Register pursuant to section 6(b) of the Act on December 21, 2009 (74 FR 67903).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–6268 Filed 3–23–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture Under Tip Award No. 70NANB10H014 To Perform Project Entitled: Automated Nondestructive Evaluation and Rehabilitation System (ANDERS) for Bridge Decks

Notice is hereby given that, on January 28, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the Act"), the Joint Venture under TIP Award No. 70NANB10H014 to Perform Project Entitled: Automated Nondestructive Evaluation and Rehabilitation System ("ANDERS") for Bridge Decks has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Rutgers, the State University of New Jersey, New Brunswick, NJ; Drexel University, Philadelphia, PA; PD–LD, INC., Pennington, NJ; Mala GeoScience USA, Inc., Charleston, SC; and Pennoni Associates Inc., Philadelphia, PA. The general area of ANDERS' planned activity is to provide a uniquely comprehensive tool that will transform the manner in which bridge decks are assessed and rehabilitated, and to provide a unique tool that enables the sustainable management of aging bridge stock through (1) a much higher evaluation detail and comprehensiveness of detection at an early stage 2 deterioration for far less cost and time than traditional approaches or fragmented NDE, (2) comprehensive condition and structural assessment (including the understanding of effects of local deterioration on global performance) at all stages of deterioration, and (3) integrated assessment and rehabilitation that will be nondestructive, rapid, cost effective and implementable at all stages of deterioration.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–6260 Filed 3–23–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on High-Efficiency Dilute Gasoline Engine II

Notice is hereby given that, on February 18, 2010, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute—Cooperative Research Group on High-Efficiency Dilute Gasoline Engine II ("HEDGE II") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ford Motor Company, Dearborn, MI; Valeo Systemes de Controle Moteur, Cergy Pontoise, FRANCE; and Navistar, Melrose Park, IL have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HEDGE II intends to file additional written notifications disclosing all changes in membership.

On February 19, 2009, HEDGE II filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 2, 2009 (74 FR 15003).

The last notification was filed with the Department of Justice on December 10, 2009. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 27, 2010 (75 FR 4423).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–6257 Filed 3–23–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2010–08; Exemption Application No. L–11575]

Grant of Individual Exemption Involving Ford Motor Company, Located in Detroit, MI

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption.

This document contains a final exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). The transactions involve the UAW Ford Retirees Medical Benefits Plan (the Ford VEBA Plan) and its funding vehicle, the UAW Retiree Medical Benefits Trust (the VEBA Trust), (collectively the VEBA).[1]

DATES: *Effective Date:* This exemption is effective as of December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Warren Blinder, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8553. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 8, 2009, the Department published a notice of proposed individual exemption in the **Federal Register** at 74 FR 64716 from the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of ERISA. The proposed exemption was requested in an application filed by the Ford Motor Company (Ford or the Applicant) pursuant to section 408(a) of ERISA and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR

[1] Because the Ford VEBA Plan will not be qualified under section 401 of the Internal Revenue Code of 1986, as amended (the Code), there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under Title I of the Act.

32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is being issued solely by the Department.

Background

On February 13, 2006, Ford and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the UAW) and a class of Ford retirees entered into a settlement agreement (the Hardwick I Settlement Agreement) in the case of *Int'l Union, UAW, et al.* v. *Ford Motor Company,* Civil Action No. 05–74730, 2006 WL 1984363 (E.D. Mich. July 13, 2006). The case was brought to contest whether Ford had the right to unilaterally modify hourly retiree welfare benefits for hourly retirees who had been represented by the UAW. Under the terms of the Hardwick I Settlement Agreement, benefits provided under a new plan were to be paid from a voluntary employees' beneficiary association (the Mitigation VEBA) controlled by a committee independent of Ford. The Mitigation VEBA was to be funded by Ford through cash and other payments, and by contributions from active Ford employees through wage deferrals and the diversion of cost-of-living adjustments.

In light of deteriorating global economic conditions and the significant impact on Ford's financial health by retiree health care funding obligations, in 2007 Ford announced its intention to terminate retiree health care coverage for UAW represented employees and retirees and its plan to terminate the Hardwick I Settlement Agreement, effective in 2011. As a result, on November 9, 2007, the UAW and a class of retirees (the 2007 Class) filed suit against Ford in the United States District Court for the Eastern District of Michigan (the District Court), challenging Ford's unilateral right to alter retiree health benefits and asserting that such benefits were vested. See *Int'l Union, UAW, et al.* v. *Ford Motor Company,* Civil Action No. 07–14845, 2008 WL 4104329 (E.D. Mich. Aug. 29, 2008).

Following a series of negotiations, Ford and the UAW agreed to a proposed settlement (the Hardwick II 2008 Settlement Agreement, otherwise referred to as the 2008 Settlement Agreement), under which Ford's obligations for providing post-retirement medical benefits to the 2007 Class and a group of Ford active employees eligible for retiree benefits (the 2007 Covered Group) would be terminated and the Ford VEBA Plan would be established and maintained by an independent committee (the Committee).[2] Pursuant to the 2008 Settlement Agreement, the Ford VEBA Plan would be funded by the VEBA Trust, which would be responsible for the payment of post-retirement medical benefits to members of the 2007 Class and the 2007 Covered Group. Furthermore, under the terms of the 2008 Settlement Agreement, coverage and operations for the Ford VEBA Plan would commence on the day following the "Implementation Date," or January 1, 2010. Ford also agreed to transfer assets to the VEBA Trust on behalf of the Ford VEBA Plan with an estimated worth of $13.2 billion, based on a present value as of December 31, 2007.

On July 23, 2009, Ford, the UAW, and Class Counsel entered into an agreement to amend the 2008 Settlement Agreement (the Amendment Agreement) by providing, *inter alia,* that Ford could use Ford common stock (Ford Common Stock) to pay up to approximately 50% of certain future obligations to the VEBA Trust on behalf of the Ford VEBA Plan. The revised settlement agreement (the 2009 Settlement Agreement) took effect on November 9, 2009, upon the District Court's issuance of an "Order and Final Judgment" granting approval to the Amendment Agreement, including approval of the amendment to the trust agreement for the VEBA Trust and certification of the class under the modified class definition.[3]

The 2009 Settlement Agreement obligates Ford to contribute to the VEBA Trust, on behalf of the Ford VEBA Plan, the following deposits or remittances: (a) The balance in a temporary asset account created under the 2008 Settlement Agreement (the TAA) as of the date of transfer or, at Ford's discretion, cash in lieu of some or all of the investments in the TAA, (b) two promissory notes issued by Ford in an aggregate principal amount of $13.2 billion (New Note A and New Note B, and collectively, the New Notes), (c) warrants to acquire 362,391,305 shares of Ford Common Stock, at a par value of $.01 and at a strike price of $9.20 per share (the Warrants), and (d) any shares of Ford Common Stock transferred by Ford in settlement of its payment obligation under New Note B (Payment Shares). In addition, Ford is obligated to direct the trustee of the Existing Internal VEBA (as defined below) to transfer to the VEBA Trust all assets in the Existing Internal VEBA or cash in an amount equal to the Existing Internal VEBA balance on the date of transfer. Furthermore, the District Court's Order and Final Judgment directed the committee of the Mitigation VEBA, or the trustee of the Mitigation VEBA, to transfer the assets of such plan to the VEBA Trust.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption on or before January 21, 2010. During the comment period, the Department received three (3) telephone inquiries and thirteen (13) written comments from interested persons on the proposed exemption. Of the written comments received, ten (10) were submitted by participants in the Ford VEBA Plan. Ford, counsel for the Committee, and Independent Fiduciary Services (IFS), the independent fiduciary for the Ford VEBA Plan (the Independent Fiduciary), submitted the remaining comments. The Department received no hearing requests during the comment period.

Several of the written comments and callers supported the adoption of the exemption. In this regard, the UAW, along with Class Counsel, reviewed Ford's application for exemption and expressed support for the application and stated their belief that the transactions which are the subject of the exemption are in the best interest of the Ford VEBA Plan's participants and beneficiaries. Furthermore, the Department received written comments from Ford, the Committee, and IFS, which supported the exemption and requested certain modifications and/or clarifications regarding the exemption.

Following is a discussion of the aforementioned comments, including the responses made by Ford or the Department to address the issues raised therein.

Participant Comments

The telephone inquiries received by the Department from participants in the Ford VEBA Plan related primarily to the commenters' difficulty in understanding the notice of proposed exemption or the effect of the exemption on the commenters' benefits, including a concern that the 2009 Settlement Agreement was too advantageous to Ford and would not ensure that benefit levels would remain affordable for all retirees.

[2] See *Ford Motor Co.,* 2008 WL 4104329.

[3] See *Int'l Union, UAW, et al.* v. *Ford Motor Company,* Civil Action No. 07–14845, (E.D. Mich. Nov. 9, 2009) (Doc. # 71, Order and Final J.).

With respect to the written comments received by the Department from Ford VEBA Plan participants, the majority of commenters neither supported nor opposed the exemption but instead raised other concerns which were beyond the scope of the exemption. Such comments related to the perceived unfair treatment of retirees within the UAW; lack of bargaining power of retirees in the settlement negotiation process between Ford, the UAW, and Class Counsel; and concerns about the rising costs of maintaining healthcare coverage under the Ford VEBA Plan. However, several commenters did raise concerns that were relevant to the Department's consideration of the final exemption.

