

protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petition for Modification

Docket No: M–2010–017–C.

Petitioner: Brooks Run Mining Company, LLC, 208 Business Street, Beckley, West Virginia 25801.

Mine: Horse Creek No. 1 Mine, MSHA I.D. No. 46–09348, located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner proposes as an alternative method that in lieu of providing nozzles for blow-off dust covers, weekly inspection and functional testing of the complete deluge-type water spray system will be continued and blow-off dust covers will be removed from the nozzles. The petitioner states that: (1) Weekly inspection and functional tests are conducted of its complete deluge-type water spray system; (2) each nozzle is provided with a blow-off dust cover; (3) in view of the frequent inspections and functional testing of the system, the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use; and (4) it is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners as the existing standard.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–10109 Filed 4–29–10; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: 2010–13, Putnam Fiduciary Trust Company, D–11425; 2010–14, UBS Financial Services Inc. and its Affiliates (UBS), D–11502; and 2010–15, Subaru of America, Inc. (Subaru), D–11531

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

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

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

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

Statutory Findings

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

(a) The exemption is administratively feasible;

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

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

Putnam Fiduciary Trust Company (PFTC), Located in Boston, Massachusetts.

[Prohibited Transaction Exemption 2010–13; Exemption Application No. D–11425.]

Exemption

Section I—Exemption

Effective as of January 19, 2010, the restrictions of section 406(a) and (b) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to either (a) the purchase or sale by a Collective Fund (as defined in Section III(b) below) of shares of a Mutual Fund (as defined in Section III(d) below) where Putnam Fiduciary Trust Company (“PFTC” or the “Applicant”) or its affiliate (PFTC and its affiliates are referred to herein as “Putnam”) is the investment advisor of the Mutual Fund as well as a fiduciary with respect to the Collective Fund (or an affiliate of such fiduciary) or (b) the receipt of fees by Putnam from a Mutual Fund for acting as an investment advisor for the Mutual Fund and/or for providing other services to the Mutual Fund which are Secondary Services (as defined in Section III(g) below) in connection with the investment by the Collective Fund in shares of the Mutual Fund, provided that the following conditions and the general conditions of Section II are met:

(a) Each Collective Fund satisfies either (but not both) of the following:

(1) The Collective Fund receives a cash credit equal to such Collective Fund’s proportionate share of all fees charged to the Mutual Fund by Putnam for investment advisory services. Such credit shall be paid to the Collective Fund no later than the same day on which such investment advisory fees are paid to Putnam. The crediting of all such fees to the Collective Funds by Putnam is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Collective Fund. The audit report shall be completed not later than six months after the period to which it relates; or

(2) No management fees, investment advisory fees, or similar fees are paid to Putnam with respect to any of the assets of such Collective Fund that are invested in shares of the Mutual Fund. This condition does not preclude the payment of investment advisory or similar fees by the Mutual Fund to Putnam under the terms of an investment management agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the 1940 Act), nor does it preclude the payment of fees for Secondary Services to Putnam pursuant to a duly adopted agreement between Putnam and the Mutual Fund if the conditions of this exemption are otherwise met.

(b) The price paid or received by a Collective Fund for shares in the Mutual Fund is the net asset value (NAV) per share (as defined in Section III(h)) and is the same price that would have been paid or received for the shares by any other investor in the Mutual Fund at that time, and all other dealings between the Collective Funds and the Mutual Fund will be on a basis no less favorable to the Collective Fund than such dealings will be with the other shareholders of the same class of shares of the Mutual Fund.¹

(c) Putnam, including any officer or director of Putnam, does not purchase or sell shares of the Mutual Fund from or to any Collective Fund; provided that this condition shall not preclude the purchase or redemption of such shares between a Collective Fund and an affiliate of PFTC acting solely in its capacity as underwriter for the Mutual Fund, if such affiliate acts as a riskless principal, the purchase or redemption is at NAV at the time of the transaction, and the affiliate does not receive any direct or indirect compensation, spread or other consideration in connection with such purchase or redemption.

(d) No sales commissions, redemption fees, or other similar fees are paid by the Collective Funds in connection with the purchase or sale of shares of the Mutual Fund.

