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### Appendix A—Herfindahl-Hirschman Index Calculations

“HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ( $30^2 + 30^2 + 20^2 + 20^2 = 2600$ ). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Exemption Application No. D-11030]

#### Withdrawal of Notice of Proposed Exemption Involving Blue Cross and Blue Shield of Kansas (the Company) and Anthem Insurance Companies, Inc. (Anthem) Located in Topeka, KS

In the **Federal Register** dated January 3, 2002, the Department of Labor (the Department) published a notice of proposed exemption (the Notice) from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986, as amended. The Notice provided prospective exemptive relief for the receipt of cash consideration by any eligible policyholder of the Company and Anthem which was an employee benefit plan (the Plan), including the Company's own in house Plan, in exchange for the termination of such Plan's membership interest in the Company, in accordance with the terms of a plan of conversion adopted by the

Company and implemented pursuant to Kansas Law. Due to the length of time since the publication of the proposal and unresolved litigation between the Company and the Kansas Commissioner of Insurance regarding the contemplated demutualization, the Department does not believe the Notice, as originally published, currently reflects accurate and complete material facts and representations. Therefore, the Department has decided to withdraw the Notice from the **Federal Register**.

Signed at Washington, DC, this 10th day of February, 2004.

Ivan L. Strasfeld,

Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.

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BILLING CODE 4510-29-M

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2004-02 *et al.*; Exemption Application No. D-11047 *et al.*]

#### Grant of Individual Exemptions; Bank of America, N.A.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

**SUMMARY:** This document contains exemptions 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.

#### Bank of America, N.A., Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 2004-02; Exemption Application No. D-11147]

### Exemption

#### Section I—Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of January 1, 2003, to:

(A) The granting to Bank of America, N.A. (Bank), either as an agent (the Agent) for a group of financial institutions (Lender(s)), or as a sole Lender, that will fund a so-called “credit facility” (Credit Facility) providing credit to certain investment funds (Fund(s)), by the Fund of a security interest in and lien on the capital commitments (Capital Commitments), reserve amounts, and capital contributions (Capital Contributions) of certain investors, including employee benefit plans (a Covered Plan, as defined in Section III(A)), investing in the Fund;

(B) Any collateral assignment and pledge by the Fund to the Agent, or to the Bank as sole Lender, of its security interest in each Investor's equity interest, including a Covered Plan's equity interest, in the Fund;

(C) The granting by the Fund to the Agent, or to the Bank as sole Lender, of

a security interest in a Collateral Account to which all Capital Contributions in the Fund will be deposited when paid (except in certain limited circumstances);<sup>1</sup>

(D) The granting by the Fund to the Agent, or to the Bank as sole Lender, of its right to make calls on Investors for Capital Contributions (Capital Call), which shall be in cash, under the operative Fund Agreements (as defined in Section III(C)), enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility;

(E) The execution by a Covered Plan of an agreement (Investor Consent) consenting to the Fund's assignment to the Agent, or to the Bank as sole Lender, of the Fund's right to make Capital Calls, which may contain: (i) An acknowledgment by the Covered Plan of the Fund's assignment to the Agent, or to the Bank as sole Lender, of the right to make Capital Calls upon the Covered Plan, enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility; (ii) a consent (as either part of the Fund Agreements or as a separate agreement) by the Covered Plan to make Capital Contributions to the Fund without counterclaim, setoff, or defense, for the purpose of repayment of the Credit Facility; (iii) a representation that the Covered Plan has no knowledge of claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreements; and (iv) an agreement that the Covered Plan will fund Capital Contributions only into the Collateral Account; provided that with respect to all transactions described above, the conditions set forth below in Section II are met.