One commenter questioned whether, when Ford returns to profitability, participants in the Ford VEBA Plan would benefit from any increase in the health benefits of active UAW members that may be earned as a result of negotiations between the UAW and Ford with respect to future labor contracts. A second commenter was concerned that the amount of employer securities contributed by Ford to the VEBA Trust was "inherently insecure and unstable," in light of the volatility in the stock markets. The commenter also asked whether Ford would provide additional funding to the Ford VEBA Plan if the fair market value of Ford Common Stock declines, and what else Ford had done to ensure that the securities will maintain their value.

Ford's Response to Participant Comments

In responding to both of the commenters' concerns, Ford initially observes that the funding of the VEBA Trust was not unilaterally determined by Ford, but rather was the product of a prolonged and intense negotiation among Ford, the UAW (representing active employees), and Class Counsel (representing retirees). Ford contends that, although no party got everything it wanted, all three parties were ultimately satisfied that the 2009 Settlement Agreement was the best one that they could achieve under the circumstances. Otherwise, Ford points out that no agreement would have been reached. As Ford notes, the 2009 Settlement Agreement was also approved by a Federal court, which had to satisfy itself that the 2009 Settlement Agreement was fair, reasonable, and adequate, and was in the best interests of the retiree Class.

In responding to the first commenter's concerns, Ford contends that the fundamental deal reached by the parties is that Ford will make the payments specified by the 2009 Settlement Agreement at the times specified by the agreement, to an independent VEBA (*i.e.,* the VEBA Trust) over which it has no authority. Ford notes that, in exchange, its obligation to pay for retiree health care is extinguished, and instead, the VEBA Trust will establish and administer a welfare plan that will provide Ford retirees with health care benefits.

Ford explains that under this structure, the health care benefits to be provided to retirees by the VEBA Trust are completely separate from the health care benefits to be provided to active employees by Ford. Neither Ford nor the UAW has the ability to adjust retiree health benefits. Rather, notes Ford, retiree health benefits are set by the Committee of the VEBA Trust in the interest of present and future retirees within the Covered Group whose health care will be funded by the VEBA Trust. Ford explains that, if Ford and the UAW were to agree on improved benefits for active employees, the Committee could consider increasing benefit levels, but would not have to do so.

In sum, Ford represents that its responsibility is to provide no more or no less than the agreed-upon funding for the VEBA Trust. Ford remarks that, what the Committee of the Ford VEBA Plan does with those funds, including how much health care coverage to provide for retirees, is a matter for the Committee to decide, and not Ford.

In responding to the second commenter, Ford explains that, as a condition of agreeing to accept employer securities in lieu of cash, the UAW and Class Counsel negotiated a number of provisions designed to protect the VEBA Trust. Ford notes that, for example, the VEBA Trust is provided with "registration rights," to aid the Independent Fiduciary in divesting the Ford securities that are paid into the VEBA Trust. In addition, Ford makes it clear that the 2009 Settlement Agreement sets forth several specific conditions under which Ford is prevented from exercising its option to make contributions in Ford Common Stock.

Moreover, Ford explains that its option to contribute securities instead of cash is itself a form of protection for the VEBA Trust. As Ford notes, its continued commercial viability is necessary to ensure that the VEBA Trust is fully funded. Ford asserts that permitting it to make contributions in Ford Common Stock rather than cash gives Ford the flexibility to avoid cash payments in low liquidity environments. Moreover, Ford maintains that it is not in anyone's interest to compel a payment that pushes Ford into insolvency, thereby jeopardizing the New VEBA's funding going forward.

With respect to the second commenter's concern regarding market volatility, Ford notes that its option to contribute shares of Ford Common Stock does not have a fixed share price, but rather fluctuates with the market. Ford explains that, specifically, it must pay the number of shares equal in value to the amount of the cash payment it was obligated to make, calculated using a share price derived from an average of recent market prices. If Ford's share price is down, observes Ford, it must pay proportionally more shares of Ford Common Stock to the VEBA Trust to satisfy its payment obligation. According to Ford, the Independent Fiduciary can then assess the market—acting solely in the interest of the VEBA Trust (and thus, of retirees)—to determine whether to continue to hold Ford Common Stock, thereby giving the VEBA Trust the advantage of any appreciation, or whether to sell it, using the registration rights noted above.

Ford reiterates that it will pay what it is obligated to do so under the 2009 Settlement Agreement, and whether that obligation is settled in more or fewer securities is a function of Ford's market price. Ford notes that it does not have an obligation to "true-up" the Ford VEBA Plan. If, for example, the price of Ford Common Stock falls before the VEBA Trust disposes of the securities, Ford explains that the parties have agreed that the other rights possessed by the VEBA Trust and the Independent Fiduciary are sufficient to protect the VEBA Trust. In addition, Ford notes that it is paying $25 million extra under New Note A in each year where there is a payment date under New Note B. Ford maintains that this additional amount was designed to compensate the VEBA Trust for any costs in selling shares of Ford Common Stock and for any short term risk of stock price volatility.

In sum, Ford represents that it, the UAW, and the Class Counsel, on behalf of retirees, agreed that giving Ford the option to pay part of its payment obligation to the VEBA Trust with employer securities was in the long term interest of the VEBA Trust, Ford retirees, and Ford, given the protections that were put in place to protect the VEBA Trust from downside risk.

Ford's Comment

The Department also received a written comment from Ford, which provides factual corrections and supplemental information regarding the 2009 Settlement Agreement and events occurring after the date on which the proposed exemption was published in the **Federal Register**. The comment also requests the modification of certain operative language of the proposed exemption. Furthermore, Ford's comment requests the Department's confirmation relating to the party in interest status of the Existing Internal VEBA and modifications regarding the duties and responsibilities of the Committee and the Independent Fiduciary.

A. Supplemental Information Regarding Implementation of the 2009 Settlement Agreement

1. *Name Change of the LLC.* Ford represents that, on December 1, 2009, the name of its wholly-owned limited liability company, "Ford-UAW Holdings LLC" (the LLC), was changed to "VEBA–F Holdings LLC." As is described in Representation 8, on pages 64720—64721 of the Summary of Facts and Representations of the proposed exemption (the Representations, and each individually, a Representation), Ford established the LLC to hold the assets in the TAA, the New Notes, the Warrants, and any Payment Shares transferred by Ford in settlement of its first payment obligation under New Note B. Under the 2009 Settlement Agreement, Ford had the option to transfer its wholly owned interest in the LLC (the LLC Interest) to the VEBA Trust in lieu of transferring the assets inside the LLC. According to Ford, the name was changed in advance of Ford's transfer of the LLC Interest to the VEBA Trust on behalf of the Ford VEBA Plan because Ford's trademark policy prohibits Ford from transferring an entity with "Ford" in its name to an unaffiliated party.

2. *Execution of Agreements and Exchange of Notes.* As described in Representation 9, on page 64721 of the proposed exemption, the 2009 Settlement Agreement provides that the "Term Note,"[4] "Convertible Note,"[5] "TAA Note"[6] and the right to future "Base Amount Payments,"[7] will be exchanged for the New Notes and Warrants, in accordance with the terms of the Security Exchange Agreement (the Exchange Agreement) among Ford, certain subsidiary guarantors, and the LLC.[8]

Ford represents that, on December 11, 2009, Ford, the LLC, and certain subsidiary guarantors entered into the Exchange Agreement. On the same date, Ford and the LLC also entered into the Securityholder and Registration Rights Agreement, and Ford and ComputerShare Trust Company N.A. (Ford's transfer agent) entered into an agreement (the Warrant Agreement) to effect the transfer of the Warrants to the VEBA Trust. In accordance with the 2009 Settlement Agreement and the Exchange Agreement, Ford issued New Note A, New Note B, certain guaranties, and the Warrants to the LLC on December 31, 2009 in exchange for the Convertible Note, the Term Note, and the TAA Note. Upon the exchange, the Convertible Note, the Term Note, and the TAA Note were cancelled. The Department notes the foregoing updates and additional representations.

3. *Payments Under New Note A and New Note B.* On page 64721 of the proposed exemption, Representation 9 describes the payment schedule under the New Notes which Ford is obligated to follow unless Ford elects to prepay the amounts due thereunder. Ford represents that, on December 31, 2009, with respect to New Note A, it paid to the LLC the payment due on that date of $1,268,470,000, the payment of an estimated "True-Up Amount" of $150,000,000,[9] and a partial prepayment of New Note A in the amount of $500,000,000. Furthermore, Ford represents that it also paid $609,950,000 in cash to the LLC on December 31, 2009 in accordance with the terms of New Note B.

According to Ford, it determined to make the $500,000,000 prepayment on New Note A in order to retire some of its most expensive debt, and, as a result, improve its balance sheet. Ford maintains that this prepayment was beneficial to the Ford VEBA Plan, both as a creditor and as a shareholder of Ford.

