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Part II

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Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions 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). This notice includes the following proposed exemptions: D–11517, JPMorgan Chase & Co. and its Current and Future Affiliates and Subsidiaries (JPMorgan Chase); D–11579, Delaware Charter Guarantee & Trust Co. d\b\a\ Principle Trust Company (Principle Trust); D–11628, Aztec Well Servicing Company and Related Companies Medical Plan Trust Fund (the Plan); D–11669, Genzyme Corporation 401(k) Plan (the Plan or the Applicant); and Retirement Program for Employees of EnPro Industries (the Plan), D–11662 *et al.*

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. *Attention:* Application No.____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or fax. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov,* or by fax to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

JPMorgan Chase & Co. and Its Current and Future Affiliates and Subsidiaries (JPMorgan Chase), Located in New York, New York

Application Number D–11517

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Sales of Auction Rate Securities From Plans to JPMorgan Chase: Unrelated to a Settlement Agreement

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in section V(e)) of an Auction Rate Security (as defined in section V(c)) to JPMorgan Chase, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in section V(f)), provided that the conditions set forth in section II have been met.

Section II. Conditions Applicable to Transactions Described in Section I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by JPMorgan Chase;

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

(c) Except in the case of a Plan sponsored by JPMorgan Chase for its own employees (a JPMorgan Chase Plan), the Unrelated Sale is made pursuant to a written offer by JPMorgan Chase (the Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to the most recent rate information for the Auction Rate Security (if reliable information is available). Either the Offer or other materials available to the Plan provide the identity and par value of the Auction Rate Security. Notwithstanding the foregoing, in the case of a pooled

[1] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

fund maintained or advised by JPMorgan Chase, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a JPMorgan Chase Plan) receives written notice regarding the Unrelated Sale, where such notice contains the material terms of the Unrelated Sale, including, but not limited to, the material terms described in the preceding sentence;

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;[2]

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in section V(d)) of JPMorgan Chase. Notwithstanding the foregoing: (1) In the case of an individual retirement account (an IRA, as described in section V(e) below) which is beneficially owned by an employee, officer, director or partner of JPMorgan Chase, or a relative of any such persons, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director, partner, or relative; or (2) in the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase, the decision to accept the Offer may be made by JPMorgan Chase after JPMorgan Chase has determined that such purchase is in the best interest of the JPMorgan Chase Plan or pooled fund;[3]

(h) Except in the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase, neither JPMorgan Chase nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) JPMorgan Chase and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that—

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than JPMorgan Chase and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of JPMorgan Chase or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

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

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraph (l)(1)(B)–(C) shall be authorized to examine trade secrets of JPMorgan Chase, or commercial or financial information which is privileged or confidential; and

(3) Should JPMorgan Chase refuse to disclose information on the basis that such information is exempt from disclosure, JPMorgan Chase 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.

Section III. Sales of Auction Rate Securities From Plans to JPMorgan Chase: Related to a Settlement Agreement

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan of an Auction Rate Security to JPMorgan Chase, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

Section IV. Conditions Applicable to Transactions Described in Section III

(a) The terms and delivery and timing of the Offer are consistent with the requirements set forth in the Settlement Agreement;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) How a Plan may determine: the Auction Rate Securities held by the Plan with JPMorgan Chase, the purchase dates for the Auction Rate Securities, and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The number of shares and par value of the Auction Rate Securities available for purchase under the Offer;

(3) The background of the Offer;

(4) That participating in the Offer will not result in or constitute a waiver of any claim of the tendering Plan;

(5) The methods and timing by which Plans may accept the Offer;

(6) The purchase dates, or the manner of determining the purchase dates, for

[2] This proposed exemption does not address tax issues. The Department has been informed by the Internal Revenue Service and the Department 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 Internal Revenue Service that if Auction Rate Securities are purchased from a Plan in a transaction described in sections I and III 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.

[3] 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 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, the decision to sell the Auction Rate Security to JPMorgan Chase for the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by JPMorgan Chase of all relevant information.

Auction Rate Securities tendered pursuant to the Offer;

(7) The timing for acceptance by JPMorgan Chase of tendered Auction Rate Securities;

(8) The timing of payment for Auction Rate Securities accepted by JPMorgan Chase for payment;

(9) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(10) The expiration date of the Offer;

(11) The fact that JPMorgan Chase may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(12) A description of the risk factors relating to the Offer as JPMorgan Chase deems appropriate;

(13) How to obtain additional information concerning the Offer; and

(14) The manner in which information concerning material amendments or changes to the Offer will be communicated to affected Plans;

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met with respect to the Settlement Sale.

Section V. Definitions

For purposes of this proposed exemption:

(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 ''control'' means: The power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term ''Auction Rate Security'' means a security that:

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

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

(d) A person is ''independent'' of JPMorgan Chase if the person is:

(1) Not JPMorgan Chase or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term ''Plan'' means: An individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of ERISA; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by ERISA section 3(42); and

(f) The term ''Settlement Agreement'' means: A legal settlement involving JPMorgan Chase and a U.S. state or federal authority that provides for the purchase of an Auction Rate Security by JPMorgan Chase from a Plan.

Effective Date: If granted, this proposed exemption will be effective as of February 1, 2008.

Summary of Facts and Representations

1. The applicant is JPMorgan Chase & Co. (hereinafter, either JPMorgan Chase or the Applicant), a financial holding company incorporated under Delaware law in 1968. JPMorgan Chase is a leading global financial services firm, with $2.0 trillion in assets, $165.4 billion in stockholders' equity, and operations in more than 60 countries as of December 31, 2009.

2. The Applicant describes Auction Rate Securities (ARS) and the arrangement by which ARS are bought and sold as follows. ARS are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

3. The Applicant states that, under a typical Dutch Auction process, JPMorgan Chase is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and routinely does so in the auction rate securities market in its sole discretion. JPMorgan Chase may place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (a) A failed auction (*i.e.,* an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate, resulting in no ARS being sold through the auction process); or (b) an auction from clearing at a rate that JPMorgan Chase believes does not reflect the market for the particular ARS being auctioned.

4. The Applicant states that for many ARS, JPMorgan Chase has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. JPMorgan Chase is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and JPMorgan Chase. That agreement provides that JPMorgan Chase will receive from the issuer auction dealer fees based on the principal amount of the securities placed through JPMorgan Chase.

5. The Applicant states further that JPMorgan Chase may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through JPMorgan Chase, for those orders that JPMorgan Chase successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than JPMorgan Chase act as dealer, such other broker-dealers may share auction dealer fees with JPMorgan Chase for orders submitted by JPMorgan Chase.

6. The Applicant represents that since February, 2008, a significant majority of auctions have been unsuccessful. According to the Applicant, the current state of the ARS market remains illiquid. As a result, Plans holding ARS may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.[4]

7. The Applicant represents further that, in certain instances, JPMorgan Chase may have previously advised or otherwise caused a Plan to acquire and hold an ARS.[5] In connection with JPMorgan Chase's role in the acquisition and holding of ARS by various JPMorgan Chase clients, including the

[4] The Department notes that Class Exemption 80–26 (45 FR 28545 (Apr. 29, 1980), as amended at 71 FR 17917 (Apr. 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a plan if, among other things, the proceeds of the loan or extension of credit are used only— (1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the plan.

[5] The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

Plans, JPMorgan Chase entered into Settlement Agreements with certain U.S. states and federal authorities. Pursuant to these Settlement Agreements, among other things, JPMorgan Chase was required to send a written offer to certain Plans that held ARS in connection with the advice and/or brokerage services provided by JPMorgan Chase. As described in further detail below, eligible Plans that accepted the written offer were permitted to sell the ARS to JPMorgan Chase for cash equal to the par value of such securities, plus any accrued interest and/or dividends. According to the Applicant, in connection with an offer issued by JPMorgan Chase pursuant to a Settlement Agreement, JPMorgan Chase has purchased approximately $2 billion dollars in ARS. The Applicant states that, prospectively, additional shares of ARS may be tendered by Plans to JPMorgan Chase pursuant to an offer issued by JPMorgan Chase pursuant to a Settlement Agreement. Accordingly, the Applicant is requesting retroactive and prospective relief for the Settlement Sales. With respect to Unrelated Sales, the Applicant states that to the best of its knowledge, as of January 1, 2011, no Unrelated Sale has occurred. However, the Applicant is requesting retroactive relief (and prospective relief) for Unrelated Sales in the event that a sale of ARS by a Plan to JPMorgan Chase has occurred outside the Settlement process. If granted, the exemption would be effective as of February 1, 2008.

8. Specifically, the Applicant is requesting exemptive relief for the sale of ARS under two different circumstances: (a) Where JPMorgan Chase initiates the sale by sending to a Plan a written offer to acquire the ARS, notwithstanding that such offer is not required under a Settlement Agreement (*i.e.,* an Unrelated Sale); and (b) where JPMorgan Chase is required under a Settlement Agreement to send to Plans a written offer to acquire the ARS (*i.e.,* a Settlement Sale). The Applicant states that the Unrelated Sales and Settlement Sales (hereinafter, either, a Covered Sale) are in the interests of Plans. In this regard, the Applicant states that the Covered Sales would permit Plans to normalize Plan investments. The Applicant represents that each Covered Sale will be for no consideration other than cash payment against prompt delivery of the ARS, and such cash will equal the par value of the ARS, plus any accrued but unpaid interest or dividends. The Applicant represents further that Plans will not pay any commissions or transaction costs with respect to any Covered Sale.

9. The Applicant represents that the proposed exemption is protective of the Plans. The Applicant states that, except in the case of a Plan sponsored by JPMorgan Chase for its own employees (a JPMorgan Chase Plan), each Covered Sale will be made pursuant to a written offer (an Offer); and the decision to accept the Offer or retain the ARS will be made by a Plan fiduciary or Plan participant or IRA owner who is independent of JPMorgan Chase. Additionally, each Offer will be delivered in a manner designed to alert a Plan fiduciary that JPMorgan Chase intends to purchase ARS from the Plan. In connection with an Unrelated Sale, the Offer will describe the material terms of the Unrelated Sale, including the most recent rate information for the ARS (if reliable information is available). Either the Offer or other materials available to the Plan will provide the identity and par value of the ARS. Offers made in connection with a Settlement Agreement will specifically include, among other things: The background of the Offer; the method and timing by which a Plan may accept the Offer; the expiration date of the Offer; a description of certain risk factors relating to the Offer; how to obtain additional information concerning the Offer; and the manner in which information concerning material amendments or changes to the Offer will be communicated to affected Plans. The Applicant states that, except in the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase, neither JPMorgan Chase nor any affiliate will exercise investment discretion or render investment advice with respect to a Plan's decision to accept the Offer or retain the ARS.[6] In the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase, the decision to engage in a Covered Sale may be made by JPMorgan Chase after JPMorgan Chase has determined that such purchase is in the best interest of the JPMorgan Chase Plan or pooled fund. The Applicant represents further that Plans will not waive any rights or claims in connection with any Covered Sale.

10. The Applicant represents that the proposed exemption, if granted, would be administratively feasible. In this regard, the Applicant notes that each Covered Sale will occur at the par value of the affected ARS, plus any accrued but unpaid interest or dividends, and such value is readily ascertainable. The Applicant represents further that JPMorgan Chase will maintain the records necessary to enable the Department and Plan fiduciaries, among others, to determine whether the conditions of this exemption, if granted, have been met.

11. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act because, among other things:

(a) Except in the case of a JPMorgan Chase Plan, each Covered Sale shall be made pursuant to a written Offer;

(b) Each Covered Sale shall be for no consideration other than cash payment against prompt delivery of the ARS;

(c) The amount of each Covered Sale shall equal the par value of the ARS, plus any accrued but unpaid interest or dividends;

(d) Plans will not waive any rights or claims in connection with any Covered Sale;

(e) Except in the case of a JPMorgan Chase Plan or a pooled fund maintained or advised by JPMorgan Chase:

(1) The decision to accept an Offer or retain the ARS shall be made by a Plan fiduciary or Plan participant or IRA owner who is independent of JPMorgan Chase; and

(2) Neither JPMorgan Chase nor any affiliate shall exercise investment discretion or render investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the ARS;

(f) Plans shall not pay any commissions or transaction costs with respect to any Covered Sale;

(g) A Covered Sale shall not be part of an arrangement, agreement or understanding designed to benefit a party in interest to the affected Plan;

(h) With respect to any Settlement Sale, the terms and delivery and timing of the Offer, and the terms of Settlement Sale, shall be consistent with the requirements set forth in the Settlement Agreement;

(i) JPMorgan Chase shall make available in connection with an Unrelated Sale the material terms of the Unrelated Sale, including the most recent rate information for the ARS (if reliable information is available), and the identity and par value of the ARS;

(j) Each Offer made in connection with a Settlement Agreement shall describe the material terms of the Settlement Sale, including the following:

(1) Information regarding how the Plan can determine: The ARS held by

[6] The Applicant states that while there may be communication between a Plan and JP Morgan Chase subsequent to an Offer, such communication will not involve advice regarding whether the Plan should accept the Offer.

the Plan with JPMorgan Chase, the number of shares and par value of the ARS, purchase dates for such ARS, and (if reliable information is available) the most recent rate information for the ARS;

(2) The background of the Offer;

(3) That participating in the Offer will not result in or constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which the Plan may accept the Offer;

(5) The purchase dates, or the manner of determining the purchase dates, for ARS pursuant to the Offer;

(6) The timing for acceptance by JPMorgan Chase of tendered ARS;

(7) The timing of payment for ARS accepted by JPMorgan Chase for payment;

(8) The methods and timing by which a Plan may elect to withdraw tendered ARS from the Offer;

(9) The expiration date of the Offer;

(10) The fact that JPMorgan Chase may make purchases of ARS outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the ARS;

(11) A description of the risk factors relating to the Offer as JPMorgan Chase deems appropriate;

(12) How to obtain additional information concerning the Offer; and

(13) The manner in which information concerning material amendments or changes to the Offer will be communicated to affected Plans.

Notice to Interested Persons

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**.

Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Chris Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Delaware Charter Guarantee & Trust Co. d\b\a\ Principal Trust Company (Principal Trust); Principal Life Insurance Company (Principal Life) and Any Affiliates, Thereof (Collectively, Principal or the Applicants), Located in Wilmington, Delaware and in Des Moines, Iowa

[Application No. D–11579].

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act and the taxes resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code, [7] shall not apply, as of the effective date of this proposed exemption, to:

(a) The receipt of a fee by Principal, as Principal is defined, below, in Section IV(a), from an open-end investment company or open-end investment companies (Affiliated Fund(s)), as defined, below, in Section IV(e), in connection with the direct investment in shares of any such Affiliated Fund, by an employee benefit plan or by employee benefit plans (Client Plan(s)), as defined, below, in Section IV(b), where Principal serves as a fiduciary with respect to such Client Plan, and where Principal:

(1) Provides investment advisory services, or similar services to any such Affiliated Fund; and

(2) Provides to any such Affiliated Fund other services (Secondary Service(s)), as defined, below, in Section IV(i); and

(b) In connection with the indirect investment by a Client Plan in shares of an Affiliated Fund through investment in a pooled investment vehicle or pooled investment vehicles (Collective Fund(s)),[8] as defined, below, in Section IV(j), where Principal serves as a fiduciary with respect to such Client Plan, the receipt of fees by Principal from:

(1) An Affiliated Fund for the provision of investment advisory services, or similar services by Principal to any such Affiliated Fund; and

(2) an Affiliated Fund for the provision of Secondary Services by Principal to any such Affiliated Fund; provided that the conditions, as set forth, below, in Section II and Section III, are satisfied, as of the effective date of this proposed exemption and thereafter.

Section II—Specific Conditions

(a)(1) Each Client Plan which is invested directly in shares of an Affiliated Fund either:

(i) Does not pay to Principal for the entire period of such investment any investment management fee, or any investment advisory fee, or any similar fee at the plan-level (the Plan-Level Management Fee), as defined, below, in Section IV(m), with respect to any of the assets of such Client Plan which are invested directly in shares of such Affiliated Fund; or

(ii) pays to Principal a Plan-Level Management Fee, based on total assets of such Client Plan under management by Principal at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any investment advisory fee and any similar fee (the Affiliated Fund-Level Advisory Fee), as defined, below, in Section IV(o), paid by such Affiliated Fund to Principal.

If, during any fee period, in the case of a Client Plan invested directly in shares of an Affiliated Fund, such Client Plan has prepaid its Plan-Level Management Fee, and such Client Plan purchases shares of an Affiliated Fund directly, the requirement of this Section II(a)(1)(ii) shall be deemed met with respect to such prepaid Plan-Level Management Fee, if, by a method reasonably designed to accomplish the same, the amount of the prepaid Plan-Level Management Fee that constitutes the fee with respect to the assets of such Client Plan invested directly in shares of an Affiliated Fund:

(A) Is anticipated and subtracted from the prepaid Plan-Level Management Fee

[7] For purposes of this proposed exemption reference to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[8] The Department, herein, is expressing no opinion in this proposed exemption regarding the reliance of the Applicants on the relief provided by section 408(b)(8) of the Act with regard to the purchase and with regard to the sale by a Client Plan of an interest in a Collective Fund and the receipt by Principal, thereby, of any investment management fee, any investment advisory fee, and any similar fee (a Collective Fund-Level Management Fee), as defined, below, in Section IV(n), where Principal serves as an investment manager or investment adviser with respect to such Collective Fund and also serves as a fiduciary with respect to such Client Plan, nor is the Department offering any view as to whether the Applicants satisfy the conditions, as set forth in section 408(b)(8) of the Act.

at the time of the payment of such fee; or

(B) is returned to such Client Plan, no later than during the immediately following fee period; or

(C) is offset against the Plan-Level Management Fee for the immediately following fee period or for the fee period immediately following thereafter.

For purposes of Section II(a)(1)(ii), a Plan-Level Management Fee shall be deemed to be prepaid for any fee period, if the amount of such Plan-Level Management Fee is calculated as of a date not later than the first day of such period.

(2) Each Client Plan invested in a Collective Fund the assets of which are not invested in shares of an Affiliated Fund:

(i) Does not pay to Principal for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(i) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Principal, based on the assets of such Client Plan invested in such Collective Fund; or

(ii) does not pay to Principal for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(ii) do not preclude the payment of a Plan-Level Management Fee by such Client Plan to Principal, based on total assets of such Client Plan under management by Principal at the plan-level; or

(iii) such Client Plan pays to Principal a Plan-Level Management Fee, based on total assets of such Client Plan under management by Principal at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee (the ''Net'' Plan-Level Management Fee), where the amount subtracted represents such Client Plan's *pro rata share* of any Collective Fund-Level Management Fee paid by such Collective Fund to Principal.

The requirements of this Section II(a)(2)(iii) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Principal, based on the assets of such Client Plan invested in such Collective Fund.

(3) Each Client Plan invested in a Collective Fund the assets of which are invested in shares of an Affiliated Fund:

(i) Does not pay to Principal for the entire period of such investment any a Plan-Level Management Fee (including any ''Net'' Plan-Level Management Fee, as described, above, in Section II(a)(2)(iii)), and does not pay to Principal for the entire period of such investment any Collective Fund-Level Management Fee with respect to the assets of such Client Plan which are invested in such Affiliated Fund; or

(ii) pays to Principal a Collective Fund-Level Management Fee, in accordance with Section II(a)(2)(i), above, based on the total assets of such Client Plan invested in such Collective Fund, from which a credit has been subtracted from such Collective Fund-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Principal by such Affiliated Fund; and does not pay to Principal for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; or

(iii) pays to Principal a Plan-Level Management Fee, in accordance with Section II(a)(2)(iii), above, based on the total assets of such Client Plan under management by Principal at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Principal by such Affiliated Fund; and does not pay to Principal for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; or

(iv) pays to Principal a ''Net'' Plan-Level Management Fee, in accordance with Section II(a)(2)(iii), above, from which a further credit has been subtracted from such ''Net'' Plan-Level Management Fee, where the amount of such further credit which is subtracted represents such Client Plan's *pro rata share* of any Affiliated Fund-Level Advisory Fee paid to Principal by such Affiliated Fund.

Provided that the conditions of this proposed exemption are satisfied, the requirements of Section II(a)(1)(i), (ii), and Section II(a)(3)(i)–(iv) do not preclude the payment of an Affiliated Fund-Level Advisory Fee by an Affiliated Fund to Principal under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the Investment Company Act). Further, the requirements of Section II(a)(1)(i)–(ii), and Section II(a)(3)(i)–(iv) do not preclude the payment of a fee by an Affiliated Fund to Principal for the provision by Principal of Secondary Services to such Affiliated Fund under the terms of a duly adopted agreement between Principal and such Affiliated Fund.

For the purpose of Section II(a)(1)(ii), and Section II(a)(3)(ii)–(iv), in calculating a Client Plan's *pro rata share* of an Affiliated Fund-Level Advisory Fee, Principal must use an amount representing the ''gross'' advisory fee paid to Principal by such Affiliated Fund. For purposes of this paragraph, the ''gross'' advisory fee is the amount paid to Principal by such Affiliated Fund, including the amount paid by such Affiliated Fund to sub-advisers.

(b) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly, and the purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold indirectly through a Collective Fund, is the net asset value per share (NAV), as defined, below, in Section IV(f), at the time of the transaction, and is the same purchase price that would have been paid and the same sales price that would have been received for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time.[9]

(c) Principal, including any officer and any director of Principal, does not purchase any shares of an Affiliated Fund from and does not sell any shares of an Affiliated Fund to any Client Plan which invests directly in such Affiliated Fund, and Principal, including any officer and director of Principal, does not purchase any shares of any Affiliated Fund from and does not sell any shares of an Affiliated Fund to any Collective Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund.

(d) No sales commissions, no redemption fees, and no other similar fees are paid in connection with any purchase and in connection with any sale by a Client Plan directly in shares of an Affiliated Fund, and no sales commissions, no redemption fees, and no other similar fees are paid by a Collective Fund in connection with any purchase and in connection with any sale of shares in an Affiliated Fund by a Client Plan indirectly through such

[9] The selection of a particular class of shares of an Affiliated Fund as an investment for a Client Plan indirectly through 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 proposed exemption, the Department is not providing any relief for any fiduciary violations, pursuant to section 404 of the Act, or violations of the prohibited transaction provisions, as set forth in section 406 of the Act that may arise from the selection of one class of shares of an Affiliated Fund over another class of shares.

Collective Fund. However, this Section II(d) does not prohibit the payment of a redemption fee, if:

(1) Such redemption fee is paid only to an Affiliated Fund; and

(2) The existence of such redemption fee is disclosed in the summary prospectus for such Affiliated Fund in effect both at the time of any purchase of shares in such Affiliated Fund and at the time of any sale of such shares.