(e) For each Collective Fund, the combined total of all fees received by Putnam for the provision of services to the Collective Fund, and in connection with the provision of services to the Mutual Fund in which the Collective Fund may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(f) Putnam does not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions covered by this exemption.

(g) The Second Fiduciary (as defined in Section III (f) below) with respect to each plan having an interest in a Collective Fund (a "Client Plan") receives in writing, in advance of any investment by the Collective Fund in the Mutual Fund, full and detailed disclosure of information concerning

the Mutual Fund, including but not limited to: (1) A current prospectus issued by the Mutual Fund; (2) a statement describing the fees for investment advisory or similar services, any Secondary Services and all other fees to be charged to or paid by (or with respect to) the Collective Fund and by the Mutual Fund, including the nature and extent of any differential between the rates of such fees; (3) the reasons why PFTC may consider such investment to be appropriate for the Collective Fund; (4) a statement describing whether there are any limitations applicable to PFTC with respect to which Collective Fund assets may be invested in shares of the Mutual Fund and, if so, the nature of such limitations; and (5) upon request of the Second Fiduciary, a copy of both the notice of proposed exemption and a copy of the final exemption, and any other reasonably available information regarding the transactions covered by this exemption.

(h) On the basis of the information described in paragraph (g) above, the Second Fiduciary authorizes in writing the investment of assets of the Collective Fund in the Mutual Fund and the fees to be paid by the Mutual Fund to Putnam.

(i) Except as otherwise indicated in this paragraph (i), on an annual basis, Putnam will provide to the Second Fiduciary of each Client Plan having an interest in the Collective Fund: (1) a current prospectus issued by the Mutual Fund in which the Collective Fund invests, and, upon the Second Fiduciary's request, a copy of the Statement of Additional Information for such Mutual Fund that contains a description of all fees paid by the Mutual Fund to Putnam; (2) a copy of the annual financial disclosure report prepared by Putnam that includes information about the Mutual Fund portfolios, as well as audit findings of an independent auditor, within 60 days of the preparation of the report; (3) oral or written responses to inquiries of the Second Fiduciary as they arise; (4) a statement (i) of the approximate percentage (which may be in the form of a range) of the assets of the Collective Fund that were invested in the Mutual Fund during the year and (ii) that, if the Second Fiduciary objects to the continued investment by the Collective Fund in the Mutual Fund, the Client Plan may withdraw from the Collective Fund; and (5) a form (Termination Form) expressly providing an election to withdraw from the Collective Fund, together with instructions on the use of such form. The instructions will inform the Second Fiduciary that: (i) The prior

written authorization is terminable at will by the Plan, without penalty to the Plan, upon receipt by Putnam of written notice from the Second Fiduciary, and (ii) failure to return the form will result in continued authorization for Putnam to engage in the transactions described above on behalf of the Plan.

However, if the Termination Form has been provided to the Second Fiduciary pursuant to Section I(j), the Termination Form need not be provided again for an annual reauthorization pursuant to this Section I(i) unless at least six months has elapsed since the form was previously provided.

(j) Except as provided in Section I(j)(E), paragraph (h) of this Section I does not apply if:

(A) The purchase, holding and sale of Mutual Fund shares by the Collective Fund is performed subject to the prior and continuing authorization, in the manner described in this paragraph (j), of a Second Fiduciary with respect to each Client Plan whose assets are invested in the Collective Fund.

(B) (1) For each Collective Fund using the fee structure described in paragraph (a)(2) above with respect to investments in the Mutual Fund, in the event of an increase in the rate of fees paid by the Mutual Fund to Putnam regarding any investment management services, investment advisory services, or similar services that Putnam provides to the Mutual Fund over an existing rate for such services that had been authorized by a Second Fiduciary in accordance with paragraph (h) above or this paragraph (j); or

(2) For each Collective Fund under this exemption (regardless of whether the fee structure described in paragraph (a)(1) or (a)(2) is used), in the event an additional Secondary Service is provided by Putnam to the Mutual Fund for which a fee is charged, or an increase in the rate of any fee paid by the Mutual Fund to Putnam for any Secondary Service that results either from an increase in the rate of such fee or from a decrease in the number or kind of services performed by Putnam for such fee over an existing rate for such Secondary Service that had been authorized by a Second Fiduciary in accordance with paragraph (h) above or this paragraph (j):