Consequently, Ford notes that in accordance with the terms of New Note A, described in Representation 10 of the proposed exemption, on page 64722, each future principal payment on New Note A, beginning with the June 30, 2010 payment, will be reduced proportionately to reflect the prepayment made on December 31, 2009. As a result, the payment schedule under the New Notes has been modified as follows to reflect the foregoing payments:

Payment date	Payment of note A	Payment of note B
June 30, 2010	$249.45 million	$609.95 million
June 30, 2011	249.45 million	609.95 million
June 30, 2012	584.06 million	654 million
June 30, 2013	584.06 million	654 million
June 30, 2014	584.06 million	654 million
June 30, 2015	584.06 million	654 million
June 30, 2016	584.06 million	654 million
June 30, 2017	584.06 million	654 million
June 30, 2018	584.06 million	654 million
June 30, 2019	22.36 million	26 million
June 30, 2020	22.36 million	26 million
June 30, 2021	22.36 million	26 million

[4] The Term Note, issued by Ford in April 2008 and due January 1, 2018, was issued in the original principal amount of $3.0 billion and bears 9.50% interest per annum, which is payable semi-annually.

[5] The Convertible Note, issued by Ford in April 2008 and due January 1, 2013, was issued with an aggregate principal amount of $3.3 billion and bears 5.75% interest per annum, which is payable semi-annually.

[6] The TAA Note was issued by Ford to the LLC in late 2008 under the 2008 Settlement Agreement in exchange for a payment of $2.282 billion, the value of the assets in the TAA as of December 31, 2008. The TAA Note had an interest rate of 9% per annum and a maturity date of December 31, 2009.

[7] The Base Amount Payments are annual payments of $52.3 million that Ford is obligated to make for 15 years to the VEBA Trust under the 2008 Settlement Agreement.

[8] Upon the exchange, the aggregate principal amount of the New Notes and the amortization thereof represent the equivalent value of (a) the principal amounts of and interest payments on the Term Note, the Convertible Note and the TAA Note; (b) any unpaid Base Amount Payments; and (c) an additional $25 million per year during the period 2009 through 2018, which is intended to cover transaction costs the Ford VEBA Plan incurs in selling any shares of Ford Common Stock delivered pursuant to Ford's exercise of the stock settlement option under New Note B.

[9] Under the terms of New Note A, Ford is obligated to pay to the LLC a "True-up Amount," calculated according to a formula provided in the TAA Note, to reflect a hypothetical investment return on the TAA assets paid to Ford in exchange for the TAA Note. Based on year-end returns available after December 31, 2009, Ford determined that the final True-Up Amount due under New Note A is $150,000,000.

Payment date	Payment of note A	Payment of note B
June 30, 2022	22.36 million	26 million

4. *Transfer of Certain Assets to the VEBA Trust.* Ford represents that, at the close of business on December 31, 2009, it exercised its right under the 2009 Settlement Agreement, as described in Representation 15.a.(1), on pages 64724–64725 of the proposed exemption, to transfer the LLC Interest to the VEBA Trust in order to satisfy its contractual obligations thereunder. Ford notes that the unaudited fair market value of assets in the TAA Account as of December 31, 2009, excluding New Notes A and B and the Warrants, was $768,716,494.20.

Ford also represents that it caused certain assets of the Existing Internal VEBA to be transferred to the VEBA Trust upon the close of business on December 31, 2009 in satisfaction of its obligations under the 2009 Settlement Agreement, described in Representation 13, on page 64724 of the proposed exemption. Ford notes that the unaudited fair market value of the assets in the Existing Internal VEBA as of December 31, 2009 was $3,517,847,429.91.

Furthermore, Ford represents that, in accordance with the 2009 Settlement Agreement, as described in Representation 15.c.(2) on pages 64726–64727 of the proposed exemption, the Existing Internal VEBA retained $850,000, which may be used for outstanding fees owed by the Existing External VEBA to its investment managers. Ford notes further that after these outstanding expenses are satisfied, any remaining funds will be transferred to the VEBA Trust.

In response to the above referenced comments, the Department has revised the name of the LLC in Section VII(l) of the final exemption. In addition, the Department takes note of the foregoing clarifications and updates to the Representations.

B. Comments on the Summary of Facts and Representations

1. *Factual Corrections.* Ford maintains that certain statements in the Representations attributed to the Applicant are not accurate. Specifically, Ford notes that in Representation 3, the definition of the term "Covered Group" appearing on page 64718 of the proposed exemption in the last sentence of the first full paragraph in the second column, inaccurately states that the 2009 Settlement Agreement expanded the members included in the definition of the 2007 Covered Group. Instead, according to Ford, the definition of the "Covered Group" reduced the number of members in the 2007 Covered Group as certain of these members retired since the 2008 Settlement Agreement and became members of the expanded Class.

In addition, Ford suggests that, on page 64721 of the proposed exemption, in Representation 9, the amortization schedule for New Note A should have included the "True-Up Amount" that was due on December 31, 2009. As noted above, the final True-Up Amount was calculated to be $150,000,000 and paid by Ford to the LLC on December 31, 2009.

In response to these comments, the Department takes note of the foregoing clarifications and updates to the Representations.

2. *Status of Existing Internal VEBA as a "Party in Interest".* As described on page 64724 of the proposed exemption, in Representation 13, the Existing Internal VEBA was the subaccount of the Ford-UAW Benefits Trust previously maintained by Ford as a source of funding for retiree health care expenses. As of December 31, 2008, the Existing Internal VEBA had an estimated asset value of approximately $2.7 billion. Until the Existing Internal VEBA's assets were transferred to the VEBA Trust, the assets were invested in a manner consistent with its investment policy.

As described above, on December 31, 2009, Ford directed the trustee of the Existing Internal VEBA to transfer to the VEBA Trust all assets in the Existing Internal VEBA or cash in an amount equal to the Existing Internal VEBA balance on the date of the transfer. The Existing Internal VEBA retained an amount equal to the Existing Internal VEBA's share of expenses (to the extent permitted by ERISA) subject to reconciliation with actual expenses incurred.

In its exemption application, Ford stated that it believed that any deposits, remittances or asset transfers between the VEBA Trust and the Existing Internal VEBA do not implicate any prohibited transactions under section 406(a) of ERISA because the Existing Internal VEBA is not a "party in interest" as defined under section 3(14) of ERISA, with respect to the Ford VEBA Plan. The VEBA Trust and the Ford VEBA Plan were established by the UAW Ford Retirees Employees' Beneficiary Association (the Ford EBA), an employees' beneficiary organization within the meaning of section 3(4) of ERISA, acting through the Committee.

Ford requests that the Department confirm that the Existing Internal VEBA was not a "party in interest" with respect to the Ford VEBA Plan at the time the trustee of the Existing Internal VEBA transferred assets to the VEBA Trust in accordance with the terms of the 2009 Settlement Agreement based on its analysis of section 3(14) of ERISA. In this regard, Ford explains that the Existing Internal VEBA was a "voluntary employees' beneficiary association" and a tax-exempt trust authorized by section 501(c)(9) of the Code. Ford also explains that the Existing Internal VEBA was governed by the Ford-UAW Benefits Trust Master Trust Agreement between Ford Motor Company and The Northern Trust Company and that the Existing Internal VEBA is managed by the Asset Management department of Ford Motor Company through various third party managers. In addition, Ford examined the party in interest provisions under section 3(14) of ERISA and concludes that the Existing Internal VEBA and the Ford VEBA Plan would not fit any of the party in interest relationships that are described therein with respect to each other.

Based upon Ford's representations that neither VEBA was a fiduciary or service provider to the other or is otherwise described in any of the other categories of party in interest under section 3(14) of ERISA, the Department is of the view that neither the Existing Internal VEBA nor the Ford VEBA Plan is a party in interest with respect to each other. Based upon Ford's representations, the transfer of assets from the Existing Internal VEBA to the Ford VEBA Plan was not a prohibited sale, exchange or transfer of assets between a plan and a party in interest under section 406(a) of ERISA.

C. Comments on the Operative Language

1. *Covered Transactions.* On page 64730 of the proposed exemption, Section I(b) provides exemptive relief for the sale of Ford Common Stock held by the Ford VEBA Plan to Ford in accordance with the Right of First Offer or a Ford self-tender under the Securityholder and Registration Rights Agreement. However, Ford notes that the Securityholder and Registration Rights Agreement provides that Ford

may purchase Payment Shares or *Warrants,* that the VEBA Trust intends to transfer to third parties in accordance with the Right of First Offer or a Ford self-tender. Moreover, Representation 12.c of the proposed exemption, on page 64724, also states that the Right of First Offer applies to "Warrants, Payment Shares or shares of Ford Common Stock received upon the exercise of all or a portion of the Warrants."

To ensure that the final exemption aligns with the description in the Representations, as well as with the substantive underlying documents themselves, Ford requests that Section I(b) of the proposed exemption be revised as follows:

If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(b)(1), and 406(b)(2) of ERISA shall not apply, effective December 31, 2009, to the sale of Ford Common Stock or Warrants held by the Ford VEBA Plan to Ford in accordance with the Right of First Offer or a Ford self-tender under the Securityholder and Registration Rights Agreement.

The Department acknowledges the fact that Warrants were inadvertently excluded from Section I(b) of the proposed exemption. As such, the Department concurs with Ford's requests to modify Section I(b), and conforming changes have been made to the final exemption.