(e) The combined total of all fees received by Principal is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act, for services provided:

(1) By Principal to each Client Plan;

(2) By Principal to each Collective Fund in which a Client Plan invests; and

(3) By Principal to each Affiliated Fund in which a Client Plan invests directly in shares of such Affiliated Fund, and

(4) By Principal to each Affiliated Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund through a Collective Fund.

(f) Principal does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act in connection with the transactions covered by this proposed exemption;

(g) No Client Plan is an employee benefit plan sponsored or maintained by Principal.

(h)(1) In the case of a Client Plan investing directly in shares of an Affiliated Fund, a second fiduciary (the Second Fiduciary), as defined, below, in Section IV(h), acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan directly in shares of such Affiliated Fund, a full and detailed disclosure via first class mail or via personal delivery of (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below) of information concerning such Affiliated Fund, including but not limited to the items listed, below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Principal by each Affiliated Fund;

(B) Secondary Services to be paid to Principal by each such Affiliated Fund; and

(C) All other fees to be charged by Principal to such Client Plan and to each such Affiliated Fund and all other fees to be paid to Principal by each such Client Plan and by each such Affiliated Fund;

(iii) The reasons why Principal may consider investment directly in shares of such Affiliated Fund by such Client Plan to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Principal with respect to which assets of such Client Plan may be invested directly in shares of such Affiliated Fund, and if so, the nature of such limitations; and

(v) Upon the request of the Second Fiduciary acting on behalf of such Client Plan, a copy of the Notice of Proposed Exemption (the Notice), a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption.

(2) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund after such Collective Fund has begun investing in shares of an Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below) of information concerning such Collective Fund and information concerning each such Affiliated Fund in which such Collective Fund is invested, including but not limited to the items listed, below:

(i) A current summary prospectus issued by each such Affiliated Fund;

(ii) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(A) Investment advisory and similar services to be paid to Principal by each Affiliated Fund;

(B) Secondary Services to be paid to Principal by each such Affiliated Fund; and

(C) All other fees to be charged by Principal to such Client Plan, to such Collective Fund, and to each such Affiliated Fund and all other fees to be paid to Principal by such Client Plan, by such Collective Fund, and by each such Affiliated Fund;

(iii) The reasons why Principal may consider investment by such Client Plan in shares of each such Affiliated Fund indirectly through such Collective Fund to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Principal with respect to which assets of such Client Plan may be invested indirectly in shares of each such Affiliated Fund through such Collective Fund, and if so, the nature of such limitations;

(v) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(vi) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(3) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund before such Collective Fund has begun investing in shares of any Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below) of information, concerning such Collective Fund, including but not limited to the items listed, below:

(i) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for all fees to be charged by Principal to such Client Plan and to such Collective Fund and all other fees to be paid to Principal by such Client Plan, and by such Collective Fund;

(ii) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(iii) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(i) On the basis of the information described, above, in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan:

(1) Authorizes in writing the investment of the assets of such Client Plan, as applicable:

(i) Directly in shares of an Affiliated Fund;

(ii) Indirectly in shares of an Affiliated Fund through a Collective

Fund where such Collective Fund has already invested in shares of an Affiliated Fund; and

(iii) In a Collective Fund which is not yet invested in shares of an Affiliated Fund but whose organizational document expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund; and

(2) Authorizes in writing; as applicable:

(i) The Affiliated Fund-Level Advisory Fee received by Principal for investment advisory services and similar services provided by Principal to such Affiliated Fund;

(ii) The fee received by Principal for Secondary Services provided by Principal to such Affiliated Fund;

(iii) The Collective Fund-Level Management Fee received by Principal for investment management, investment advisory, and similar services provided by Principal to such Collective Fund in which such Client Plan invests;

(iv) The Plan-Level Management Fee received by Principal for investment management and similar services provided by Principal to such Client Plan at the plan-level; and

(v) The selection by Principal of the applicable fee method, as described, above, in Section II(a)(1)–(3).

All authorizations made by a Second Fiduciary, pursuant to this Section II(i), must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(j)(1) Any authorization, described, above, in Section II(i), and any authorization made pursuant to negative consent, as described, below, in Section II(k) and in Section II(l), made by a Second Fiduciary, acting on behalf of a Client Plan, shall be terminable at will by such Second Fiduciary, without penalty to such Client Plan, upon receipt by Principal via first class mail, via personal delivery, or via electronic email of a written notification of the intent of such Second Fiduciary to terminate any such authorization.

(2) A form (the Termination Form) expressly providing an election to terminate any authorization, described, above, in Section II(i), or to terminate any authorization made pursuant to negative consent, as described, below, in Section II(k) and in Section II(l), with instructions on the use of such Termination Form must be provided to such Second Fiduciary at least annually, either in writing via first class mail or via personal delivery (or if such Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below). However, if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), below, then a Termination Form need not be provided again, pursuant to this Section II(j), until at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided;

(3) The instructions for the Termination Form must include the following statements:

(i) Any authorization, described, above, in Section II(i), and any authorization made pursuant to negative consent, as described, below, in Section II(k) or in Section II(l), is terminable at will by a Second Fiduciary, acting on behalf of a Client Plan, without penalty to such Client Plan, upon receipt by Principal via first class mail or via personal delivery or via electronic email of the Termination Form, or some other written notification of the intent of such Second Fiduciary to terminate such authorization;

(ii) Within 30 days from the date the Termination Form is sent to such Second Fiduciary by Principal, the failure by such Second Fiduciary to return such Termination Form or the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate any authorization, described in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described, below, in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary;

(4) In the event that a Second Fiduciary, acting on behalf of a Client Plan, at any time returns a Termination Form or returns some other written notification of intent to terminate any authorization, as described, above, in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described, below, in Section II(k) or in Section II(l);

(i)(A) In the case of a Client Plan which invests directly in shares of an Affiliated Fund, the termination will be implemented by the withdrawal of all investments made by such Client Plan in the affected Affiliated Fund, and such withdrawal will be effected by Principal within one (1) Business day of the date that Principal receives such Termination Form or receives from the Second Fiduciary, acting on behalf of such Client Plan, some other written notification of intent to terminate any such authorization;

(B) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests directly in shares of an Affiliated Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Affiliated Fund, such Client Plan will not be subject to pay a *pro rata share* of any Affiliated Fund-Level Advisory Fee and will not be subject to pay any fees for Secondary Services paid to Principal by such Affiliated Fund;

(ii)(A) In the case of a Client Plan which invests in a Collective Fund, the termination will be implemented by the withdrawal of such Client Plan from all investments in such affected Collective Fund, and such withdrawal will be implemented by Principal within such time as may be necessary for withdrawal in an orderly manner that is equitable to the affected withdrawing Client Plan and to all non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Principal more than five business (5) days after the day Principal receives from the Second Fiduciary, acting on behalf of such withdrawing Client Plan, a Termination Form or receives some other written notification of intent to terminate the investment of such Client Plan in such Collective Fund; and

(B) Principal will pay to such withdrawing Client Plan interest on the settlement amount calculated at the prevailing Federal funds rate plus two percent (2%) for the period from the day Principal receives from the Second Fiduciary, acting on behalf of such withdrawing Client Plan, a Termination Form or receives some other written notification of intent to terminate the investment of such Client Plan in such Collective Fund, to the date Principal pays such settlement amount in cash, with interest thereon, to such withdrawing Client Plan;

(C) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests in a Collective Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Collective Fund, such Client Plan will not be subject to pay a *pro rata* share of any Collective Fund-Level Management Fee, nor will such Client Plan be subject to any other changes to the portfolio of such Collective Fund, including a *pro rata* share of any Affiliated Fund-Level Advisory Fee arising from the investment by such Collective Fund in an Affiliated Fund.

(k)(1) Principal, at least thirty (30) days in advance of the implementation of each fee increase (Fee Increase(s)), as defined, below, in Section IV(l), must provide, in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below), a notice of change in fees (the Notice of Change in Fees) (which may take the form of a proxy statement, letter, or similar communication which is separate from the summary prospectus of such Affiliated Fund) and which explains the nature and the amount of such Fee Increase to the Second Fiduciary of each affected Client Plan. Such Notice of Change in Fees shall be accompanied by a Termination Form and by instructions on the use of such Termination Form, as described, above, in Section II(j)(3);

(2) For each Client Plan affected by a Fee Increase, Principal may implement such Fee Increase without waiting for the expiration of the 30-day period, described, above, in Section II(k)(1), provided Principal does not begin implementation of such Fee Increase before the first day of the 30-day period, described, above in Section II(k)(1), and provided further that the following conditions are satisfied:

(i) Principal delivers, in the manner described in Section II(k)(1), to the Second Fiduciary for each affected Client Plan, the Notice of Change of Fees, as described in Section II(k)(1), accompanied by the Termination Form and by instructions on the use of such Termination Form, as described, above, in Section II(j)(3);

(ii) Each affected Client Plan receives from Principal a credit in cash equal to each such Client Plan's *pro rata* share of such Fee Increase to be received by Principal for the period from the date of the implementation of such Fee Increase to the earlier of:

(A) The date when an affected Client Plan, pursuant to Section II(j), terminates any authorization, as described, above, in Section II(i), or, terminates any negative consent authorization, as described, in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Principal delivers to the Second Fiduciary of each affected Client Plan the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and by the instructions on the use of such Termination Form, as described, above, in Section II(j)(3).

(iii) Principal pays to each affected Client Plan the cash credit, described, above, in Section II(k)(2)(ii), with interest thereon, no later than five (5) business days following the earlier of:

(A) the date such affected Client Plan, pursuant to Section II(j), terminates any authorization, as described, above, in Section II(i), or terminates, any negative consent authorization, as described, in Section II(k) or in Section II(l); or

(B) the 30th day after the day that Principal delivers to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and instructions on the use of such Termination Form, as described, above, in Section II(j)(3);

(iv) Interest on the credit in cash is calculated at the prevailing Federal funds rate plus two percent (2%) for the period from the day Principal first implements the Fee Increase to the date Principal pays such credit in cash, with interest thereon, to each affected Client Plan;

(v) An independent accounting firm (the Auditor) at least annually audits the payments made by Principal to each affected Client Plan, audits the amount of each cash credit, plus the interest thereon, paid to each affected Client Plan, and verifies that each affected Client Plan received the correct amount of cash credit and the correct amount of interest thereon;

(vi) Such Auditor issues an audit report of its findings no later than six (6) months after the period to which such audit report relates, and provides a copy of such audit report to the Second Fiduciary of each affected Client Plan; and

(3) Within 30 days from the date Principal sends to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees and the Termination Form, the failure by such Second Fiduciary to return such Termination Form and the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(i), or to terminate the negative consent authorization, as described, in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary of such Fee Increase.

