:45 am]

**BILLING CODE 4510–29–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–093)]

### NASA Advisory Council, Pioneer Revolutionary Technology Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC), Pioneer Revolutionary Technology Subcommittee (PRTS).

**DATES:** Wednesday, September 4, 2002, 8:30 a.m. to 5:30 p.m.; and Thursday, September 5, 2002, 8:30 a.m. to 12:30 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Room 6H46, 300 E Street, SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4729.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Quality Review Process  
—General Description of Program  
—Actions from ATAC and NASA’s Response