2. *Definitions.* Ford suggests that certain definitions should be added to Section VII of the final exemption or modified for clarity and to reflect the occurrence of certain events prescribed by the 2009 Settlement Agreement. Specifically, Ford suggests that the following definition for "Payment Shares" be added in the final exemption to the Definitions in Section VII, because the term is not defined and it is an element of the previously defined term "Securities":

The term "Payment Shares" means any shares of Ford Common Stock issued by Ford to satisfy all or a portion of its payment obligation under New Note B, subject to the terms and conditions specified in New Note B.

Ford also requests that the following definitions in Section VII be modified in the final exemption to correct the effective dates, and updated to reflect recent events described in Section A above:

The term "Exchange Agreement" means the Security Exchange Agreement among Ford, the subsidiary guarantors listed in Schedule I thereto, and the LLC, dated as of December 11, 2009.

The term "LLC" means the Ford-UAW Holdings LLC, established by Ford as a wholly-owned LLC, and subsequently renamed VEBA–F Holdings LLC, established to hold the assets in the TAA and certain other assets required to be contributed to the VEBA under the 2008 Settlement Agreement, as amended by the 2009 Settlement Agreement.

The term "Securityholder and Registration Rights Agreement" means the Securityholder and Registration Rights Agreement by and among Ford and the LLC, dated as of December 11, 2009.

The Department concurs with the above referenced additions and modifications to Section VII of the proposed exemption, and it has made conforming changes to the final exemption.

3. *Conditions.* Ford notes that on pages 64730—64731 of the proposed exemption, Section II provides "Conditions Applicable to Section I(a) and I(b)" that relate to the duties and responsibilities of the Committee and the Independent Fiduciary. Ford requests that, to the extent the parallel conditions proposed in both General Motor Corporation's and Chrysler LLC's proposed individual exemptions [10] are substantively modified in a manner affecting Ford's proposed exemption, conforming modifications will be made to the conditions proposed for Ford.

The Department concurs with Ford's request to conform modifications of the operative language in Section II of the proposed exemption relating to the functions of the Committee and the Independent Fiduciary.

The Committee's Comment

The Committee submitted a written comment that was supportive of the proposed exemption, and suggests certain modifications to the operative language of the proposed exemption and the Representations. The Committee's comment letter also relates to the respective roles of the Independent Fiduciary and any investment banks retained by the Independent Fiduciary with respect to the Securities held by the VEBA Trust.

A. Modifications to Summary of Facts and Representations

1. *Number of Investment Banks.* As illustrated on page 64718 of the proposed exemption, Representation 4 states that the trust agreement for the VEBA Trust provides for separate retiree accounts designed to segregate payments attributable to GM, Chrysler, and Ford, pursuant to the terms of each company's settlement agreement with the UAW and each respective class (the Separate Retiree Accounts). As described on page 64728 of the proposed exemption, in Representation 16, the Committee represented that, in the event that a single Independent Fiduciary represents two or more Separate Retiree Accounts:

A separate investment bank will be retained with respect to each of the three plans comprising the VEBA Trust. The investment bank's initial recommendations will be made solely with the goal of maximizing the returns for the single plan that owns the securities for which the investment bank is responsible.

In its initial discussions with the Department, the Committee made the argument that the arrangement for retention of separate investment banks would minimize the likelihood of an immediate transactional conflict inherent wherein one Independent Fiduciary managing more than one Separate Retiree Account would be immediately confronted by the need to dispose of the securities of each company.

The Committee has retained IFS as the Independent Fiduciary with respect to the Securities, and has currently retained separate independent fiduciaries with respect to the GM and Chrysler Separate Retiree Accounts. As noted, however, it is conceivable that at some future date any or all three Independent Fiduciary engagements may be consolidated and the foregoing conditions would then come into play. In such event, the Committee argues that the requirement for different investment banks for each Separate Retiree Account would not be in the interest of the Ford VEBA Plan and would not advance the goal of reducing potential fiduciary conflicts. The Committee contends that the need to retain multiple investment banks should be at the discretion of the Independent Fiduciary and the investment banks themselves, or that such requirement should be limited to investment banks performing a traditional underwriting role and being paid on a transactional basis, not those retained for ongoing valuation or investment consulting services.[11]

[10] See Section II–Conditions Applicable to Section I(a), Notice of Proposed Individual Exemption Involving General Motors Corporation, Located in Detroit, MI, 74 FR 47963, September 18, 2009; Section II–Conditions Applicable to Section I(a), Notice of Proposed Individual Exemption Involving Chrysler LLC, Located in Auburn Hills, MI, 74 FR 51182, October 5, 2009.

[11] The Committee suggests that an investment bank performing valuation or investment consulting and advisory services will often be paid a flat or asset-based fee, while an investment bank performing underwriting and brokerage services will be paid a transaction-based fee as a percentage of the overall sale. Additionally, the Committee notes that it is not anticipated that the Independent Fiduciary likely would retain a separate consulting and advisory firm for day-to-day advice (unless appropriate).

The Committee points out that, as a threshold matter, the term "investment bank" or "investment banker" is not a precise term, but refers to a range of services including investment valuation, investment consulting and advice, and brokerage or underwriting performed under the authority and supervision of one or more regulators (including, but not limited to the Federal Reserve and/or the SEC). The Committee maintains that typically, though not necessarily, an investment bank engaged to provide a regular valuation will not be the same as an investment bank engaged to assist the Independent Fiduciary in connection with a large private sale or an initial public offering, and even in the latter event, different investment banks may be employed for different markets (public versus private, international versus domestic, institutional versus retail).

The Committee suggests that, particularly in the case of an investment bank engaged only to provide valuation or investment advice, the Independent Fiduciary may conclude that there is no potential conflict in retaining a single investment bank with respect to two or more Separate Retiree Accounts. Furthermore, the Committee believes that retaining a single investment bank may in fact provide potential benefits in the form of experience, cost savings, and communication.

The Committee proffers that Ford, Chrysler, and GM are at vastly different stages of marketability, are competing for capital in different markets (including public versus private), and are not competing against each other so much as they are part of a huge global automobile market with many other competitors.[12] The Committee notes that a conflict could arise in the unlikely event that the Independent Fiduciary proposes to sell large blocks of stock of two or more car companies in the same market at the exact same time. In that case, the Committee suggests that the Independent Fiduciary would probably (though not necessarily) engage separate investment bankers at that time to underwrite the sales. Furthermore, the Committee contends that it would maintain safeguards to mitigate the risk of conflicts. For example, the Committee notes that it would still appoint a conflicts monitor and perform its own monitoring of the Independent Fiduciary, and it would continue to raise any questions about potential conflicts.

Accordingly, the Committee proposes that, on page 64728 of the proposed exemption, Representation 16 should be revised, to replace the text referenced above, as follows:

> In the event that a single Independent Fiduciary is retained to represent two or more plan Accounts, and it proposes to sell Securities from two or more such Accounts at the same time, a separate investment bank (if any) will be retained for each Account with respect to the marketing or underwriting of the Securities. For this purpose, an investment bank will be considered as having been retained to market or underwrite securities if it is compensated on the success of the offering and/or as a percentage of the offering or sales proceeds. The foregoing does not preclude the engagement of a single investment bank to provide valuation services or long-term investment consulting on behalf of two or more plan Accounts, provided that (1) the fees of the investment bank are not contingent upon the success or size of an offering or sale, and (2) for each plan Account, the investment bank's recommendations are made solely with the goal of maximizing the returns for such Account.

In addition, the Committee explains that there may be some confusion as to whether two different Independent Fiduciaries may retain the same investment bank. The Committee states that there should be no limitations on the number of investment banks that the Independent Fiduciary must retain other than general fiduciary principles. According to the Committee, although it is unlikely that an Independent Fiduciary would consider, or that an investment bank would accept, an engagement that might involve marketing securities of two different companies in the same market at the same time, it would not be unusual, for instance, to retain the same investment bank to make a private offering of securities in the domestic market and a public offering of different securities in a foreign market, where such investment bank is best qualified to do so.

Accordingly, the Committee suggests that Representation 16 of the proposed exemption be modified to include the following:

> To the extent that two Accounts are represented by different Independent Fiduciaries, nothing herein shall prohibit the Independent Fiduciaries from retaining the same investment bank with respect to the Accounts which they manage if they determine that it is in the interest of their respective Accounts to do so.

The Department concurs with the Committee that, in the event that one Independent Fiduciary represents two or more (Separate Retiree) Accounts, and it proposes to sell Securities from two or more such Separate Retiree Accounts at the same time, then a separate investment bank (if any) will be retained for each Separate Retiree Account with respect to the marketing or underwriting of the Securities. Notwithstanding the above, nothing in the final exemption would preclude the Independent Fiduciary of two or more Separate Retiree Accounts from retaining the same investment banker to provide valuation services or long-term investment consulting on behalf of two or more of such Separate Retiree Accounts.[13] Lastly, with respect to the Committee's suggestion that, to the extent that two Separate Retiree Accounts are represented by different Independent Fiduciaries, nothing herein shall prohibit the Independent Fiduciaries from retaining the same investment bank with respect to the Separate Retiree Accounts which they manage if they determine that it is in the interest of their respective Separate Retiree Accounts to do so, the Department is of the view that a separate investment bank (if any) must be retained to represent each such Separate Retiree Account with respect to the marketing or underwriting of the Securities. Therefore, subject to these limitations, the Department concurs with the Committee's requested clarifications.