Putnam will, at least 30 days in advance of the implementation of any direct or indirect increase in fees described in this paragraph (j), provide a written notice (which may take the form of a letter or similar communication that is separate from the prospectus of the Fund and that explains the nature and amount of the additional service for which a fee is

¹ The selection of a particular class of shares of a Mutual Fund as an investment for a Collective Fund is a fiduciary decision that must be made in accordance with the provisions of section 404(a) of the Act. In this exemption, the Department is not addressing any issues under section 404 or 406 of the Act resulting from the selection of one class of shares of a Mutual Fund over another class of shares (e.g., where there may be higher fees or prices associated with one or more of the classes of shares). Consistent with the above duties, the Applicant has represented that the Collective Fund will invest in the lowest priced class of shares in the Mutual Fund.

charged or of the increase in the rate of fee) to the Second Fiduciary of each Client Plan having an interest in the Collective Fund. Such written notice will include a Termination Form expressly providing an election to withdraw from the Collective Fund, together with instructions on the use of such form.

(C) In the event a Second Fiduciary submits a notice in writing to PFTC objecting to the initial investment by the Collective Fund in the Mutual Fund or the implementation of such additional service for which a fee is charged or such rate of fee increase, whichever is applicable, the Client Plan on whose behalf the objection was intended is given the opportunity to terminate its investment in the Collective Fund, without penalty to such Client Plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing Client Plans and to the non-withdrawing Client Plans. In the case of a Client Plan that elects to withdraw under this subparagraph (C), the withdrawal shall be effected prior to the initial investment by the Collective Fund in the Mutual Fund or the implementation of such additional service for which a fee is charged or such rate of fee increase, whichever is applicable.

(D) Notwithstanding the foregoing subparagraphs (B) and (C), Putnam may commence providing an additional Secondary Service for a fee or implement any increase in the rate of fee paid by the Mutual Fund to Putnam prior to providing the notice referred to in subparagraph (B) above or prior to the withdrawal of an objecting Client Plan, whichever is applicable, provided that, in either such event, the Collective Fund receives a cash credit equal to the fee for the additional Secondary Service or such fee increase charged to the Mutual Fund by Putnam, whichever is applicable, for the period from the date of such commencement or implementation to the later of the date that is 30 days after the notice referred to in subparagraph (B) above has been provided or, if applicable, the date on which any Client Plan that objects to the provision of such additional Secondary Service or to such fee increase has withdrawn from the Collective Fund pursuant to subparagraph (C) above. Any such cash credits shall be paid to the Collective Fund, with interest thereon at the prevailing Federal funds rate plus two percent (2%), no later than the fifth business day following the

receipt of the increased fee by Putnam.² The crediting of all such fees to the Collective Fund by Putnam will be audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees and interest to the Collective Fund. The audit report shall be completed not later than six months after the period to which it relates.

(E) In the case of a Client Plan whose assets are proposed to be invested in the Collective Fund subsequent to the implementation of the arrangement and that has not authorized the investment of assets of the Collective Fund in the Mutual Fund, the Client Plan's investment in the Collective Fund is subject to: (1) The receipt by a Second Fiduciary of the full and detailed disclosures concerning the Mutual Fund pursuant to Section I(g), above, and (2) the prior written authorization of a Second Fiduciary pursuant to Section I(h), above (*i.e.*, the authorization must be provided by such new Client Plan investor in advance of the initial investment).

(k) For each Collective Fund using the fee structure described in paragraph (a)(1) above with respect to investments in the Mutual Fund, the Second Fiduciary of the Client Plan receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by Putnam to the Mutual Fund for investment advisory services, or of a decrease in the number or kind of services performed by Putnam.

Section II—General Conditions

(a) PFTC maintains for a period of six years the records necessary to enable the persons described in paragraph (b) below to determine whether the conditions of this exemption have been met, except that:

(1) A separate prohibited transaction will not be considered to have occurred if, solely because of circumstances beyond the control of PFTC, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than Putnam shall be subject to the civil penalty that may be assessed under Section 502(i) of the Act or to the taxes imposed by Section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) below and notwithstanding any

² Putnam will pay interest on any such amounts from the date it receives such incremental amounts to the date it makes the rebate payment to the Collective Fund.

provisions of Section 504(a)(2) of the Act, the records referred to in paragraph (a) above are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities & Exchange Commission,

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of the interest in the Collective Fund owned by such Client Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Client Plan having an interest in the Collective Fund or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(ii) or (iii) above shall be authorized to examine trade secrets of Putnam, or commercial or financial information that is privileged or confidential.