#### Section II—Conditions

(A) The transaction is on terms that are no less favorable to the Covered Plans than those which the Covered Plans could obtain in arm's-length transactions with unrelated parties;

(B) The decision to invest in the Fund on behalf of each Covered Plan and to execute an Investor Consent in favor of the Bank (either as sole Lender or Agent), is made by fiduciaries of the Covered Plan that are not included among, are independent of, and are unaffiliated with, the Lenders (including the Bank) and the Fund. For purposes of this exemption, a fiduciary

of a Covered Plan is not included among, is independent of, and unaffiliated with, a Lender (including the Bank) or a Fund, as applicable, if: (i) The fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Fund;<sup>2</sup> (ii) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Fund; and (iii) no officer, director, highly-compensated employee (within the meaning of section 4975(e)(2)(H) of the Code), or partner of the Fund, or any officer, director or highly-compensated employee, or partner of the Lender who is involved in the transactions described in Section I of the exemption, is also an officer, director, highly-compensated employee, or partner of the fiduciary. However, if such individual is a director of the Lender, and if he or she abstains from participation in, and is not otherwise involved with, the decision made by the Covered Plan to invest in the Fund, then this condition shall be deemed satisfied;

(C) At the time of the execution of an Investor Consent, the Covered Plan has assets of not less than \$100 million. In the case of multiple plans maintained by the same employer, or by members of a controlled group of corporations (within the meaning of Code section 414(b)) or members of a group of trades or businesses under common control (within the meaning of Code section 414(c)) (hereafter, referred to as "members of a controlled group"), whose assets are invested on a commingled basis (e.g., through a master trust), this \$100 million threshold applies to the aggregate assets of the commingled entity;

(D) Not more than five (5) percent of the assets of any Covered Plan, measured at the time of the execution of an Investor Consent, is invested in the Fund. In the case of multiple plans maintained by the same employer, or by members of a controlled group, whose assets are invested on a commingled basis (e.g., through a master trust), the five (5) percent limit applies to the aggregate assets of the commingled entity;

(E) Neither the Bank nor any Lender has discretionary authority or control with respect to a Covered Plan's

investment in the Fund nor renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to such investment;

(F) Upon request, the Covered Plan fiduciaries receive from the Bank a copy of this exemption, as published in the **Federal Register**, as well as a copy of the notice of proposed exemption. In addition, all appropriate fiduciaries of Covered Plans must receive a copy of this exemption, as published in the **Federal Register**, for Covered Transactions (as defined in Section III(D) below) that occurred during the period from January 1, 2003 until the date of this exemption;

(G) The Bank receives from the Covered Plan fiduciaries a written representation that the conditions set forth above in Section II(B), (C), and (D) are satisfied for such transaction with respect to the Covered Plan for which they are fiduciaries; and

(H) None of the Covered Transactions are part of an arrangement, agreement or understanding, designed to benefit a party in interest with respect to a Covered Plan.

#### Section III—Definitions

(A) The term "Covered Plan" means an investor in a Fund (as defined below) that is an employee benefit plan, as defined in section 3(3) of the Act, that satisfies the conditions set forth herein in Section II;

(B) The term "Fund" means an investment or venture capital fund (organized as a corporation, limited partnership, limited liability company, or another business entity authorized by applicable law) in which one or more investors invest, including employee benefit plans or special purpose entities holding "plan assets" subject to the Act, as described herein, by making capital contributions in cash to such Fund, pursuant to specific Capital Commitments as established by the Fund Agreement(s) and other operative documents executed by the parties, for purposes of making certain real estate investments (including real estate-related investments, such as venture capital investments) or non-real estate investments. The term "Fund" includes an entity created by the Fund that may borrow or receive funds from the Credit Facility, provided that such entity is considered an affiliate of the Fund as a subsidiary or other controlled entity;

(C) The terms "Fund Agreement" or "Fund Agreements" mean the written agreements under which a Fund (as defined above) is formed (such as a limited partnership agreement, a limited liability company agreement or articles of incorporation, together with ancillary

<sup>1</sup>In most cases, all Investors will make Capital Contributions into the Collateral Account. However, in some cases, investors that are not plans may be directed to make Capital Contributions to the Agent, for the benefit of the Lenders, after an event of default, in some other manner.

<sup>2</sup>For purposes of determining whether a fiduciary is not included among, is independent of, and unaffiliated with, a Fund, the term "Fund" shall be deemed, as appropriate, to include the governing entity of the Fund or a member of the governing body of the Fund, as appropriate, e.g., a general partner of a partnership, a manager of a limited liability company, a member of a member-managed limited liability company, or a member of the board of directors of a corporation.

related agreements, such as subscription agreements) that obligate each investor to make cash contributions of capital with respect to Capital Commitments, upon receipt of a call for Capital Contributions;

(D) The terms "Covered Transaction" or "Covered Transactions" mean any combination of transactions described in Section I(A)–(D), in conjunction with the Investor Consent described in Section I(E); and

(E) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

**EFFECTIVE DATE:** This exemption is effective as of January 1, 2003.

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 September 29, 2003, at 68 FR 56008.