(l) Effective on the date the final exemption is granted, in the case of a Client Plan which has received the disclosures, as set forth, above, in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), II(h)(2)(v), and II(h)(2)(vi), and has authorized the investment by a Client Plan in a Collective Fund, in accordance with Section II(i)(1)(ii), above; and, as applicable, effective on the date the final exemption is granted, in the case of a Client Plan which has received the disclosures, as set forth, above, in Section II(h)(3)(i), II(h)(3)(ii), and II(h)(3)(iii), and has authorized the investment by a Client Plan in a Collective Fund, in accordance with Section II(i)(1)(iii), above, then, the authorization, pursuant to negative consent, in accordance with this Section II(l), applies to:

(1) the proposed purchase, as an addition to the portfolio of such Collective Fund, of shares of an Affiliated Fund (a New Affiliated Fund) where such New Affiliated Fund has not been previously authorized, pursuant to Section II(i)(1)(ii) or, as applicable, Section II(i)(1)(iii), above, and such Collective Fund may commence investing in such New Affiliated Fund without further written authorization from the Second Fiduciary of each Client Plan invested in such Collective Fund provided that:

(i) The organizational documents of such Collective Fund expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund, and such documents were disclosed in writing via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below) to the Second Fiduciary of each such Client Plan invested in such Collective Fund, in advance of any investment by such Client Plan in such Collective Fund;

(ii) At least thirty (30) days in advance of the purchase by a Client Plan of shares of such New Affiliated Fund indirectly through a Collective Fund, Principal provides, either in writing via first class or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below), to the Second Fiduciary of each Client Plan having an interest in such Collective Fund, full and detailed disclosures about such New Affiliated Fund, including but not limited to:

(A) A notice of Principal's intent to add a New Affiliated Fund to the portfolio of such Collective Fund. Such notice may take the form of a proxy statement, letter, or similar communication that is separate from the summary prospectus of such New Affiliated Fund to the Second Fiduciary of each affected Client Plan;

(B) Such notice of Principal's intent to add a New Affiliated Fund to the portfolio of such Collective Fund shall be accompanied by the information, as described, above, in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), and II(2)(v) with respect to each such New Affiliated Fund proposed to be added to the portfolio of such Collective Fund; and

(C) A Termination Form, and instructions on the use of such

Termination Form, as described, above, in Section II(j)(3); and

(2) Within 30 days from the date Principal sends to the Second Fiduciary of each affected Client Plan, the information described, above, in Section II(l)(1)(ii), the failure by such Second Fiduciary to return the Termination Form or to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(i)(1)(ii), or, as appropriate, to terminate the authorization, described in Section II(i)(1)(iii), or to terminate any authorization, pursuant to negative consent, as described, in this Section II(l), will be deemed to be an approval by such Second Fiduciary of the addition of a New Affiliated Fund to the portfolio of such Collective Fund in which such Client Plan invests, and will result in the continuation of the authorization of Principal to engage in the transactions which are the subject of this proposed exemption with respect to such New Affiliated Fund.

(m) Principal is subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Second Fiduciary of such Client Plan requests Principal to provide.

(n) All dealings between a Client Plan and an Affiliated Fund, including all such dealings when such Client Plan is invested directly in shares of such Affiliated Fund and when such Client Plan is invested indirectly in such shares of such Affiliated Fund through a Collective Fund, are on a basis no less favorable to such Client Plan, than dealings between such Affiliated Fund and other shareholders of the same class of shares in such Affiliated Fund.

(o) In the event a Client Plan invests directly in shares of an Affiliated Fund, and, as applicable, in the event a Client Plan invests indirectly in shares of an Affiliated Fund through a Collective Fund, if such Affiliated Fund places brokerage transactions with Principal, Principal will provide to the Second Fiduciary of each such Client Plan, so invested, at least annually a statement specifying:

(1) The total, expressed in dollars of brokerage commissions that are paid to Principal by each such Affiliated Fund;

(2) The total, expressed in dollars, of brokerage commissions that are paid by each such Affiliated Fund to brokerage firms unrelated to Principal;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Principal by each such Affiliated Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each such Affiliated Fund to brokerage firms unrelated to Principal.

(p)(1) Principal provides to the Second Fiduciary of each Client Plan invested directly in shares of an Affiliated Fund, with the disclosures, as set forth, below, and at the times set forth below, in Section II(p)(1)(i), II(p)(1)(ii), II(p)(1)(iii), II(p)(1)(iv), and II(p)(1)(v), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below);

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund which contains a description of all fees paid by such Affiliated Fund to Principal;

(iii) With regard to any Fee Increase received by Principal, pursuant to Section II(k)(2), above, a copy of the audit report referred to in Section II(k)(2)(v), above, within sixty (60) days of the completion of such audit report;

(iv) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise; and

(v) Annually, with a Termination form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), above, then a Termination Form need not be provided again, pursuant to this Section II(p)(1)(v), until at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided.

(2) Principal provides to the Second Fiduciary of each Client Plan invested in a Collective Fund, with the disclosures, as set forth, below, and at the times set forth below, in Section II(p)(2)(i), II(p)(2)(ii), II(p)(2)(iii), II(p)(2)(iv), II(p)(2)(v), II(p)(2)(vi), II(p)(2)(vii), and II(p)(2)(viii), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth, below);

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund thorough each such Collective Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund thorough each such Collective Fund which contains a description of all fees paid by such Affiliated Fund to Principal;

(iii) Annually, with a statement of the Collective Fund-Level Management Fee for investment management, investment advisory or similar services paid to Principal by each such Collective Fund, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund;

(iv) A copy of the annual financial statement of each such Collective Fund in which such Client Plan invests, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund, within sixty (60) days of the completion of such financial statement;

(v) With regard to any Fee Increase received by Principal, pursuant to Section II(k)(2), above, a copy of the audit report referred to in Section II(k)(2)(v), above, within sixty (60) days of the completion of such audit report;

(vi) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise;

(vii) For each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, a statement of the approximate percentage (which may be in the form of a range) on an annual basis of the assets of such Collective Fund that was invested in Affiliated Funds during the applicable year; and

(viii) Annually, with a Termination form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), above, then a Termination Form need not be provided again, pursuant to this Section II(p)(2)(viii), until at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided.

(q) Any disclosure required, herein, to be made by Principal to a Second Fiduciary may be delivered by electronic email containing direct hyperlinks to the location of each such document required to be disclosed, which are maintained on a Web site by Principal, provided:

(1) Principal obtains from such Second Fiduciary prior consent in writing to the receipt by such Second Fiduciary of such disclosure via electronic email;

(2) Such Second Fiduciary has provided to Principal a valid email address; and

(3) The delivery of such electronic email to such Second Fiduciary is provided by Principal in a manner consistent with the relevant provisions of the Department's regulations at 29 CFR 2520.104b–1(c) (substituting the word, ''Principal,'' for the word, ''administrator,'' as set forth therein, and substituting the phrase, ''Second Fiduciary,'' for the phrase, ''the participant, beneficiary or other individual,'' as set forth therein).

Section III—General Conditions

(a) Principal maintains for a period of six (6) years the records necessary to enable the persons described, below, in Section III(b) to determine whether the conditions of this proposed exemption have been met, except that:

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

(2) No party in interest other than Principal 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 Section III(b); below.

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

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

(ii) Any fiduciary of a Client Plan invested directly in shares of an Affiliated Fund, any fiduciary of a Client Plan who has the authority to acquire or to dispose of the interest in a Collective Fund in which a Client Plan invests, any fiduciary of a Client Plan invested indirectly in an Affiliated Fund through a Collective Fund where such fiduciary has the authority to acquire or to dispose of the interest in such Collective Fund, and any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Client Plan invested directly in shares of an Affiliated Fund or invested in a Collective Fund, and any participant or beneficiary of a Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and any representative of such participant or beneficiary; and

(2) None of the persons described in Section III(b)(1)(ii) and (iii) shall be authorized to examine trade secrets of Principal, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this proposed exemption:

(a) The term, ''Principal,'' means Principal Trust, Principal Life, and any affiliate thereof, as defined, below, in Section IV(c).

(b) The term, ''Client Plan(s),'' means a 401(k) plan(s), an individual retirement account(s), other tax-qualified plan(s), and other plan(s) as defined in the Act and Code, but does not include any employee benefit plan sponsored or maintained by Principal, as defined, above, in Section IV(a).

(c) 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.

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

(e) The term, ''Affiliated Fund(s),'' means Principal Funds, Inc., a series of mutual funds managed by Principal Management Corporation (PMC), an affiliate of Principal, as defined, above in Section IV(c), and any other diversified open-end investment company or companies registered with the Securities and Exchange Commission under the Investment Company Act and operated in accordance with Rule 2a–7 under the Investment Company Act, as amended, established and maintained by Principal now or in the future for which Principal serves as an investment adviser.

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

(g) 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.

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

(1) Such Second Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Principal;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner, or employee of Principal (or is a relative of such person); or

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

If an officer, director, partner, or employee of Principal (or relative of such person) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The decision of a Client Plan to invest in and to remain invested in shares of an Affiliated Fund directly, the decision of a Client Plan to invest in shares of an Affiliated Fund indirectly through a Collective Fund, and the decision of a Client Plan to invest in a Collective Fund that may in the future invest in shares of an Affiliated Fund;

(ii) Any authorization in accordance with Section II(i), and any authorization, pursuant to negative consent, as described in Section II(k) or in Section II(l); and

(iii) The choice of such Client Plan's investment adviser; then Section IV(h)(2), above, shall not apply.

(i) The term, ''Secondary Service(s),'' means a service or services other than an investment management service, investment advisory service, and any similar service which is provided by

Principal to an Affiliated Fund, including but not limited to custodial, accounting, administrative services, and brokerage services. Principal may also serve as a dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Service, as defined, in this Section IV(i).

(j) The term, ''Collective Fund(s),'' means a separate account of an insurance company, as defined in section 2510.3–101(h)(1)(iii) of the Department's plan assets regulations,[10] maintained by Principal, and a bank-maintained common or collective investment trust maintained by Principal.

(k) The term, ''business day,'' means any day that

(1) Principal is open for conducting all or substantially all of its business; and

(2) The New York Stock Exchange (or any successor exchange is open for trading.

(l) The term, ''Fee Increase(s),'' includes any increase by Principal in a rate of a fee, previously authorized in writing by the Second Fiduciary of each affected Client Plan, pursuant to Section II(i)(2)(i)–(iv), above, and in addition includes, but is not limited to:

(1) Any increase in any fee that results from the addition of a service for which a fee is charged;

(2) any increase in any fee that results from a decrease in the number of services and any increase in any fee that results from a decrease in the kind of service(s) performed by Principal for such fee over an existing rate of fee for each such service previously authorized by the Second Fiduciary, in accordance with Section II(i)(2)(i)–(iv), above; and

(3) any increase in any fee that results from Principal changing from one of the fee methods, as described, above, in Section II(a)(1)–(3), to using another of the fee methods, as described, above, in Section II(a)(1)–(3).

(m) The term, ''Plan-Level Management Fee,'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Client Plan to Principal for any investment management services, investment advisory services, and similar services provided by Principal to such Client Plan at the plan-level. The term, ''Plan-Level Management Fee'' does not include a separate fee paid by a Client Plan to Principal for asset allocation service(s) (Asset Allocation Service(s)), as defined, below, in Section IV(p), provided by Principal to such Client Plan at the plan-level.[11]

(n) The term, ''Collective Fund-Level Management Fee,'' includes any investment management fee, investment advisory fee, and any similar fee paid by a Collective Fund to Principal for any investment management services, investment advisory services, and any similar services provided by Principal to such Collective Fund at the collective fund level.

(o) The term, ''Affiliated Fund-Level Advisory Fee'' includes any investment advisory fee and any similar fee paid by an Affiliated Fund to Principal under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act.