2. *Reporting Deviations From an Investment Bank's Recommendations.* If a single Independent Fiduciary is retained with respect to more than one Separate Retiree Account, on page 64728 of the proposed exemption, Representation 16 provides that the Independent Fiduciary shall report each instance in which it proposes to "deviate" from a "recommendation" of the investment bank. The Committee initially represented to the Department that such arrangement would help to minimize the likelihood of a conflict inherent in retaining one Independent Fiduciary to manage the securities of more than one Separate Retiree Account.

However, the Committee now proffers that this requirement may not be practical, in light of information gained

[12] According to the Committee, the most likely reason that an investment bank would propose going to market under this scenario is if the overall market itself is booming, such that there is ample appetite for the securities. In the event that a plan needs liquidity in a falling market, the Committee is more likely to explore other options, including reducing benefits or seeking alternative sources of capital such as through borrowing.

[13] In reaching the Department's conclusion, it is our understanding, based on the Committee's representations, that the fees paid to a single investment bank to provide valuation services or long-term investment consulting on behalf of two or more Separate Retiree Accounts will not be contingent upon the success or size of an offering or sale, and for each Separate Retiree Account, the investment bank's recommendations are made solely with the goal of maximizing the returns for such Account.

during the process of interviewing and selecting the Independent Fiduciaries in connection with the Ford, GM, and Chrysler exemption applications. The Committee notes that, typically, an investment bank will not "recommend" a single, specific course of action, but through a dialogue with the Independent Fiduciary will present, discuss, modify and refine various options and scenarios that the Independent Fiduciary ultimately will use in making its decisions as a fiduciary. Thus, the Committee argues that it would not be feasible for the Independent Fiduciary to report back to the Committee when it proposes to deviate from a specific recommendation, given that interactions between the Independent Fiduciary and an investment bank generally lack a single, identifiable "recommendation" (either orally or in writing) that the Independent Fiduciary does or does not intend to follow.

Moreover, the Committee contends that some investment banker recommendations are unlikely ever to raise conflict issues. For instance, the Committee notes that an investment bank may develop a preliminary valuation of certain Ford Securities of $xx, and after thorough consideration, the Independent Fiduciary may determine that such securities are actually worth $yy. In such event, the Committee asserts that the Independent Fiduciary's valuation might be viewed as a "deviation" from the initial recommendation but is unlikely to raise any conflict vis-à-vis any Securities held by the VEBA Trust.

The Committee is also concerned that the requirement for the Committee to review the reported deviations will cause the Committee to interpose itself between the two parties before such parties have reached a consensus. In this event, the Committee is concerned that it may have an implied obligation to substitute its judgment for that of the Independent Fiduciary.

The Department concurs with the Committee's comment that their initial representation that the Independent Fiduciary would report any deviations from the recommendation of the investment bank raises operational issues. Nevertheless, the Department notes that the Independent Fiduciary and the Committee are not relieved from their fiduciary duties under ERISA in carrying out their respective responsibilities. There may be circumstances where the Independent Fiduciary has a responsibility under ERISA to inform the conflicts monitor or the Committee of a deviation from the investment bank's recommendations, and the Committee, as part of its oversight responsibility, may need to take appropriate action based on such disclosure. Subject to the caveat above, the Department takes note of these clarifications and updates to the Summary of Facts and Representations of the proposed exemption.

3. *Ford's right to defer payments under New Note B.* The Committee suggests that the description of Ford's ability to defer payments in respect of New Note B, set out in Representation 9.b. in the middle column of page 64722 (beginning with "Furthermore * * *") may be inaccurate. The proposed exemption provides that, on each New Note B payment date, subject to satisfaction of all of the "Stock Settlement Conditions" (as described in the proposed exemption), Ford has the option to settle any or all of the amount due with respect to New Note B with Ford Common Stock designated as "Payment Shares." The proposed exemption further provides that:

* * * if on any payment date under New Note B, conditions 1., 2., 3., 5., and 6. are met, then, subject to certain limitations, Ford would generally have the right to defer such payment by paying it in up to five equal annual installments beginning with the next scheduled payment date, with interest accruing at 9% beginning on the date such payment was originally due and continuing through the date such payment is made. Thus, Ford may make such payment (or installment thereof) in common stock on any deferred installment date if all the conditions for payment in common stock have been met on such date.

The Committee suggests that the above paragraph describing Ford's ability to defer payments in respect of New Note B, set out on page 67422 of the proposed exemption, should be revised to provide the following:

Furthermore, if on any payment date under New Note B, all of the foregoing Stock Settlement Conditions other than conditions 4., 7. and/or 8. are met, then, subject to certain conditions, Ford would generally have the option to defer such payment and to pay it in up to five equal annual installments on the first through fifth anniversaries of such payment date together with interest at the rate of 9% from the date such payment was originally due through the applicable installment payment date. On each such installment payment date, if all of the Stock Settlement Conditions are then satisfied, Ford will have the option to pay the installment by delivering Payment Shares with the number of Payment Shares to be so delivered determined based on the volume-weighted average selling price per shares of Ford Common Stock for the 30 trading day period ending on the second business day prior to such installment payment date.

The Department concurs with the Committee's suggested revision to the proposed exemption, and takes note of the foregoing clarifications and updates to the Representations.

B. *Requests for Confirmation*

1. *Conditions Applicable in the Event That the Committee Appoints a Single Independent Fiduciary.* The Committee's comment requested confirmation that certain terms and conditions described in the Representations on page 64728, and incorporated into Sections II(b)(1) through (3) on page 64731, of the proposed exemption would apply only if and to the extent that the same Independent Fiduciary is appointed to represent two or more Separate Retiree Accounts.

Sections II(b)(1) through (3) of the proposed exemption provide that the Committee will take certain steps to mitigate potential conflicts of interest, including the appointment of a conflicts monitor, the adoption of procedures to facilitate prompt replacement of the Independent Fiduciary due to a conflict of interest, the adoption of a written policy by the Independent Fiduciary regarding conflicts, and the periodic reporting of actual or potential conflicts. Additionally, on page 64728 of the proposed exemption, Representation 16 provides that a separate investment bank will be retained with respect to each Separate Retiree Account, and in the event that the Independent Fiduciary deviates from the "initial recommendations" of an investment bank, "it would find it necessary to explain why it deviated from a recommendation."

The Department concurs with the Committee, that the terms and conditions described above will apply only if and to the extent that the same Independent Fiduciary is appointed to represent two or more Separate Retiree Accounts. Notwithstanding the above, nothing in the final exemption would preclude the Committee from adopting procedures similar to those described in Sections II(b)(1) through (3) of the proposed exemption in furtherance of its oversight responsibilities. However, the Department believes that the requirement that the Independent Fiduciary retain separate investment banks with respect to each Separate Retiree Account, subject to the limitations described above, applies regardless of how many Separate Retiree Accounts are represented by the same Independent Fiduciary.

2. *Investment Bank's Acknowledgement that the VEBA Trust is its Ultimate Client.* On page 64731 of the proposed exemption, Section II(e) provides that "any contract between the

Independent Fiduciary and an investment banker includes an acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA Plan." In assisting the Department in formulating the conditions of the proposed exemption, the Committee represented to the Department that such acknowledgement would be helpful in the event that the Committee is forced to replace the Independent Fiduciary (such as in the event of an irreconcilable conflict). The Committee reasoned that this requirement would ensure that, in the event the Independent Fiduciary was replaced, the investment banker would continue to represent the plan and work with the replacement Independent Fiduciary.

After conducting interviews and consulting with numerous parties in its search for an independent fiduciary to manage the Securities received by the Ford VEBA Plan, the Committee has raised concerns regarding such condition. The Committee has requested that the Department confirm that this condition will not cause the investment bank to become a fiduciary or otherwise obligate the investment bank or the Independent Fiduciary to provide to the Committee any of the investment bank's work-product except upon request, nor will it obligate the Committee to request or review any such work product. The Committee contends that the Independent Fiduciary is both a named fiduciary and an investment manager, thus it should be free within the parameters of its contract to determine what information it shares with the Committee.

The Department confirms that the requirement that the investment banker acknowledge that its ultimate client is the Ford VEBA Plan will not, by itself, make the investment banker a fiduciary of the Ford VEBA Plan. Rather, whether an investment banker referred to in Section II of the proposed exemption becomes a fiduciary as a result of its provision of services depends on whether it meets the definition of a "fiduciary" as set forth in section 3(21) of ERISA and the regulations promulgated thereunder.

3. *Obligation of the Committee to Review the Investment Banker Reports.* As described in Representation 16, on page 64728 of the proposed exemption, several safeguards are provided to reduce the risk of conflict in the event that a single independent fiduciary is retained with respect to more than one Retiree Separate Account. Specifically, in assisting the Department to formulate these procedures, the Committee had suggested that a "conflicts monitor" would develop a process for identifying potential conflicts. As a result, the Department added Section II(b)(1)(ii) of the proposed exemption, which provides that a conflicts monitor appointed by the Committee "regularly review the… investment banker reports… to identify the presence of factors that could lead to a conflict."