Section III—Definitions

(a) An "affiliate" of a person includes:

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

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

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

(b) The term "Collective Fund" means any common or collective trust fund maintained by PFTC.

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

(d) The term "Mutual Fund" means the Putnam Money Market Liquidity Fund and any other money market fund that is a diversified open-end investment company registered under the 1940 Act and operated in accordance with Rule 2a-7 under the 1940 Act as to which Putnam serves as an investment adviser. Putnam may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other "Secondary Service" (as defined below in paragraph (g) below).

(e) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family") as that term is defined in section 4975(e)(6) of the Code, or a

brother, a sister, or a spouse of a brother or a sister.

(f) The term "Second Fiduciary" means a fiduciary of a Client Plan who is independent of, and unrelated to, Putnam. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Putnam if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Putnam;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of Putnam (or is a relative of such persons); or

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner or employee of Putnam (or a relative of such a person), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the decision of the Client Plan to invest in, and remain invested in, the Collective Fund and (ii) the granting of any authorization contemplated by Section I(h) or any deemed authorization contemplated by Section I(i) and (j) with respect to the Collective Fund, then paragraph (f)(2) above shall not apply.

(g) The term "Secondary Service" means a service other than an investment management, investment advisory, or similar service, which is provided by Putnam to the Mutual Fund, including but not limited to custodial, accounting, administrative, or any other service.

(h) The term "net asset value (*i.e.*, NAV)" means the amount for purposes of pricing all purchases and sales, calculated by dividing the value of all securities, determined by a method as set forth in a Mutual Fund's prospectus and statement of additional information, and other assets belonging to the Mutual Fund or portfolio of the Mutual Fund, less the liabilities charged to each such portfolio or Mutual Fund, by the number of outstanding shares.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 19, 2010 at 75 FR 3054.

Written Comments and Hearing Requests

The Department received one written comment letter in response to the notice of proposed exemption, which was

submitted by the Applicant. There were no requests for a hearing.

In its comment letter, the Applicant requested that the Department make three changes to the operative language of the proposed exemption. First, the Applicant asked the Department to revise section I(b) in order to reflect the possibility that a Mutual Fund might have more than one class of shares. The Department has made the requested change by adding the words, "of the same class of shares" to the condition. The Applicant also suggested that the Department clarify the language of section I(j)(B)(2), and agreed with the Department's re-wording of the condition which requires that Putnam will, at least 30 days in advance of the implementation of any direct or indirect increase in fees described in paragraph (j), provide a written notice to the Second Fiduciary of each Client Plan having an interest in the Collective Fund. Third, the Applicant asked the Department to revise section III(d) to reflect the fact that the Putnam Prime Money Market Fund is no longer in existence.

In addition, the Applicant provided the following changes and updated information for the "Summary of Facts and Representations" (the Summary) section of the proposed exemption:

(1) PFTC became a New Hampshire (not Massachusetts) trust company on April 3, 2009 and, as such, is subject to supervision by the New Hampshire Banking Department;

(2) As a result of an internal corporate reorganization, which occurred on August 3, 2007, PFTC is now a wholly-owned subsidiary of Putnam U.S. Holdings, LLC (not of Putnam, LLC). Accordingly, all references to Putnam, LLC should be read to mean Putnam U.S. Holdings, LLC;

(3) Putnam U.S. Holdings, LLC has been an indirect majority-owned subsidiary of Great-West Lifeco U.S. Inc. at all times since Great-West Lifeco U.S. Inc. acquired Putnam on August 3, 2007;

(4) In paragraph 2 of the Summary, the word "2006" should be deleted;

(5) Paragraph 5 of the Summary refers to the Putnam Prime Money Market Fund. As noted above, this fund was terminated subsequent to the filing of the exemption application. The successor to this fund is the Putnam Money Market Liquidity Fund, which was established in 2009. As a result of the foregoing, the reference in the first sentence of paragraph 5 of the Summary should be changed from Putnam Prime Money Market Fund to Putnam Money Market Liquidity Fund. The third sentence of paragraph 5 of the Summary

should be revised to state that, "The Applicant represents that since January 2006, the yields generated by the institutional money market funds managed by Putnam have generally been superior to the yield generated by the STIF"; and

(6) In paragraph 19 of the Summary, the reference to other shareholders should be to other shareholders "of the same class of shares" of the Mutual Fund.