(p) The term, ''Asset Allocation Service(s),'' means a service or services to a Client Plan relating to the selection of appropriate asset classes or target-date ''glidepath,'' the selection of specific Collective Funds, and the selection of specific Affiliated Funds (subject to the required consent of the Second Fiduciary) to ''populate'' the selected asset classes (including rebalancing), and the allocation of the assets of a Client Plan among the selected funds. Such services do not include the management of the underlying assets of a Client Plan, or the selected Affiliated Funds or Collective Funds.

Effective Date: If granted, this proposed exemption will be effective as of the publication of the final exemption in the **Federal Register**.

Summary of Facts and Representations

1. Principal Life was originally established in 1879. Principal's Affiliates have been founded or acquired from time to time thereafter. Principal offers a variety of financial products and services to businesses, individuals, and institutional clients. Principal has approximately $236.6 billion in assets under management and serves 18.8 million customers worldwide from offices in twelve (12) countries.

2. The Principal Financial Group is a trade name/registered trademark under which various Principal affiliated companies operate. Affiliated companies include Principal Financial Group, Inc., a public (holding) company (NYSE: PFG); numerous direct or indirect subsidiaries including Principal Life, Delaware Charter Guarantee & Trust Company d\b\a Principal Trust Company; PMC, Princor Financial Services Corporation, Principal Financial Services, Inc., Principal Global Investors, LLC, and many other affiliated entities.

3. It is represented that certain Affiliates within Principal make investments available, either directly or indirectly through Collective Funds to Client Plans. Principal has requested that the proposed exemption apply to any Client Plan for which Principal serves as investment fiduciary and for which Principal causes such Client Plan to invest in shares of Affiliated Funds, either directly or indirectly through a Collective Fund. It is represented that Principal places no limits on the minimum or maximum portion of the total assets of each Client Plan that may be invested directly in shares of an Affiliated Fund or invested indirectly in an Affiliated Fund through a Collective Fund.

4. Section 406(a)(1)(D) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if he knows or should know, that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan.

Sections 3(14)(A) and (B) of the Act define the term, ''party in interest,'' to include, respectively, any fiduciary of a plan and any person providing services to a plan. Under section 3(21)(A)(i) of the Act, a person is a fiduciary with respect to a plan to the extent such person exercises authority or control with respect to the management or disposition of the assets of a plan. Under section 3(21)(A)(ii) a person is a fiduciary with respect to a plan to the extent such person renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan or has any authority or responsibility to do so.

Under section 406(b) of the Act, a fiduciary with respect to a plan may not: (1) Deal with the assets of a plan in his own interest or for his own account, (2) in his individual or in any other capacity act in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of such plan or the interests of its participants or beneficiaries, or (3) receive any consideration for his

[10] 51 FR 41262 (November 13, 1986).

[11] For the receipt by Principal from a Client Plan of a fee for Asset Allocation Services provided by Principal to such Client Plan at the plan-level, Principal relies on the relief provided by the statutory exemption, as set forth in section 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408b–2. The Department is offering no view, herein, as to whether the receipt by Principal of such an asset allocation fee is covered by such statutory exemption, nor is the Department, herein, offering any view as to whether Principal satisfies the conditions set forth in such statutory exemption.

own personal account from any party dealing with a plan in connection with a transaction involving the assets of such plan.

Principal entities may currently serve, and may in the future serve, as investment advisors, investment managers, trustees, or other fiduciaries with respect to Client Plans. Accordingly, the Applicants and various other Principal affiliates may currently be, or may in the future be, parties in interest with respect to a Client Plan which engage in the proposed transactions. In this regard, where Principal now or in the future is a fiduciary with respect to a Client Plan, the investment of the assets of such Client Plan in a Collective Fund and/or in an Affiliated Fund advised by Principal may raise issues under sections 406(a)(1)(D), 406(b)(1), 406(b)(2), and 406(b)(3) of the Act, and the corresponding provisions of the Code, unless an exemption is available.

5. Principal's collective investment vehicles currently include various pooled separate accounts. In this regard, Principal Life manages several insurance company separate accounts (the Separate Accounts). Principal Life is a fiduciary with respect to any Separate Accounts that hold plan assets. It is represented that none of the Separate Accounts currently invests in any Affiliated Fund in a manner that requires exemptive relief, hereunder. However, it is represented that existing Separate Accounts or Separate Accounts to be established in the future may do so. Accordingly, the Applicants request that the proposed exemption apply, as of the effective date of this proposed exemption, to Separate Accounts that hold ''plan assets'' of investor Client Plans.

6. Principal's collective investment vehicles also currently include various bank-maintained collective investment trusts. Any or all of Principal's collective investment vehicles may rely upon one or more statutory or class exemptions in connection with their activities. Principal represents that the proposed exemption, if granted, will apply to Collective Funds, as defined, above, in Section IV(j).

7. It is represented that in 2009, Principal Trust established certain target date collective funds (the Target Date Funds). The Target Date Funds are used as investment options in participant-directed Client Plans. The Target Date Funds are deemed to hold ''plan assets'' of such investing Client Plans. It is represented that although a Second Fiduciary, as defined, above, in Section IV(h), will select the Target Date Funds as designated investment options, the actual decision to invest in any Target Date Funds is made by individual plan participants, unless such fund is selected by a Second Fiduciary as a qualified default investment option.

The Target Date Funds are bank-maintained collective investment trusts. The Target Date Funds are currently comprised of eleven (11) portfolios. Principal Trust acts as trustee and investment manager for the Target Date Funds. As such, Principal Trust has discretion over the investment of the assets of the Target Date Funds. Principal Trust manages the portfolios of the Target Date Funds in accordance with its own investment objectives and strategies. In this regard, Principal Trust invests the assets of such Target Date Funds in Affiliated Funds and other investments including other Collective Funds. Principal Trust selects the underlying investments and allocates the assets of each of the Target Date Funds among the underlying investments based on the time horizon of each such Target Date Fund and the expected risk tolerance of those investors who have chosen that time horizon. It is represented that the underlying investments include investment in Principal Funds Inc., a series of Affiliated Funds managed by PMC, or may include other Affiliated Funds to be formed in the future. It is represented that the Target Date Funds are the only Principal Collective Funds currently invested in Affiliated Funds.

8. The Affiliated Funds are a series of mutual funds managed by PMC, an affiliate of Principal, and may include other Affiliated Funds to be established in the future by Principal. The Affiliated Funds are open-end investment companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended and operated in accordance with Rule 2a–7 under the Investment Company Act. PMC or Principal serves as an investment adviser with respect to the Affiliated Funds. Principal may also serve as custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Services, including brokerage services, to an Affiliated Fund.

Prohibited Transaction Exemption 77–4 (PTE 77–4)

9. It is represented that all of the Principal entities to which the proposed exemption, if granted, would apply are currently part of the same controlled group. In this regard, the Applicants maintain that such Principal entities can rely on the relief provided pursuant to PTE 77–4.[12]

PTE 77–4 provides an exemption from section 406 of the Act and section 4975 of the Code for the purchase and for the sale by a plan of shares of a registered, open-ended investment company where the investment adviser of such fund: (1) Is a plan fiduciary or affiliated with a plan fiduciary; and (2) is not an employer of employees covered by the plan. The conditions of PTE 77–4 prohibit the payment of commissions by a plan, limit the payment of redemption fees by such plan, require prior disclosures (*e.g.,* fee information and a current prospectus) to a second fiduciary and written authorization from such second fiduciary who is generally the sponsor or other named fiduciary or trustee of such plan, and prohibit the payment of double investment advisory fees and similar fees with respect to plan assets invested in such shares for the entire period of such investment. In addition, PTE 77–4 requires advance written approval from a second fiduciary for any changes in the fund fee rates.

10. The Applicants represent that the requested relief is essentially the same as that afforded by PTE 77–4, except for the use of a ''negative consent'' procedure, as discussed in the paragraphs, below, for:

(1) Approving Fee Increases received by Principal, and

(2) approving in advance the addition of Affiliated Funds (not previously authorized) as investments ''inside'' a Principal Collective Fund, subject to notice and a right to terminate the original approval at the time a new Affiliated Fund is proposed to be added.

Principal maintains that obtaining advance written approval from a Second Fiduciary can be difficult, particularly in the case of a Collective Fund, such as a Target Date Fund, where a Second Fiduciary from every investing Client Plan must provide written approval before fees payable to Principal by an Affiliated Fund in which such Client Plans invest indirectly via a Collective Fund can be increased, or before a new investment in an Affiliated Fund that was not previously authorized can be made. If advance written approval is not obtained from the Second Fiduciary of each affected Client Plan, then PTE 77–4 may not apply and Principal may violate the restrictions of section 406(a) and 406(b) of the Act.

[12] The Department, herein, is expressing no opinion in this proposed exemption regarding the reliance of the Applicants on the relief provided by PTE 77–4, nor is the Department offering any view as to whether the Applicants satisfy the conditions, as set forth in PTE 77–4.

Negative Consent for Fee Increases

11. In order to avoid the administrative burden of obtaining advance written approval from a Second Fiduciary of each affected Client Plan, the Applicants request an individual administrative exemption which would allow for a negative consent procedure for obtaining the approval from a Second Fiduciary for Fee Increases payable to Principal. Fee Increases are defined in Section IV(l) and include: (1) Any increase in the rate of a fee previously authorized in writing by the Second Fiduciary of an affected Client Plan, (2) any increase in any fee that results from an addition of services for which a fee is charged, (3) any increase in any fee that results from a decrease in the number or kind of services performed for such fee over an existing rate for such service previously authorized by the Second Fiduciary, and (3) any increase in a fee that results from Principal changing from one of the fee methods, as described, above, in Section II(a)(1)–(3), to using another of the fee methods, as described, above, in Section II(a)(1)–(3).

In order to obtain the negative consent authorization from the Second Fiduciary of each affected Client Plan with regard to a Fee Increase, Principal will have to comply with the provisions, set forth in Section II(k). In this regard, the proposed exemption would require Principal to provide to the Second Fiduciary of a Client Plan invested directly in shares of an Affiliated Fund or indirectly through a Collective Fund certain disclosures in writing thirty (30) days in advance of any proposed Fee Increase, including but not limited to any Fee Increase for Secondary Services, as such services are described, below. The disclosures are delivered by regular mail or personal delivery (or if the Second Fiduciary consents by electronic means), and are accompanied by a Termination Form and instructions on the use of such form.

Notwithstanding the requirement for thirty (30) days advance notice of a Fee Increase, the proposed exemption would permit Principal to implement a Fee Increase, without waiting until the expiration of the 30 day period; provided that implementation of such Fee Increase does not start before Principal delivers to each affected Client Plan the Notice of Intent of Change of Fees, as described in Section II(k), and provided further that any affected Client Plan receives a cash credit equal to its *pro rata share* of such Fee Increase, for the period from the date of the implementation of such Fee Increase to the *earlier of* the date of the termination of the investment or the thirtieth (30th) day after the date Principal delivers the Notice of Change of Fee to the Second Fiduciary of each affected Client Plan. In addition, Principal must pay to each affected Client Plan interest on such cash credit. An Auditor on at least an annual basis will verify the proper crediting of the *pro rata share* of each such Fee Increase and interest. An audit report shall be completed by such Auditor no later than six (6) months after the period to which it relates.

Failure of the Second Fiduciary to return the Termination Form or to provide some other written notification of the intent to terminate within a certain period of time will be deemed to be approval of the proposed Fee Increase, including but not limited to an increase in the fee for Secondary Services.