After conducting interviews with candidates for the Independent Fiduciary position, the Committee has raised a concern regarding the conflicts monitor's duties. The Committee has requested confirmation that Section II(b)(1)(i) does not independently impose any obligation on the Committee to provide (or request) "investment banker reports" as a matter of course (*i.e.,* beyond ERISA's general fiduciary requirements). In its comment letter, the Committee notes that it may be appropriate for the conflicts monitor or the Committee (or any subcommittee with delegated authority) to review investment banker reports when provided to them by the Independent Fiduciary, or to request such reports under certain circumstances. However, the Committee maintains that such reports may contain information that is confidential or proprietary, or preliminary, or simply irrelevant to its responsibilities. Furthermore, according to the Committee, it is not clear what constitutes a "report," with the result that informal notes and/or emails may fall under the definition.

The Department concurs with the Committee that Section II(b)(1)(ii) of the proposed exemption does not independently impose an affirmative obligation on the Committee to provide (or request) "investment banker reports" as a matter of course beyond ERISA's general fiduciary requirements.

IFS' Comment

IFS submitted a written comment that is supportive of the proposed exemption, and seeks written clarification and confirmation from the Department as to the scope of the exemptive relief provided under the proposed exemption with respect to certain transactions involving Securities held by the Ford VEBA Plan.

A. *Exchange of Warrants for Warrants*

Section I(a)(1)-(5), on page 64730 of the proposed exemption, provides relief for the acquisition and holding of Securities by the Ford VEBA Plan and its funding vehicle, the VEBA Trust, from the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a) of ERISA if the proposed exemption is granted by the Department. Additionally, on page 64730 of the proposed exemption, Section I(a)(6) provides relief for the disposition of Securities by the Independent Fiduciary, if the exemption is granted. For these purposes, Section VII(q) and Section VII(z), on page 64733 of the proposed exemption, define "Securities" and "Warrants," respectively, as "the New Note A, the New Note B, the Warrants, the LLC Interest, any Payment Shares, and additional shares of Ford Common Stock acquired pursuant to the Independent Fiduciary's exercise of the Warrants," and as "warrants to acquire shares of Ford Common Stock, par value $0.01 per share, issued by Ford."

IFS requests clarification as to whether the aforementioned relief extends to warrants issued by Ford or Ford Common Stock acquired and held by the Ford VEBA Plan as a result of the disposition of all or some of the Securities of a like type (*e.g.,* warrant for warrant or stock for stock) (In-Kind Ford Securities) by the Independent Fiduciary in exchange for some or all of the Securities. IFS posits that the same question arises in the context of a disposition of Warrants by the Independent Fiduciary in a transaction in which the consideration the Ford VEBA Plan receives consists in whole or in part of In-Kind Ford Securities that constitute Ford issued warrants.

IFS notes that it may determine that it is in the interest of the Ford VEBA Plan's participants and beneficiaries to sell certain Warrants in exchange for a combination of cash and other Ford issued warrants.[14] IFS explains that the warrants [given by Ford] would have a fair market value no less than the fair market value of the Warrants the Ford VEBA Plan is selling.[15] For example, IFS suggests that it may find it in the interest of the Ford VEBA Plan and its participants and beneficiaries to sell a Warrant to Ford in exchange for cash and a replacement warrant of shorter/longer duration or with a different strike price. In this example, IFS highlights three transactions; namely, (1) the disposition of Warrants by IFS in its role as the Independent Fiduciary in favor of other Ford issued warrants, (2) the acquisition of the new warrants by the Ford VEBA Plan, and (3) the holding of

[14] IFS states that any such transaction would be entered into only after IFS has met all the conditions precedent to entering into such a transaction as set forth in Section II of the proposed exemption, including, but not limited to, determining that the transaction is feasible, in the best interests of the Ford VEBA Plan, and protective of the participants and beneficiaries of the Ford VEBA Plan.

[15] IFS notes that for this purpose, it would seek the advice of an investment advisor to determine value.

these warrants by the Ford VEBA Plan. IFS is seeking confirmation from the Department that each of these In-Kind Ford Securities and like transactions, assuming the transactions otherwise meet the conditions set forth in Section II of the proposed exemption, would fall within the exemptive relief contemplated under the proposed exemption.[16]

More specifically, IFS is seeking confirmation that what it has defined as "other Ford issued warrants" would fall within the definitions of Securities and warrants, as applicable, for purposes of the proposed exemption. IFS states that inclusion of such warrants in the definitions of Securities and Warrants is critical inasmuch as the warrants will themselves be subject to future transactions as IFS seeks to dispose of these securities in a manner that is consistent with its duties to the Ford VEBA Plan and its participants and beneficiaries.

B. *Securities Acquired in Connection With a Corporate Transaction*

In addition to the transactions discussed above, IFS requests clarification whether the proposed exemption would cover Ford Common Stock or Warrants acquired in connection with a corporate transaction, restructuring or other change in capital structure of Ford (such Securities hereinafter referred to as after-acquired securities). IFS notes that, under this scenario, the Ford VEBA Plan would receive after-acquired securities in exchange for, or with respect to, all or some of the Securities of like kind then held by the Ford VEBA Plan due to a corporate transaction, restructuring, or other change in Ford's capital structure.[17]

As noted in Representation 16 of the proposed exemption, on page 64727, the Independent Fiduciary does not have authority to vote Ford Common Stock. Thus, IFS notes that it would have little, if any, ability to affect the negotiation and ultimate approval of any such corporate transaction. Moreover, IFS suggests that the Department has previously issued relief from sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a) of ERISA for the disposition of securities by an independent fiduciary as well as the acquisition and holding of any after-acquired securities in this type of scenario in a previous individual exemption.[18]

In response to the above referenced comments, the Department confirms that the proposed exemption provides exemptive relief for other Ford issued warrants acquired in exchange for Warrants held by the Ford VEBA Plan at the direction of the Independent Fiduciary, and such relief also extends to additional shares of Ford Common Stock or other Ford issued warrants acquired in exchange for Ford Common Stock or Warrants held by the Ford VEBA Plan in connection with a restructuring, recapitalization, merger or other corporate transaction involving Ford. Accordingly, the Department has made revisions to the definitions of "Securities" and "Warrants" in Section VII(r) and Section VII(aa), respectively, of the final exemption. In addition, the Department takes note of the foregoing clarifications and updates to the Representations.

The Department has carefully considered the issues expressed by the commenters in their written comments, including the issues raised by the individuals who had telephoned the Department. After consideration of the commenters' concerns and documentation provided, the Department does not believe that any material factual issues have been raised which would require the convening of a public hearing. Further, after giving full consideration to the entire record, including the comments, the Department has determined to grant the exemption, subject to the modifications and clarifications described herein.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption that was published in the **Federal Register** on December 8, 2009 at 74 FR 64716. 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. L–11575) 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 Employee Benefits Security Administration, Room N–1513, US Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The written comments may also be viewed online at *http://www.regulations.gov,* at Docket ID Number: EBSA–2009–0026.

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 ERISA does not relieve a fiduciary or other party in interest from certain other provisions of ERISA, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA, 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 ERISA;

(2) In accordance with section 408(a) of ERISA, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the Ford VEBA Plan and of its participants and beneficiaries; and

(c) The exemption is protective of the rights of participants and beneficiaries participating in the Ford VEBA Plan; and

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, 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.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Exemption

Section I. Covered Transactions

(a) The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a) of ERISA shall not apply, effective December 31, 2009, to:

(1) The acquisition by the UAW Ford Retirees Medical Benefits Plan (the Ford

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[16] IFS notes that it is not suggesting that transactions which would fundamentally alter the terms of the Settlement Agreement are being contemplated, nor is IFS seeking to bring any such transactions within the scope of the Proposed PTE.

[17] IFS notes that certain corporate transactions are contemplated under the Warrants such that on the occurrence of the transaction the exercise price available to the Ford VEBA Plan would be adjusted. See, *e.g.,* Section 5.01(e) of the Warrant Agreement dated as of December 11, 2009 between Ford Motor Company and Computershare Trust Company, N.A. as Warrant Agent; See, also, Section 7.02 of the Securityholder and Registration Rights Agreement.

[18] *Calpine Corporation,* PTE 2009–01, 74 FR 3644 (January 21, 2009). See also *The Golden Comprehensive Security Program, et al.,* PTE 2002–02, 67 FR 1243 (January 9, 2002).

VEBA Plan) and its funding vehicle, the UAW Retiree Medical Benefits Trust (the VEBA Trust) of: (i) The LLC Interests; (ii) New Note A; (iii) New Note B (together with New Note A, the New Notes); and (iv) Warrants, transferred by Ford and deposited in the Ford Employer Security Sub-Account of the Ford Separate Retiree Account of the VEBA Trust.

(2) The acquisition by the Ford VEBA Plan of shares of Ford Common Stock pursuant to Ford's right to settle its payment obligations under New Note B in shares of Ford Common Stock (*i.e.,* Payment Shares), consistent with the 2009 Settlement Agreement;

(3) The acquisition by the Ford VEBA Plan of shares of Ford Common Stock pursuant to (i) the Independent Fiduciary's exercise of all or a pro rata portion of the Warrants, consistent with the 2009 Settlement Agreement and (ii) an adjustment, substitution, conversion, or other modification of Ford Common Stock in connection with a reorganization, restructuring, recapitalization, merger, or similar corporate transaction, provided that each holder of Ford Common Stock is treated in an identical manner;

(4) The holding by the Ford VEBA Plan of the aforementioned Securities in the Ford Employer Security Sub-Account of the Ford Separate Retiree Account of the VEBA Trust, consistent with the 2009 Settlement Agreement;

(5) The deferred payment of any amounts due under New Note B by Ford pursuant to the terms thereunder; and

(6) The disposition of the Securities by the Independent Fiduciary.