The Department has given full consideration to the entire record, including the comment letter received. The Department has determined to grant the exemption, with the changes as noted above.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

UBS Financial Services Inc. and Its Affiliates (UBS), Located in Weehawken, New Jersey.
[Prohibited Transaction Exemption 2010-14; Exemption Application No. D-11502.]

Exemption

Section I. Transactions Involving Plans Described in Both Title I and Title II of ERISA

The restrictions of sections 406(a)(1)(A) through (D) and section 406(b) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:³

(a) The sale or exchange of an Auction Rate Security (as defined in Section IV(b)) by a Plan (as defined in Section IV(h)) to the Sponsor (as defined in Section IV(g)) of such Plan; or

(b) A lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security by the Plan, from: (1) UBS; (2) an Introducing Broker (as defined in Section IV(f)); or (3) a Clearing Broker (as defined in Section IV(d)); where the loan is: (i) repaid in accordance with its terms; and (ii) guaranteed by the Sponsor.

Section II. Transactions Involving Plans Described in Title II of ERISA Only

The sanctions resulting from the application of sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply,

³ For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:

(a) The sale or exchange of an Auction Rate Security by a Title II Only Plan (as defined in Section IV(i)) to the Beneficial Owner (as defined in Section IV(c)) of such Plan; or

(b) A lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an Auction Rate Security by the Title II Only Plan, from: (1) UBS; (2) an Introducing Broker; or (3) a Clearing Broker; where the loan is: (i) repaid in accordance with its terms and; (ii) guaranteed by the Beneficial Owner.

Section III. Conditions

(a) UBS acted as a broker or dealer, non-bank custodian, or fiduciary in connection with the acquisition or holding of the Auction Rate Security that is the subject of the transaction;

(b) For transactions involving a Plan (including a Title II Only Plan) not sponsored by UBS for its own employees, the decision to enter into the transaction is made by a Plan fiduciary who is independent (as defined in Section IV(e)). For transactions involving a Plan sponsored by UBS for its own employees, UBS may direct such Plan to engage in a transaction described in Section I if all of the other conditions of this Section III have been met. Notwithstanding the foregoing, an employee of UBS who is the Beneficial Owner of a Title II Only Plan may direct such Plan to engage in a transaction described in Section II, if all of the other conditions of this Section III have been met;

(c) The last auction for the Auction Rate Security was unsuccessful;

(d) The Plan does not waive any rights or claims in connection with the loan or sale as a condition of engaging in the above-described transaction;

(e) The Plan does not pay any fees or commissions in connection with the transaction;

(f) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(g) With respect to any sale described in Section I(a) or Section II(a):

(1) The sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(2) For purposes of the sale, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;⁴

(h) With respect to an in-kind exchange described in Section I(a) or Section II(a), the exchange involves the transfer by a Plan of an Auction Rate Security in return for a Delivered Security, as such term is defined in Section IV(j), where:

(1) The exchange is unconditional;

(2) For purposes of the exchange, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(3) The Delivered Security is valued at fair market value, as determined at the time of the in-kind exchange by a third party pricing service or other objective source;

(4) The Delivered Security is appropriate for the Plan and is a security that the Plan is otherwise permitted to hold under applicable law;⁵ and

(5) The total value of the Auction Rate Security (*i.e.*, par plus any accrued but unpaid interest) is equal to the fair market value of the Delivered Security;

(i) With respect to a loan described in Sections I(b) or II(b):

(1) The loan is documented in a written agreement that contains all of the material terms of the loan, including the consequences of default;

(2) The Plan does not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan:

(A) The coupon rate for the Auction Rate Security;

(B) The Federal Funds Rate; or

(C) The Prime Rate;

(3) The loan is unsecured; and

(4) The amount of the loan is not more than the total par value of the Auction Rate Securities held by the Plan.

of the Treasury that they are considering providing limited relief from the requirements of sections 72(t)(4), 401(a)(9), and 4974 of the Code with respect to retirement plans that hold Auction Rate Securities. The Department has also been informed by the Service that if Auction Rate Securities are purchased from a Plan in a transaction described in Sections I and II at a price that exceeds the fair market value of those securities, then the excess value would be treated as a contribution for purposes of applying applicable contribution and deduction limits under sections 219, 404, 408, and 415 of the Code.