Negative Consent for New Affiliated Funds

12. Principal further requests that the proposed exemption permit a Principal Collective Fund holding the assets of a Client Plan, such as a Target Date Fund, to purchase shares of an Affiliated Fund not previously affirmatively authorized by the Second Fiduciary of such Client Plan; provided: (1) The organizational document of such Collective Fund expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund and such organizational document is disclosed initially to such Client Plan; and (2) Principal satisfies the requirements of the negative consent procedure for obtaining the approval of the Second Fiduciary for each Client Plan invested in such Collective Fund at the time Principal proposes to add an Affiliated Fund to such Collective Fund's portfolio.

Specifically, the negative consent procedure would entail that the Second Fiduciary of each Client Plan invested in such Collective Fund receives in advance: (i) A notice of Principal's intent to add an Affiliated Fund to the portfolio of such Collective Fund; and (ii) certain disclosures in writing, including a summary prospectus of such Affiliated Fund. The disclosures are delivered by regular mail or personal delivery (or if the Second Fiduciary consents by electronic means), and are accompanied by a Termination Form and instructions on the use of such form.

Failure of the Second Fiduciary to return the Termination Form or to provide some other written notification of the intent to terminate within a certain period of time will be deemed to be approval of the investment by such Collective Fund in such Affiliated Fund.

13. Principal represents that the negative consent procedures, described in the paragraphs, above, are more efficient, cost effective, and administratively feasible than the advance written approval from the Second Fiduciary, as described in PTE 77–4. It is represented that the negative consent procedure avoids the administrative delays that would result if advance written approval from the Second Fiduciary were required.

It is further represented that because the Second Fiduciary of each Client Plan will receive all of the necessary disclosures and will have an opportunity to terminate the investment in any Affiliated Fund without penalty, such Client Plan and its participants and beneficiaries are adequately protected. Further, to the extent that Principal may find it desirable from time to time to create an Affiliated Fund with new investment goals, the negative consent procedure will facilitate the addition of an Affiliated Fund into the portfolios of Principal's Collective Funds.

Electronic Disclosures

14. Principal intends to utilize electronic mail with hyperlinks to documents required to be disclosed by this proposed exemption. Principal agrees that it will ''actively'' satisfy the various disclosure requirements of this proposed exemption by transmitting emails, rather than relying on ''passive'' postings on a Web site. It is represented that this method of disclosure will be consistent with the Department's regulations at 29 CFR section 2520.104b–1. Client Plans which do not authorize electronic delivery will receive in advance hard copies of the documents required to be disclosed, and hard copies of documents will also be available on request.

Termination

15. A Client Plan invested directly in shares of an Affiliated Fund or invested indirectly through a Collective Fund will have an opportunity to terminate and withdraw from investment in such Affiliated Fund, and, as applicable, to terminate and withdraw from investment in such Collective Fund in the event of a Fee Increase and in the event of the addition of an Affiliated Fund to the portfolio of a Collective Fund.

In this regard, a Second Fiduciary will be provided with a Termination Form at least annually and may terminate the authorization to invest directly in shares of an Affiliated Fund or indirectly through a Collective Fund, at will, without penalty to a Client Plan. Termination of the authorization by the Second Fiduciary of a Client Plan investing directly in shares of an Affiliated Fund will result in such Client Plan withdrawing from such Affiliated Fund. Termination of the authorization by the Second Fiduciary of a Client Plan investing indirectly in shares of an Affiliated Fund through a Collective Fund will result in such Client Plan withdrawing from such Collective Fund.

Generally, Principal will process timely requests for withdrawal from an Affiliated Fund within one (1) Business day. Withdrawal from a Collective Fund will generally be processed within the same time frame, subject to rules designed to ensure orderly withdrawals and fairness for the withdrawing Client Plans and non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Principal more than five business (5) days after receipt by Principal of a termination form or other written notification of intent to terminate investment in such Collective Fund from the Second Fiduciary acting on behalf of the withdrawing Client Plan. Principal will pay interest on the settlement amount for the period from receipt by Principal of a termination form or other written notification of intent to terminate from the Second Fiduciary, acting on behalf of the withdrawing Client Plan, to the date Principal pays the settlement amount, plus interest thereon.

From the date a Client Plan terminates its investment in an Affiliated Fund, such Client Plan will not be subject to pay a *pro rata share* of the fees received by Principal from such Affiliated Fund. Likewise, from the date a Client Plan terminates its investment in a Collective Fund, such Client Plan will not be subject to pay a *pro rata share* of the fees received by Principal from such Collective Fund, nor will such Client Plan be subject to changes in the portfolio of such Collective Fund, including a *pro rate share* of any Affiliated Fund-Level Advisory Fee arising from the investment by such Collective Fund in an Affiliated Fund.

Receipt of Fees Pursuant to the Fee Methods

16. The exemption, if granted, includes conditions which detail various methods which ensure that Principal complies with the prohibition against a Client Plan paying double investment management fees, investment advisory, and similar fees for the assets of Client Plans invested directly in shares of an Affiliated Fund or invested indirectly in shares of an Affiliated Fund though a Collective Fund. These methods are described in Section II(a)(1)–(3) of this proposed exemption.

Plan-Level Fees

17. It is represented that currently to the extent that Principal provides discretionary investment management services [13] to any Client Plan that invests directly in shares of an Affiliated Fund or indirectly through a Collective Fund, Principal does not charge any investment management fee, any investment advisory fee, or any similar fee directly to such Client Plan.[14] If in the future, Principal were to do so, this proposed exemption would require Principal to use the methods, as described in Section II(a) of this exemption, as applicable, so as to avoid receiving ''double'' investment management, investment advisory, and similar fees.

Also, services provided by Principal for which a fee is charged involve plan-level and participant-level recordkeeping and administrative services, custody, and other clerical and administrative functions.[15] It is represented that a Second Fiduciary typically will select Principal's Collective Funds in connection with a decision to retain Principal as a service provider to such Client Plan, usually as part of a ''bundled'' arrangement. It is also possible that a Second Fiduciary of a Client Plan that already uses Principal's products and services may wish to add additional Collective Funds to its investment line-up.

The Collective Fund-Level Management Fee

18. With regard to the Collective Fund-Level Management Fee, it is represented that the only Collective Funds over which Principal currently exercises fiduciary discretion to invest in Affiliated Funds are the Target Date Funds. Principal currently charges no investment advisory and no similar fees ''inside'' the Target Date Funds. Fees charged by the Target Date Funds presently are limited to: (i) Four (4) basis points charged by Principal Trust for non-advisory, custodial and administrative services (Collective Fund Administrative Services); [16] and (ii) depending on the specific class of units selected by a sponsor of a Client Plan, certain additional ''services fees'' [17] that the plan sponsor may direct to be paid over to other plan service providers for services such as recordkeeping, custody, and distribution.[18]

However, it is represented that in the future, Principal may decide to charge investment advisory fees or may decide to charge similar fees ''inside'' a collective investment vehicle. In that event, Principal will utilize the methods, described in Section II(a)(2) and in Section II(a)(3), as applicable so as to avoid charging ''double'' investment advisory and similar fees.

The Affiliated Fund-Level Advisory Fee

19. The Affiliated Fund-Level Advisory Fees are described in the summary prospectus for an Affiliated Fund and include fees for investment advisory services and fees for similar services which Principal receives as compensation for the provision of such services to such Affiliated Fund.

As noted, above, Principal currently waives the Plan-Level Management Fees and Collective Fund-Level Management Fees for the provision of investment management services, investment advisory services, and similar services and retains the fees paid to Principal by an Affiliated Fund with regard to a Client Plan that invests directly in shares of such Affiliated Fund or indirectly in shares of such Affiliated Fund through a Collective Fund. Notwithstanding this fact, it is represented that Principal in the future may cease to waive Plan-Level Management Fees and Collective Fund-Level Management Fees. In that event, in order to avoid receiving double fees, Principal must comply with the

[13] Investment management services do not include Asset Allocation Services, as defined, above, in Section IV(p).

[14] The Department, herein, is not providing relief for the receipt by Principal of a Plan-Level Management Fee for investment management services provided at the plan-level by Principal to a Client Plan.

[15] The Applicants have not requested and the Department, herein, is not providing any relief for the receipt by Principal at the plan-level of fees for providing recordkeeping and administrative services, custody, and other clerical and administrative functions to a Client Plan.

[16] The Department, herein, is not providing relief for the receipt by Principal of fees from a Collective Fund for providing Collective Fund Administrative Services to such Collective Fund.

[17] For example, a sponsor of a Client Plan can select a ''share'' class of a Collective Fund that is subject to a four (4) basis point trustee fee, or may elect to utilize a share class of a Collective Fund that pays (by way of example) fourteen (14) basis points, four (4) basis points of which are paid to Principal Trust and ten (10) basis points of which the sponsor of such Client Plan may direct Principal Trust to pay to such Client Plan's recordkeeper or other service providers.

[18] The Department, herein, is not providing relief for any other additional ''services fees'' received by Principal that the sponsor of a Client Plan may direct to be paid over to other service providers to such Client Plan.

conditions, as set forth in Section II(a) of this exemption, as applicable.

Receipt of Fees for Secondary Services

20. Principal also receives from an Affiliated Fund various fees and expenses for custody, transfer agency, and similar services, including brokerage services. It is represented that all such services are treated as ''Secondary Services.'' The term, ''Secondary Services,'' is defined, above, in Section IV(i), to mean a service other than an investment management service, an investment advisory service, and any similar service, which is provided by Principal to an Affiliated Fund, including but not limited to custodial, accounting, administrative, brokerage, and other services. It is represented that all fees for Secondary Services received by Principal at this time are paid to Principal directly by the Affiliated Funds. The negative consent procedure applicable for a Fee Increase for Secondary Services is discussed, above, in paragraph 11.

In addition, Principal affiliates may receive commissions for the performance of brokerage services for the mutual funds. Under the conditions of this proposed exemption, if an Affiliated Fund places brokerage transactions with Principal, Principal will provide the Second Fiduciary of each such Client Plan, at least annually with the disclosure described in Section II(o) of this proposed exemption.

21. The Applicants represent that proposed exemption is in the interest of Client Plans, because it will allow Principal to efficiently manage or advise with respect to the assets of such Client Plans invested in shares of an Affiliated Fund, either directly or indirectly through a Collective Fund, in a timely manner and on terms that might not otherwise be available without exemptive relief.

22. It is represented that the proposed exemption contains sufficient safeguards for the protection of the Client Plans invested in shares of an Affiliated Fund either directly or indirectly through a Collective Fund. Prior to any investment by a Client Plan directly or indirectly in shares of an Affiliated Fund, such investment must be authorized by the Second Fiduciary of such Client Plan, based on full and detailed written disclosure concerning such Affiliated Fund.

It is further represented that the proposed exemption is protective of the rights of Client Plans, because any Fee Increase or the addition of an Affiliated Fund to the portfolio of a Collective Fund will be on terms monitored and approved by the Second Fiduciary who will have the ability to avoid the effect of such Fee Increase and the effect of the addition of an Affiliated Fund to the portfolio of a Collective Fund. Furthermore, each investment of the assets of a Client Plan in shares of an Affiliated Fund, either directly, or indirectly through a Collective Fund, will be subject to the ongoing ability of the Second Fiduciary of such Client Plan to terminate the investment in such Affiliated Fund and to terminate the investment in such Collective Fund, without penalty to such Client Plan at any time upon written notice of termination to Principal.