(b) The restrictions of sections 406(a)(1)(A), 406(b)(1), and 406(b)(2) of ERISA shall not apply, effective December 31, 2009, to the sale of Ford Common Stock or Warrants held by the Ford VEBA Plan to Ford in accordance with the Right of First Offer or a Ford self-tender under the Securityholder and Registration Rights Agreement.

(c) The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of ERISA shall not apply, effective December 31, 2009, to:

(1) The extension of credit or transfer of assets by Ford, the Ford Retiree Health Plan, or the Ford VEBA Plan in payment of a benefit claim that was the responsibility and legal obligation, under the terms of the applicable plan documents, of one of the other parties listed in this paragraph;

(2) The reimbursement by Ford, the Ford Retiree Health Plan, or the Ford VEBA Plan, of a benefit claim that was paid by another party listed in this paragraph, which was not legally responsible for the payment of such claim, plus interest;

(3) The retention of an amount by Ford until payment to the Ford VEBA Plan resulting from an overaccrual of pre-transfer expenses attributable to the TAA or the retention of an amount by the Ford VEBA Plan until payment to Ford resulting from an underaccrual of pre-transfer expense attributable to the TAA; and

(4) The Ford VEBA Plan's payment to Ford of an amount equal to any underaccrual by Ford of pre-transfer expenses attributable to the TAA or the payment by Ford to the Ford VEBA Plan of an amount equal to any overaccrual by Ford of pre-transfer expenses attributable to the TAA.

(d) The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of ERISA shall not apply, effective December 31, 2009, to the return to Ford of assets deposited or transferred to the Ford VEBA Plan by mistake, plus interest.

Section II. Conditions Applicable to Section I(a) and I(b)

(a) The Committee appoints a qualified Independent Fiduciary to act on behalf of the Ford VEBA Plan for all purposes related to the transfer of the Securities to the Ford VEBA Plan for the duration of the Ford VEBA Plan's holding of the Securities. Such Independent Fiduciary will have sole discretionary responsibility relating to the holding, ongoing management and disposition of the Securities, except for the voting of the Ford Common Stock. The Independent Fiduciary has determined or will determine, before taking any actions regarding the Securities, that each such action or transaction is in the interest of the Ford VEBA Plan.

(b) In the event that the same Independent Fiduciary is appointed to represent the interests of one or more of the other plans comprising the VEBA Trust (*i.e.,* the UAW Chrysler Retiree Medical Benefits Plan and/or the UAW General Motors Company Retiree Medical Benefits Plan) with respect to employer securities deposited into the VEBA Trust, the Committee takes the following steps to identify, monitor and address any conflict of interest that may arise with respect to the Independent Fiduciary's performance of its responsibilities:

(1) The Committee appoints a "conflicts monitor" to: (i) develop a process for identifying potential conflicts; (ii) regularly review the Independent Fiduciary reports, investment banker reports, and public information regarding the companies, to identify the presence of factors that could lead to a conflict; and (iii) further question the Independent Fiduciary when appropriate.

(2) The Committee adopts procedures to facilitate prompt replacement of the Independent Fiduciary if the Committee in its sole discretion determines such replacement is necessary due to a conflict of interest.

(3) The Committee requires the Independent Fiduciary to adopt a written policy regarding conflicts of interest. Such policy shall require that, as part of the Independent Fiduciary's periodic reporting to the Committee, the Independent Fiduciary includes a discussion of actual or potential conflicts identified by the Independent Fiduciary and options for avoiding or resolving the conflicts.

(c) The Independent Fiduciary authorizes the trustee of the Ford VEBA Plan to dispose of the Ford Common Stock (including any Payment Shares or any shares of Ford Common Stock acquired pursuant to exercise of the Warrants), the LLC Interests, the New Notes, or exercise the Warrants, only after the Independent Fiduciary determines, at the time of the transaction, that the transaction is feasible, in the interest of the Ford VEBA Plan, and protective of the participants and beneficiaries of the Ford VEBA Plan.

(d) The Independent Fiduciary negotiates and approves on behalf of the Ford VEBA Plan any transactions between the Ford VEBA Plan and any party in interest involving the Securities that may be necessary in connection with the subject transactions (including but not limited to the registration of the Securities contributed to the Ford VEBA Plan).

(e) Any contract between the Independent Fiduciary and an investment banker includes an acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA plan.

(f) The Independent Fiduciary discharges its duties consistent with the terms of the Ford VEBA Plan, the Trust Agreement, the Independent Fiduciary Agreement, and any other documents governing the Securities, such as the Registration Rights Agreement.

(g) The Ford VEBA Plan incurs no fees, costs or other charges (other than described in the Trust Agreement, the 2009 Settlement Agreement, and the Securityholder and Registration Rights Agreement) as a result of the transactions exempted herein.

(h) The terms of any transaction exempted herein are no less favorable to the Ford VEBA Plan than the terms negotiated at arms' length under similar circumstances between unrelated parties.

Section III. Conditions Applicable to Section I(c)(1) and I(c)(2)

(a) The Committee and the Ford VEBA Plan's third party administrator will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the Ford VEBA Plan's independent auditor. The results of this review will be made available to Ford.

(b) Ford and the applicable third party administrator of the Ford Active Health Plan will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the plan's independent auditor. The results of this review will be made available to the Committee.

(c) Interest on any reimbursed mispayment will accrue from the date of the mispayment to the date of the reimbursement.

(d) Interest will be determined using the applicable 6 month published LIBOR rate.

(e) If there is a dispute as to the amount, timing or other feature of a reimbursement payment, the parties will enter into the Dispute Resolution Procedure found in Section 26B of the 2009 Settlement Agreement and described further in Section VII(c) herein.

Section IV. Conditions Applicable to Section I(c)(3) and I(c)(4)

(a) Ford and the Committee will cooperate in the calculation and review of the amounts of expense accruals related to the TAA, and the amount of any overaccrual shall be made subject to the review of an independent auditor selected by Ford and the amount of any underaccrual shall be made subject to the review of the Ford VEBA Plan's independent auditor.

(b) Ford must make a claim for any underaccrual to the Committee, and the Committee must make a claim for any overaccrual to Ford, as applicable, within the Verification Time Period, as defined in Section VII(z).

(c) Interest on any true-up payment will accrue from the date of transfer of the assets in the TAA (or the LLC containing the TAA) for the amount in respect of the overaccrual or underaccrual, as applicable, until the date of payment of such true-up amount.

(d) Interest will be determined using the published six month LIBOR rate.

(e) If there is a dispute as to the amount, timing or other feature of a true-up payment in respect of TAA expenses, the parties will enter into the Dispute Resolution Procedure found in Section 26B of the 2009 Settlement Agreement and described further in Section VII(c) herein.

Section V. Conditions Applicable to Section I(d)

(a) Ford must make a claim to the Committee regarding the specific deposit or transfer made in error or made in an amount greater than that to which the Ford VEBA Plan was entitled.

(b) The claim is made within the Verification Time Period, as defined in Section VII(z).

(c) Interest on any mistaken deposit or transfer will accrue from the date of the mistaken deposit or transfer to the date of the repayment.

(d) Interest will be determined using the published six-month LIBOR rate.

(e) If there is a dispute as to the amount, timing or other feature of a mistaken payment, the parties will enter into the Dispute Resolution Procedure found in Section 26B of the 2009 Settlement Agreement and described further in Section VII(c) herein.

Section VI. Conditions Applicable to Section I

(a) The Committee and the Independent Fiduciary maintain for a period of six years from the date (i) the Securities are transferred to the Ford VEBA Plan, and (ii) the shares of Ford Common Stock are acquired by the Ford VEBA Plan through the exercise of the Warrants or Ford's delivery of Payment Shares in settlement of its payment obligations under New Note B, the records necessary to enable the persons described in paragraph (b) below to determine whether the conditions of this exemption have been met, provided that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Committee and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Committee or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under ERISA section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (b) below; and

(b) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of ERISA, the records referred to in paragraph (a) above shall be unconditionally available at their customary location during normal business hours to:

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

(2) The UAW or any duly authorized representative of the UAW;

(3) Ford or any duly authorized representative of Ford;

(4) The Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(5) The Committee or any duly authorized representative of the Committee; and

(6) Any participant or beneficiary of the Ford VEBA Plan or any duly authorized representative of such participant or beneficiary.

(c) None of the persons described above in paragraphs (b)(2), (4)–(6) shall be authorized to examine trade secrets of Ford, or commercial or financial information which is privileged or confidential, and should Ford refuse to disclose information on the basis that such information is exempt from disclosure, Ford shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section VII. Definitions

(a) The term "affiliate" means: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) any officer, director, partner, or employee in any such person, or relative (as defined in section 3(15) of ERISA) of any such person; or (3) any corporation, partnership or other entity of which such person is an officer, director or partner. (For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual).