*Written Comments:* The applicant (referred to herein as the "Bank") submitted a number of comments on the notice of proposed exemption (the Notice). These comments, and modifications to the exemption made by the Department in response thereto, are discussed below.

First, the Bank states that the term "Borrower Collateral Account" appeared several times in the operative language of the Notice (*see* 68 FR at 56008–56009, Section I(C) and I(E)) as well as in the Summary of Facts and Representations (the Summary) in the Notice. In particular, Paragraph 3 of the Summary states that the borrower under the Credit Facility will be a Fund. However, the Bank states that the account established for a borrower, referred to as a "Borrower Collateral Account," may be in the name of the Fund if the Fund is the borrower, or it may be in the name of an affiliate of the Fund (*i.e.*, a subsidiary or other controlled entity) that is established for the purpose of making a particular investment. Thus, in order to avoid any confusion, the Bank suggested that the exemption should refer to such accounts simply as the "Collateral Account."

In response to the Bank's comment, the Department has deleted the term "Borrower Collateral Account" and substituted the term "Collateral Account" in Sections I(C) and I(E), as well as in Footnote 1, of the exemption. In addition, the Department notes that any references to the term "Borrower Collateral Account" in the Summary (*e.g.*, in the last paragraph of Paragraph

6, or in item (iv) of Paragraph 7) should be replaced with the term "Collateral Account" as clarified by the Bank.

Second, the Bank states that there are at least two additional references in the Summary to a Fund as a borrower of funds (*i.e.*, monies) under a Credit Facility (*e.g.*, Paragraph 3 of the Summary (68 FR at 56009, third column) and Paragraph 6 of the Summary (68 FR at 56010, third column)). As noted above, the Bank represents that many of these Funds actually establish special purpose entities to make particular investments. In such instances, the Bank states that those entities are the borrower of such funds, in which case the Fund may be a guarantor or may be providing other credit support to the borrower entity. As a result, the Bank requested a clarification to note that such "Funds" may be borrowers under a Credit Facility as well as guarantors or providers of other credit support.

The Department acknowledges the Bank's clarification. In addition, in response to the Bank's comments, the Department has added a sentence at the end of the definition of the term "Fund" in Section III(B) of the exemption which states that such term includes an entity created by a Fund that may borrow or receive funds from the Credit Facility, provided that such entity is considered an affiliate of the Fund as a subsidiary or other controlled entity.

Third, with respect to the definition of a "Fund," the Bank states that the Notice used the phrase "investment opportunity fund" to describe, in part, such investment vehicles (*see* 68 FR at 56009, second line of Section III(B) and Paragraph 1 of the Summary). The Bank represents that some persons may think that an "investment opportunity fund" is a specific type of "Fund," rather than a more general investment fund that may be investing in real estate or other proper investments. As a result, the Bank requested that the word "opportunity" be deleted from the phrase "investment opportunity" in the definition of the term "Fund."

In response to the Bank's comment, the Department has deleted the word "opportunity" from the definition contained in Section III(B) of the exemption.

Fourth, with respect to Paragraph 4 of the Summary (*see* 68 FR 56010, second column), there is a discussion of the independence of Covered Plan fiduciaries from a Lender (including the Bank) or a Fund. In this regard, the last sentence in Paragraph 4 of the Summary (just prior to Paragraph 5) reads as follows:

"\* \* \* (iii) the fiduciary is not a corporation or partnership in which a person affiliated with the Fund or a Lender, as appropriate, is an officer, director, partner, or employee."