In addition to the initial disclosures, Principal provides to such Second Fiduciary ongoing disclosures regarding such Affiliated Funds. Further, Principal will respond to inquiries from a Second Fiduciary and will provide any other reasonably available information to a Second Fiduciary upon request.

23. It is represented that the proposed exemption is administratively feasible, because the subject transactions will not require continued monitoring or other involvement on behalf of the Department or the Internal Revenue Service. The use of a Termination Form will provide both a record and a regular reminder to the Second Fiduciary of a Client Plan of such plan's rights vis-à-vis investing in Affiliated Funds, either directly or indirectly through a Collective Fund.

24. In summary, the Applicants represent that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Affiliated Funds will provide Client Plans with effective investment vehicles;

(b) The receipt by Principal of an Affiliated Fund-Level Advisory Fee, and the receipt of a fee by Principal for Secondary Services will require an authorization in writing in advance by a Second Fiduciary for each such Client Plan after receipt of full written disclosure;

(c) Any authorization made by a Second Fiduciary, acting on behalf of a Client Plan will be terminable at will by such Second Fiduciary, without penalty to such Client Plan, following receipt by Principal of a Termination Form or any other written notice of termination from such Second Fiduciary of a Client Plan invested directly in shares of an Affiliated Fund or indirectly through a Collective Fund;

(d) The Termination Form will be supplied to such Second Fiduciary at least annually;

(e) No sales commissions will be paid by Client Plans in connection with the acquisition or in connection with the sale of shares of the Affiliated Funds either directly or through a Collective Fund, and only redemption fees disclosed in the summary prospectus of an Affiliated Fund will be paid by a Client Plan;

(f) All dealings among a Client Plan, any Affiliated Fund, and Principal will be on a basis no less favorable to such Client Plan than such dealings with the other shareholders of such Affiliated Fund;

(g) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly, and the purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold indirectly through a Collective Fund, will be the NAV at the time of the transaction, and will be the same purchase price paid and the same sales price received for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time;

(h) A Client Plan investing in shares of an Affiliated Fund, either directly or indirectly, through a Collective Fund, will not pay ''double fees'' for investment management, investment advisory, and similar fees with respect to the assets of such Client Plan so invested; and

(i) An Auditor on at least an annual basis will verify the proper crediting of any Fee Increase and interest, received by a Client Plan, pursuant to Section II(k)(2), and an audit report shall be completed by such Auditor no later than six (6) months after the period to which it relates.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice include each Client Plan invested directly in shares of an Affiliated Fund, each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and each plan for which Principal provides discretionary management services, via the Target Date Funds or otherwise at the time the proposed exemption is published in the **Federal Register**.

It is represented that notification will be provided to each of these interested persons by first class mail, within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the

Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

For further information contact: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

Aztec Well Servicing Company & Related Companies Medical Plan Trust Fund (the Plan), Located in Aztec, New Mexico

[Application No. D–11628]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act in accordance with procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), (C) and (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the payment by the Plan to Basin Occupational & Urgent Care, LLC (BOUC), a party in interest with respect to the Plan, for the on-site provision to the Plan of urgent medical care and wellness services by a nurse-practitioner and a wellness coordinator employed by BOUC, provided that the following conditions are satisfied:

(a) An independent, qualified fiduciary (I/F), with expertise in plans providing health and welfare benefits under the Act and the fiduciary obligations thereunder, acting on behalf of the Plan, determines prior to entering into the transaction that the transaction is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of the Plan;

(b) Before the Plan enters into the proposed transaction, the I/F reviews the transaction, ensures that the terms of the transaction are at least as favorable to the Plan as an arm's length transaction with an unrelated party, and determines whether or not to approve the transaction, in accordance with the fiduciary provisions of the Act;

(c) The I/F monitors compliance with the terms and conditions of this proposed exemption, as described herein, and ensures that such terms and conditions are at all times satisfied;

(d) The I/F monitors compliance with the terms of the written license agreement (the License) between the Plan and AWS, and takes any and all steps necessary to ensure that the Plan is protected, including, but not limited to, exercising its authority to terminate the License on 10 days' written notice; and

(e) The subject transaction is, in fact, on terms and at all times remains on terms that are at least as favorable to the Plan as those that would have been negotiated under similar circumstances at arm's-length with an unrelated third party.

Section II

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), (C) and (D), 406(b)(1), and 406(b)(2) of the Act shall not apply, effective July 1, 2010, to: (1) The payment by the Plan's participants to BOUC for medical services provided as a result of the inclusion of BOUC's clinic, located in Farmington, New Mexico, as a network provider in the BlueCross BlueShield of New Mexico (BCBSNM) Network of Health Care Providers; and (2) the payment by the Plan to BCBSNM of the difference between BOUC's fee and the participant's co-pay, which difference is then transmitted by BCBSNM to BOUC, provided that the following conditions are satisfied:

(a) The terms of the medical services provided by BOUC to Plan participants are at least as favorable to the participants as those they could obtain in similar transactions with an unrelated party;

(b) the Plan participants will have access to all of the providers in BCBSNM's network and will be free to choose whether or not to use BOUC's clinic;

(c) at least 99% of the providers participating in the BCBSNM are unrelated to the companies whose employees participate in the Plan, or any other party in interest with respect to the Plan;

(d) BOUC will be treated no more favorably than any other provider participating in the BCBSNM; and

(e) the transactions are not part of an agreement, arrangement or understanding designed to benefit BOUC or any other party in interest with respect to the Plan.

Summary of Facts and Representations

1. Aztec Well Servicing Company (AWS) is a family-owned business that has operated in San Juan County, in northwestern New Mexico, near the Four Corners, since 1963. In 2007, AWS decided to self-insure its medical benefits and established the Aztec Well Servicing Company & Related Companies Medical Plan Trust Fund (the Plan). The Plan covers the employees of six companies (together, the Companies) with common ownership: Totah Rental and Equipment Company, Inc., Triple S Trucking Company, Inc., Double M Mud Company, Inc., Basin Disposal, Inc., and Roadrunner Fuels, as well as AWS. All six of these companies operate in the well drilling and servicing industry in and around San Juan County. As of May 31, 2011, there were approximately 344 participants in the Plan. The Plan and its related trust fund are governed by a three-member Board of Trustees (the Trustees) that consists of Jerry Sandel, the President of the Companies, his son Jason Sandel, Vice-President and Treasurer, and Stewart Peterson, Vice-President.

2. The Trustees contract with BCBSNM for access to the BCBSNM network of health care providers and for claims adjudication and related services. However, even with access to that network, there is a dearth of primary and urgent care providers in San Juan County. Along with many members of the community, the Trustees have been concerned about the lengthy waiting times for urgent care and the general inaccessibility of health care in this rural area.

3. In order to address this problem, Trustee Jason Sandel, along with his sister Michelle Sandel, formed a health care clinic, Basin Occupational & Urgent Care LLC (BOUC), which was organized under the laws of the State of New Mexico as a for-profit limited liability corporation. No Plan assets were used in the formation of BOUC, and its services are available to the general public. Currently, AWS has an arrangement with BOUC under which BOUC provides the services of a nurse-practitioner to the Plan participants and their dependents. The services consist of non-occupational urgent care, wellness exams, and preventive care advice and are available on AWS' campus during working hours without charge to the individual. BOUC also provides a wellness coordinator who oversees the Plan's exercise facility, which is also available without charge to the Plan's participants and their eligible dependents. BOUC has also joined the Plan as a sponsoring employer and its employees have the opportunity to participate in the Plan on the same terms as all other employees of participating employers.

4. The applicant represents that AWS set up the Plan in order to provide medical benefits. The Trustees of the

Plan consider access to the nurse-practitioner and the wellness coordinator to be an important part of such benefits. The applicant represents that it was always intended that the Plan would provide these benefits; AWS is currently furnishing them to avoid violating the prohibited transaction rules. The applicant has requested relief to permit the Plan to enter into an agreement (the Agreement) with BOUC to provide the same services, on the same terms and conditions (*i.e.,* the Plan will pay BOUC for providing the services of the nurse-practitioner and the wellness coordinator). The services would continue to be available to all Plan participants without charge. AWS represents that if the Plan were to provide medical services directly to its participants, it would have to comply with a number of state laws, including medical facility and provider licensing, as well as state and federal employment laws. It would also have to insure against medical malpractice liability. Because the Plan is so small, the Trustees have decided that it is more cost-effective to the Plan to contract out these services to an entity that can take care of the licensing, insurance, employment and legal and regulatory compliance issues in the context of a larger book of business.

5. The nurse-practitioner and the wellness coordinator, who are employees of BOUC, will be providing their services to the Plan in a building (Building) owned by AWS. AWS has entered into a licensing agreement (the License) with the Plan under which the Plan can use the Building free of charge. The Plan purchased exercise equipment from an unrelated party, The Fitness Superstore, a national chain that sells sports equipment. The equipment, which the Plan has put into the Building, includes treadmills, elliptical trainers, stationary bicycles, weight machines, exercise mats, and the like, none of which is affixed to the real property and all of which could either be moved to a new location or sold on the open market by the Plan. The License does not contain a specific number of years, but simply provides that it will remain in effect until terminated by either party (on 10 days' written notice). The License provides that the Plan will retain ownership of any alterations, remodeling, and/or improvements funded by the Plan. In the event of termination, AWS and the Plan will apply to the Department for a separate prohibited transaction exemption to permit the Plan to sell to AWS any alterations, remodeling or improvements the Plan makes to the Building.

6. An independent, qualified fiduciary has been retained by the Plan and has conducted a study regarding the proposed transaction. The independent fiduciary is Maureen Sanders, of Albuquerque, New Mexico. Ms. Sanders represents that she has been the attorney for the New Mexico Medical Insurance Pool (the Pool) since the late 1980s. The Pool was created by the legislature to ensure that health insurance is available for purchase for those with pre-existing conditions. Ms. Sanders represents that because of that affiliation, she has become very aware of the importance of preventive measures to assist individuals with their health needs. She is also aware of the costs of health care, the lack of providers in the Four Corners area, and the need for options for those working in the oil fields. Since she has left full-time teaching, Ms. Sanders has continued to teach insurance law at the University of New Mexico School of Law as an adjunct professor. She represents that she regularly represents clients who have been denied medical and other welfare benefits by their fully-insured ERISA plans and is familiar with the fiduciary obligations imposed by ERISA. She further represents that less than 1% of her annual income has been and will be derived from her role as independent fiduciary for the Plan.

7. Ms. Sanders has reviewed the proposed transaction and determined that it is appropriate for the Plan and in the best interest of its participants and beneficiaries. She states that the proposed arrangement would provide several benefits to the Plan participants, including worksite medical services and a fitness center. Under the Agreement, BOUC will furnish the worksite medical services to the Plan's participants and beneficiaries at no additional out-of-pocket costs to them. The services will include wellness services and urgent care triage and treatment. However, participants and beneficiaries will be referred to their primary care physicians for routine and on-going treatment. The services of the nurse-practitioner will be made available to all of the participants and beneficiaries, on site and free of charge. BOUC will also furnish a wellness coordinator to assist in the administration of wellness programs and activities designed to improve employee health and well-being. It is expected that the Fitness Center will support healthy lifestyles for the participants and beneficiaries.