(b) The "Committee" means the eleven individuals consisting of six independent members and five UAW appointed members who will serve as the plan administrator and named fiduciary of the Ford VEBA Plan.

(c) The term "Dispute Resolution Procedure" means the process found in Section 26B of the 2009 Settlement Agreement to effectuate the resolution of any dispute respecting the transactions described in Sections I(c)(1), (c)(2), (c)(3), (c)(4), and (d) herein, and which reads in pertinent part: (1) The aggrieved party shall provide the party alleged to have violated the 2009 Settlement Agreement (Dispute Party) with written notice of such dispute, which shall include a description of the alleged violation and identification of the Section(s) of the 2009 Settlement Agreement allegedly violated. Such notice shall be provided so that it is received by the Dispute Party no later than 180 calendar days from the date of the alleged violation or the date on which the aggrieved party knew or should have known of the facts that give rise to the alleged violation, whichever is later, but in no event longer than 3 years from the date of the alleged violation; and (2) If the Dispute Party fails to respond within 21 calendar days from its receipt of the notice, the aggrieved party may seek recourse to the District Court; provided however, that the aggrieved party waives all claims related to a particular dispute against the Dispute Party if the aggrieved party fails to bring the dispute before the District Court within 180 calendar days from the date of sending the notice. All the time periods in Section 26 of the 2009 Settlement Agreement may be extended by agreement of the parties to the particular dispute.

(d) The term "Exchange Agreement" means the Security Exchange Agreement among Ford, the subsidiary guarantors listed in Schedule I thereto and the LLC, dated as of December 11, 2009.

(e) The term "Ford" or the "Applicant" means Ford Motor Company, located in Detroit MI, and its affiliates.

(f) The term "Ford Active Health Plan" means the medical benefits plan maintained by Ford to provide benefits to eligible active hourly employees of Ford and its participating subsidiaries.

(g) The term "Ford Common Stock" means the shares of common stock, par value $0.01 per share, issued by Ford.

(h) The term "Ford Employer Security Sub-Account of the Ford Separate Retiree Account of the VEBA Trust" means the sub-account established in the Ford Separate Retiree Account of the VEBA Trust to hold Securities on behalf of the Ford VEBA Plan.

(i) The term "Ford Retiree Health Plan" means the retiree medical benefits plan maintained by Ford that provided benefits to, among others, those who will be covered by the Ford VEBA Plan.

(j) The term "Implementation Date" means December 31, 2009.

(k) The term "Independent Fiduciary" means a fiduciary that is (1) independent of and unrelated to Ford, the UAW, the Committee, and their affiliates, and (2) appointed to act on behalf of the Ford VEBA Plan with respect to the holding, management and disposition of the Securities. In this regard, the fiduciary will be deemed not to be independent of and unrelated to Ford, the UAW, the Committee, and their affiliates if (1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with Ford, the UAW, the Committee or their affiliates, (2) such fiduciary directly or indirectly receives any compensation or other consideration from Ford, the UAW or any Committee member in his or her individual capacity in connection with any transaction contemplated in this exemption (except that an Independent Fiduciary may receive compensation from the Committee or the Ford VEBA Plan for services provided to the Ford VEBA Plan in connection with the transactions discussed herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision), and (3) the annual gross revenue received by the fiduciary, in any fiscal year, from Ford, the UAW or a member of the Committee in his or her individual capacity, exceeds 3% of the fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year.[19]

(l) The term "LLC" means the Ford-UAW Holdings LLC, established by Ford as a wholly-owned LLC, and subsequently renamed VEBA–F Holdings LLC, established to hold the assets in the TAA and certain other assets required to be contributed to the VEBA under the 2008 Settlement Agreement, as amended by the 2009 Settlement Agreement.

(m) The term "LLC Interests" means Ford's wholly-owned interest in the LLC.

(n) The term "New Note A" means the amortizing guaranteed secured note maturing on June 30, 2022, in the principal amount of $6,705,470,000, with payments to be made in cash, in annual installments from 2009 through 2022, issued by Ford and referred to in the Exchange Agreement.

(o) The term "New Note B" means the amortizing guaranteed secured note maturing June 30, 2022, in the principal amount of $6,511,850,000, with payments to be made in cash, Ford Common Stock, or a combination thereof, in annual installments from 2009 through 2022, issued by Ford and referred to in the Exchange Agreement.

(p) The term "Payment Shares" means any shares of Ford Common Stock issued by Ford to satisfy all or a portion of its payment obligation under New Note B, subject to the terms and conditions specified in New Note B.

(q) The term "published six month LIBOR rate" means the Official British Banker's Association Six Month London Interbank Offered Rate (LIBOR) 11:00am GMT "fixing" as reported on Bloomberg page "BBAM".[20]

(r) The term "Securities" means (1) New Note A; (2) New Note B; (3) the Warrants; (4) the LLC Interests, (5) any Payment Shares, and (6) additional shares of Ford Common Stock acquired in accordance with the transactions described in Sections I(a)(2) and (3) of this exemption.

(s) The term "Securityholder and Registration Rights Agreement" means the Securityholder and Registration Rights Agreement by and among Ford and the LLC, dated as of December 11, 2009.

(t) The term "2008 Settlement Agreement" means the settlement agreement, effective as of August 29, 2008, entered into by Ford, the UAW, and a class of retirees in the case of *Int'l Union, UAW, et al.* v. *Ford Motor Company,* Civil Action No. 07–14845, 2008 WL 4104329 (E.D. Mich. Aug. 29, 2008).

(u) The term "2009 Settlement Agreement" means the 2008 Settlement Agreement, as amended by an Amendment to such Settlement Agreement dated July 23, 2009, effective as of November 9, 2009, entered into by Ford, the UAW, and a class of retirees in the case of *Int'l Union, UAW, et al.* v. *Ford Motor Company,* Civil Action No. 07–14845, 2008 WL 4104329 (E.D. Mich. Aug. 29, 2008), *Order and Final Judgment Granted,* Civil Action No. 07–14845, Doc. #71, (E.D. Mich. Nov. 9, 2009).

(v) The term "TAA" means the temporary asset account established by Ford under the 2008 Settlement Agreement to serve as tangible evidence of the availability of Ford assets equal to Ford's obligation to the Ford VEBA Plan.

(w) The term "Trust Agreement" means the trust agreement for the VEBA Trust.

(x) The term "UAW" means the International Union, United

[19] The Department notes that the preceding conditions are not exclusive, and that other circumstances may develop which cause the Independent Fiduciary to be deemed not to be independent of and unrelated to Ford, the UAW, the Committee, and their affiliates.

[20] LIBOR is calculated by Thomson Reuters and published by the British Bankers' Association after 11 a.m. (and generally around 11:45 a.m.) each day (London time). It is a trimmed average of inter-bank deposit rates offered by designated contributor banks, for maturities ranging from overnight to one year. The rates are a benchmark rather than a tradable rate, the actual rate at which banks will lend to one another continues to vary throughout the day.

Automobile, Aerospace and Agricultural Implement Workers of America.

(y) The term "VEBA" means the Ford UAW Retirees Medical Benefits Plan (the Ford VEBA Plan) and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust).

(z) The term "Verification Time Period" means: (1) With respect to each of the Securities other than the payments in respect of the New Notes, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of any such Security to the Ford VEBA Plan) and ending 90 calendar days thereafter; (2) with respect to each payment pursuant to the New Notes, the period beginning on the date of the payment and ending 90 calendar days thereafter; and (3) with respect to the TAA, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of the assets in the TAA to the Ford VEBA Plan) and ending 180 calendar days thereafter.

(aa) The term "Warrants" means warrants issued by Ford to acquire 362,391,305 shares of Ford Common Stock at a strike price of $9.20 per share, expiring on January 1, 2013. For purposes of this definition, the term "Warrants" includes additional warrants to acquire Ford Common Stock acquired in partial or complete exchange for, or adjustment to, the warrants described in the preceding sentence, at the direction of the Independent Fiduciary or pursuant to a reorganization, restructuring or recapitalization of Ford as well as a merger or similar corporate transaction involving Ford (each, a corporate transaction), provided that, in such corporate transaction, similarly situated warrantholders, if any, will be treated the same to the extent that the terms of such warrants and/or rights of such warrantholders are the same.

Signed at Washington, DC, this 19th day of March, 2010.

Ivan Strasfeld,

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

[FR Doc. 2010–6458 Filed 3–23–10; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Engineering Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering, #1170.

Date/Time: April 14, 2010: 12 p.m. to 6 p.m. April 15, 2010: 8:15 a.m. to 12 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Deborah Young, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, Virginia 22230 703/292–8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda: The principal focus of the meeting on both days will be to discuss emerging issues and opportunities for the Directorate for Engineering and its divisions and review Committee of Visitors Reports.

Dated: March 19, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–6448 Filed 3–23–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0104]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 95—Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.
2. *Current OMB approval number:* 3150–0047.
3. *How often the collection is required:* On occasion.
4. *Who is required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.
5. *The number of annual respondents:* 16.
6. *The number of hours needed annually to complete the requirement or request:* 1,087 hours (938 hours reporting plus 149 hours recordkeeping).
7. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC-classified information and material.

Submit, by May 24, 2010, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2010–0104. You may submit your comments by any of the following methods. *Electronic comments:* Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0104. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 17th day of March, 2010.