The Bank states that the three items included in the discussion in Paragraph 4 of the Summary describe the circumstances for how fiduciaries are "independent of, or unaffiliated with" a Lender (including the Bank) or the Fund. The first item provides that the fiduciary must not, directly or indirectly, control, be controlled by, or be under common control with the Lender or a Fund. The second item ensures that a fiduciary (if an individual) is not an officer, director, employee, or relative of, or partner in, a Lender or a Fund. The third item is intended to cover fiduciaries that are not individuals, including a corporation or partnership. The Bank suggests that, in order to clarify that a Covered Plan's fiduciary that is an entity is not "affiliated with" a Lender (including the Bank) or a Fund, the exemption should state, for purposes of item (iii) above, that no officer or director of a fiduciary which is a corporation, partnership, or other entity controls the Fund or a Lender, as appropriate.

The Department is unable to concur with the Bank's suggestion for clarifying the scope of affiliations between a Covered Plan's fiduciary, that is an entity, and a Lender or Fund by limiting the affiliations referred to in item (iii) to officers or directors of such entities who would control the Lender or Fund. Such a clarification would deem many individuals who have a significant interest or relationship to both the Lender or Fund and the Covered Plan's fiduciary as "independent of, or unaffiliated with" such entities.

However, upon further discussion with the Bank in order to adequately address the concern raised by the comment, the Department has added the following sentence to the conditions contained in Section II(B) of the exemption:

"\* \* \* For purposes of this exemption, a fiduciary of a Covered Plan is not included among, is independent of, and unaffiliated with, a Lender (including the Bank) or a Fund, as applicable, if: (i) the fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Fund, (ii) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Fund; and (iii) *no officer, director, highly-compensated employee (within the meaning of section 4975(e)(2)(H) of the Code), or partner of the Fund, or any officer, director or highly-compensated employee, or partner of the Lender who is involved in the transactions*

*described in Section I of the exemption, is also an officer, director, highly-compensated employee, or partner of the fiduciary. However, if such individual is a director of the Lender, and if he or she abstains from participation in, and is not otherwise involved with, the decision made by the Covered Plan to invest in the Fund, then this condition shall be deemed satisfied.*" [emphasis added]

In addition, the Department has added a definition of the term "officer" in Section III(E) of the exemption to more narrowly define the number of individuals who could be covered by such term.

Finally, with respect to Section III(D) of the Notice, the Bank states that the word "with" should be inserted after the phrase "in conjunction" and before the phrase "the Investor Consent." The Department acknowledges the Bank's comment and has inserted the word "with" as indicated in Section III(D) of the exemption.

The Bank provided other minor clarifications relating to the information contained in the Summary, which do not require further changes or modifications to the operative language, conditions or definitions of the exemption. Interested persons are directed to the Bank's letter of November 19, 2003, contained in the exemption application file #D-11147, which is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Janet L. Schmidt of the Department, at telephone (202) 693-8540. (This is not a toll-free number.)

**Lodgian, Inc. 401(k) Plan and Trust Agreement (the Plan), Located in Atlanta, Georgia**

[Prohibited Transaction Exemption No. 2004-03; Application No. D-11180]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 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 December 3, 2002, to (1) the past acquisition and holding by the Plan of certain warrants (the Warrant(s)) issued by Lodgian, Inc. (Lodgian), a party in interest with respect to the Plan, which would permit the purchase of new common stock (New Lodgian Stock); (2) the cancellation payment (the Cancellation Payment) by Lodgian to the Plan in exchange for the Warrants (i) at

the election of active participants (ii) at the election of the terminated vested participants whose vested interests exceed \$5,000, or (iii) in accordance with the procedures for the automatic cash out of the value of Warrants held in the accounts of terminated vested participants whose vested interests are \$5,000 or less, for an amount that represents the highest value of the Warrants determined by an independent, qualified, appraiser between December 31, 2002 and the date of the individual election; (3) the sale of the Warrants from Plan participants to Lodgian to cash out active and terminated vested participants; and (4) the potential exercise of the Warrants into the New Lodgian Stock. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The acquisition and holding of the Warrants by the Plan occurred in connection with Lodgian's bankruptcy proceeding (the Bankruptcy);

(b) The Plan had no ability to affect the Plan of Reorganization filed by Lodgian on December 20, 2001 under Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code), or the First Amended Plan of Reorganization, subsequently filed under the Bankruptcy Code by Lodgian on November 1, 2002 (The First Amended Plan of Reorganization);