⁵ The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a Plan fiduciary must act prudently with respect to, among other things: (1) The decision to exchange an Auction Rate Security for a Delivered Security; and (2) the negotiation of the terms of such exchange (or a cash sale or loan described above), including the pricing of such securities. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with these types of transactions following disclosure by UBS of all relevant information.

Section IV. Definitions

(a) The term "affiliate" means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" or "ARS" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) With an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term "Beneficial Owner" means: The individual for whose benefit the Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term "Clearing Broker" means: A member of a securities exchange that acts as a liaison between an investor and a clearing corporation and that helps to ensure that a trade is settled appropriately, that the transaction is successfully completed and that is responsible for maintaining the paper work associated with the clearing and executing of a transaction;

(e) The term "independent" means a person who is: (1) Not UBS or an affiliate; and (2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(f) The term "Introducing Broker" means: A registered broker that is able to perform all the functions of a broker except for the ability to accept money, securities, or property from a customer;

(g) The term "Sponsor" means: A plan sponsor as described in section 3(16)(B) of the Act and any affiliates;

(h) The term "Plan" means: Any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code;

(i) The term "Title II Only Plan" means: Any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of the Act; and

(j) The term "Delivered Security" means a security that is: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); (2) a U.S. Treasury obligation; (3) a fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (*e.g.*, a highly rated municipal bond or a highly rated corporate bond); or (4) a certificate of deposit insured by the Federal Deposit Insurance Corporation. Notwithstanding the above, the term "Delivered Security" shall not include any Auction Rate Security, or any

⁴ This exemption does not address tax issues. The Department has been informed by the Internal Revenue Service (the Service) and the Department

related Auction Rate Security, including derivatives or securities materially comprised of Auction Rate Securities or any illiquid securities.

Effective Date: This exemption is effective as of February 1, 2008.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 19, 2010 at 75 FR 3071.

For Further Information Contact: Brian Shiker of the Department, telephone (202) 693-8552. (This is not a toll-free number.)

Subaru of America, Inc. (Subaru),
Located in Cherry Hill, New Jersey.
[Prohibited Transaction Exemption
2010-15; Exemption Application No.
D-11531.]

Exemption

The restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Pleiades Insurance Company, Ltd. (PIC) in connection with an insurance contract sold by Minnesota Life Insurance Company (MN Life) or any successor insurance company to MN Life which is unrelated to Subaru, to provide group-term life insurance to employees of Subaru under the Subaru of America, Inc. Welfare Benefit Plan (the Plan), provided the following conditions are met:

(a) PIC—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Subaru that is described in section 3(14)(E) or (G) of the Act,

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act,

(3) Has a U.S. branch, the Pleiades Insurance Company Ltd. (U.S. Branch), which has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary State which has neither been revoked nor suspended,

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, the District of Columbia) by the Insurance Commissioner of the District of Columbia within 5 years prior to the end of the year preceding the year in

which the reinsurance transaction occurred, and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) In subsequent years, the formula used to calculate premiums by MN Life or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(d) The Plan only contracts with insurers with a rating of A or better from A.M. Best Company. The reinsurance arrangement between the insurer and PIC will be indemnity insurance only, *i.e.*, the insurer will not be relieved of liability to the Plan should PIC be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(e) No commissions are paid with respect to the reinsurance of such contracts; and

(f) For each taxable year of PIC, the gross premiums and annuity considerations received in that taxable year by PIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which PIC is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by PIC. For purposes of this condition (f):

(1) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by PIC. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by PIC.

(2) All premium and annuity considerations written by PIC for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 23, 2010 at 75 FR 8132.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

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

Signed at Washington, DC, this 26th day of April 2010.

Ivan Strasfeld,

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

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