(c) The Warrants were acquired automatically and without any action on the part of the Plan;

(d) The Warrants were acquired by the Plan with the same terms and conditions as non-Plan shareholders;

(e) The Plan did not pay any fees or commissions in connection with the acquisition of the Warrants;

(f) Any decision to cancel the Warrants and accept a Cancellation Payment from Lodgian will be made by the participant in the case of active participants and terminated vested participants whose vested interests exceed \$5,000;

(g) The Warrants have been and will continue to be valued annually on the 31st of December by an independent, qualified, appraiser;

(h) With Respect to those Plan participants who cash out the Warrants, the value of the Warrants will be determined by using the highest value determined by an independent, qualified, appraiser between December 31, 2002 and the most recent valuation date prior to the date of the distribution;

(i) An independent fiduciary will monitor the Cancellation Payments, and confirm the valuation of the Warrants;

(j) Lodgian is required to purchase the Warrants upon request by a Plan participant provided that on the day of the request the price of the New Lodgian Stock is less than the exercise price of the Warrants; and

(k) If the Warrant is listed on an established trading market Lodgian is not required to purchase the Warrant from the Plan.

**EFFECTIVE DATE:** This exemption is effective as of December 3, 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 September 29, 2003 at 68 FR 56013.

**FOR FURTHER INFORMATION CONTACT:** Khalif Ford of the Department, telephone (202) 693-8540 (this is not a toll-free number).

**Bangs, McCullen, Butler, Foye & Simmons, L.L.P. Employees Profit Sharing Plan (the Plan) Located in Rapid City, South Dakota**

[Prohibited Transaction Exemption 2004-04; Exemption Application No. D-11198]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 1, 2004, to the proposed lease by the Plan (the New Lease) of certain improved real property (the Property) located in Rapid City, South Dakota, to Bangs, McCullen, Butler, Foye & Simmons, L.L.P. (the Employer), the sponsor of the Plan, and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

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

(B) The New Lease is a triple net lease under which the Employer is obligated to pay for all costs of maintenance, repair, and taxes related to the Property;

(C) The interests of the Plan for all purposes under the New Lease are represented by an independent fiduciary, Wells Fargo Bank, N.A., Rapid City, South Dakota;

(D) The rent paid by the Employer under the New Lease is no less than the fair market rental value of the Property; and

(E) If the summary appraisal of the Property, due in mid-December 2003, contains a fair market rental value that is higher than the current fair market rental value set forth in the New Lease, the Employer will amend the New Lease to pay the Plan the higher amount, retroactive to January 1, 2004.

**EFFECTIVE DATE:** This exemption is effective as of January 1, 2004.

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 December 17, 2003 at 68 FR 70308.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department, telephone (202) 693-8540.

#### 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 10th day of February, 2004.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 04-3415 Filed 2-13-04; 8:45 am]

**BILLING CODE 4510-29-P**

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-53,949]

##### **American Fast Print LTD, U.S. Finishing Division, Greenville, South Carolina; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 6, 2004 in response to a petition filed on behalf of workers at American Fast Print LTD, U.S. Finishing Division, Greenville, South Carolina.

The three petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 30th day of January 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-3316 Filed 2-13-04; 8:45 am]

**BILLING CODE 4510-30-P**

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-54,000]

##### **Arkansas Catfish Growers, Hollandale, Mississippi; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 14, 2004 in response to a petition filed by the company on behalf of workers at Arkansas Catfish Growers, Hollandale, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 23rd day of January, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-3321 Filed 2-13-04; 8:45 am]

**BILLING CODE 4510-30-P**

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-53,847]

##### **Chicago Rawhide, Franklin, North Carolina; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 19, 2003, in response to a petition filed by a company official on behalf of workers at Chicago Rawhide, Franklin, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of January, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-3327 Filed 2-13-04; 8:45 am]

**BILLING CODE 4510-30-P**

#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-53,094]

##### **Eastman Machine Company Buffalo, New York; Notice of Negative Determination Regarding Application for Reconsideration**

By application of December 4, 2003, the United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 936 requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on November 6, 2003 and published in the **Federal Register** on November 28, 2003 (68 FR 66877).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;