8. Ms. Sanders further represents that she reviewed the proposed rates and fees to be paid by the Plan for the services to be rendered by BOUC, and determined that they were reasonable. In reaching that determination, Ms. Sanders reviewed compensation for non-physician providers both nationally and for the western states. She also looked at cost to customers generally and at the anticipated cost to BOUC for the non-physician providers. She additionally reviewed the actual or anticipated BOUC operating expenses for both a wellness clinic and a fitness center. In comparing that information with the proposed fees to be paid by the Plan to BOUC, she determined that the proposed fees were reasonable. She represents that her conclusion is especially true given the dearth of facilities and providers in the Four Corners area.

9. On July 1, 2010, BOUC joined the BCBSNM provider network. BCBSNM is the largest provider network in New Mexico. In order to operate competitively and establish itself financially, it had no choice economically but to join a number of preferred provider networks, including BCBSNM, the largest. The benefits to BOUC of such an arrangement are those that attract other providers; relatively fast and streamlined claims payment in exchange for lower reimbursement fees that are set by BCBSNM. BCBSNM is not affiliated with the Plan nor any of the Companies, other than as a service provider for network access, claims adjudication and related services to the Plan.

10. The Plan has contracted annually with BCBSNM for the use of its provider network and claims adjudication services since August 1, 2007. The Trustees' selection of the BCBSNM network occurred after they had an insurance broker carry out a competitive search of area provider networks before BOUC was formed or contemplated. It is anticipated that some Plan participants, as well as the participants in plans sponsored by other unrelated employers and the general public will use the BOUC clinic located in Farmington, New Mexico. The Plan would pay claims for the services that BOUC provides at the rates specified in its provider agreement with BCBSNM.[19] The Plan participants will not be required to use the BOUC clinic; they will be able to choose any health care facilities that are in the BCBSNM network. The applicant represents that there are 20,730 health care providers in

[19] For example, if a Plan participant visits a member of the BCBSNM network, including the BOUC clinic, the participant pays the co-pay, and the provider bills BCBSNM for the difference between the negotiated fee amount and the co-pay. BCBSNM would pay the provider that difference, and then bill that amount to the Plan.

the BCBSNM network, so the BOUC clinic represents less than .05% of the providers in the network from which the participants are free to choose. The applicant further represents that there are 774 providers in the BCBSNM network who are located in San Juan County.

11. BOUC is a member of the San Juan Independent Practice Association (SJIPA), which negotiates provider reimbursement rates with BCBSNM on behalf of its members. SJIPA also negotiates with most, if not all, of the other medical provider networks that operate in San Juan County, such as Presbyterian Health Plan, Aetna, Cigna, United Health Care, and Lovelace Health Plan. SJIPA credentials its members through a lengthy application process that includes site visits, verification of provider licensure, and regulatory agency standing. Providers such as BOUC then have the opportunity to enter into a written agreement directly with one of the provider networks at the negotiated master rates.

12. Providers such as BOUC pay a per-practitioner membership fee to SJIPA of $1,000 for the first year, $225 per quarter during the second year, and $100 per quarter for all subsequent years. The providers do not pay any fee to BCBSNM. The Plan pays an administrative fee to BCBSNM for access to the BCBSNM network (and thus the negotiated discounted rates for providers) and for other administrative services, such as adjudication and processing of claims, but that fee has not changed and will not change due to the presence of BOUC in the network. None of the Companies have received or will receive any direct or indirect fees as a result of BOUC joining the BCBSNM network.

13. The applicant represents that the Plan has been trying to encourage its participants to use urgent care facilities instead of more expensive emergency rooms, when medically appropriate. To that end, the Plan recently reduced its normal participant co-pay for urgent care visits to BOUC from $75 to $25, and BOUC agreed to reduce its rates by the difference. The BCBSNM reimbursement that BOUC receives remains at the negotiated BCBSNM rate for all similar services, and the Plan does not make any additional payment to BOUC; the urgent care facility simply absorbs the loss. The Plan's Trustees recently negotiated the same reduced co-pay amount with a new urgent care facility in Aztec called Aztec Urgent Care, which is unrelated to BOUC, any of the Trustees, and any of the Companies.

14. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) An independent, qualified fiduciary (I/F), acting on behalf of the Plan, has determined prior to entering into the proposed transaction that the transaction is administratively feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of the Plan;

(b) The I/F has reviewed the transaction to ensure that its terms are at least as favorable to the Plan as an arm's-length transaction with an unrelated party, and has determined to approve the transaction, in accordance with the fiduciary provisions of the Act;

(c) The I/F will monitor compliance with the terms and conditions of this proposed exemption, as described herein, and ensure that such terms and conditions are at all times satisfied;

(d) The I/F will monitor compliance with the terms of the License, and take any and all steps necessary to ensure that the Plan is protected, including, but not limited to, exercising her authority to terminate the License on 10 days' written notice; and

(e) The transaction is, in fact, on terms and at all times remains on terms that are at least as favorable to the Plan as those that would have been negotiated under similar circumstances at arm's-length with an unrelated third party;

(f) The terms of the medical services provided by BOUC to Plan participants at its Farmington, New Mexico clinic are at least as favorable to the participants as those they could obtain in similar transactions with an unrelated party;

(g) The Plan participants will have access to all of the providers in BCBSNM's network and will be free to choose whether or not to use BOUC's clinic;

(h) At least 99% of the providers participating in the BCBSNM are unrelated to the companies whose employees participate in the Plan, or any other party in interest with respect to the Plan;

(i) BOUC will be treated no more favorably than any other provider participating in the BCBSNM; and

(j) The transactions are not part of an agreement, arrangement or understanding designed to benefit BOUC or any other party in interest with respect to the Plan.

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

Genzyme Corporation 401(k) Plan (the Plan or the Applicant), Located in Cambridge, MA

[Application No. D–11669]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[20] If the proposed exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective April 4, 2011, to (1) the acquisition by the Plan of contingent value rights (CVRs) as a result of the Plan's ownership of certain common stock (Genzyme Common Stock) in Genzyme Corporation (Genzyme), the Plan sponsor, in connection with (a) The purchase of shares (Shares) of Genzyme Common Stock pursuant to an exchange offer (the Exchange Offer) and a subsequent offer to the Exchange Offer (the Subsequent Exchange Offer) by GC Merger Corp. (the Purchaser), a wholly-owned subsidiary of sanofi-aventis (Sanofi), a party in interest with respect to the Plan, and (b) the ''short-form'' merger (the Merger) of Sanofi into Genzyme (together, the Transactions); (2) the continued holding of CVRs by the Plan; and (3) the resale of the CVRs by the Plan to Sanofi, pursuant to the exercise of repurchase rights (the Repurchase Rights) available under certain circumstances specified in the Contingent Value Rights Agreement (the CVR Agreement).

This proposed exemption is subject to the following conditions:

(a) Plan participants holding Genzyme Common Stock received one CVR for each Share on the effective date of the tender or cancellation of their Shares, in connection with the Transactions.

(b) The acquisition of CVRs by the Plan occurred in connection with the Transactions on the same terms and in the same manner as the acquisition of CVRs by all other holders of Genzyme Common Stock, other than Sanofi, the Purchaser, Genzyme and dissenting shareholders.

(c) The Plan's acquisition of CVRs resulted either (1) from a decision by a

[20] For purposes of this proposed 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.

participant or beneficiary to tender Shares allocated to his or her account or (2) following a decision by a participant or beneficiary not to tender Shares by reason of the Merger.

(d) The Plan did not pay any fees or commissions in connection with the acquisition of the CVRs, nor does it pay any fees or commissions in connection with the holding or sale of CVRs to Sanofi pursuant to an exercise of Sanofi's repurchase right under the CVR Agreement.

(e) Credit Suisse Securities (USA) LLC (Credit Suisse Securities) and Goldman Sachs & Co (Goldman Sachs) advised Genzyme that the consideration received by Genzyme shareholders (Genzyme Shareholders), including Plan participants, in exchange for their Shares was ''fair,'' from a financial point of view.

(f) The Plan does not acquire or hold CVRs other than those acquired in connection with the Transactions.

(g) Plan participants have the same rights with respect to CVRs allocated to their accounts under the Plan (including with respect to any repurchase of CVRs by Sanofi) as unrelated parties have with respect to CVRs not held under the Plan, and they may direct the Plan's trustee (the Trustee) to sell CVRs allocated to their respective accounts at any time.

(h) For so long as CVRs remain a permissible Plan investment, the retention or disposition by the Plan of CVRs allocated to a participant's or beneficiary's account is administered in accordance with the provisions of the Plan that are in effect for individually-directed investment of participant accounts.

Effective Date: If granted, this proposed exemption will be effective as of April 4, 2011.

Summary of Facts and Representations

The Plan

1. The Plan, which is sponsored and maintained by Genzyme, is an individual account plan intended to qualify under section 401(a) of the Code that includes a qualified cash or deferred arrangement described in section 401(k) of the Code. The Plan allows participants to direct the investment of their accounts under the Plan in various investment alternatives available under the Plan, including, during periods prior to the Transactions described herein, Genzyme Common Stock.

As of April 4, 2011, the Plan had 7,537 participants and assets having an aggregate fair market value of $738,806,554. As of the same date, 646,922.56 Shares were held by the Plan in accounts maintained for 2,933 participants, representing approximately 39% of the participants in the Plan. These Shares had an aggregate fair market value on April 4, 2011 of $49,366,660, or approximately 6.7% of the aggregate fair market value of the Plan's total assets, and represented approximately 0.2437% of the 265,485,712 Shares that were issued and outstanding as of that date. According to the Applicant, the Plan's Shares constituted qualifying employer securities within the meaning of section 407(d)(5) of the Act.[21]

The Plan is funded through a trust of which Prudential Bank & Trust, FSB, serves as the Trustee. The Trustee is a directed trustee. Under the Genzyme Corporation 401(k) Plan Trust Agreement (the Trust Agreement) executed between the Trustee and Genzyme, the Trustee accepted employer securities (*i.e.,* Genzyme Common Stock), as defined in the Plan, as a plan asset with Genzyme's understanding and approval that the employer securities would be held by Prudential Investment Management Services LLC.

The Plan is administered by the Genzyme Benefit Plan Committee (the Committee), which was appointed by Genzyme. The Committee is responsible for making all investment decisions related to the Plan, other than decisions made by the participants and decisions with regard to investments provided for as a design feature in the Plan document, such as investments in employer securities. Genzyme, as Plan sponsor, is responsible for decisions relating to the availability of specified investments as a feature of the Plan's design. The Committee has engaged CapTrust Advisors (CapTrust), an independent financial advisor with its primary office located in Raleigh, North Carolina, to provide financial services to the Committee and to Plan participants.

Genzyme

2. Genzyme, a Massachusetts corporation with its principal offices located in Cambridge, Massachusetts, is a global biotechnology company engaged in the research, development, manufacturing and marketing of products to address unmet medical needs. As of December 31, 2010, Genzyme had total assets of approximately $10.91 billion and total stockholders' equity of approximately $7.59 billion. As of the same date, there were approximately 261.5 million Shares outstanding.

Sanofi

3. Sanofi, a French *société anonyme*[22] with its headquarters located in Paris, France, is a global pharmaceutical group engaged in the research, development, manufacture and marketing of healthcare products. As of December 31, 2010, Sanofi had total assets of approximately €85.26 billion and total stockholders' equity of approximately €53.3 billion.

The Purchaser

4. The Purchaser, a Massachusetts corporation incorporated on July 29, 2010, is a direct wholly-owned subsidiary of Sanofi. The Purchaser was organized by Sanofi to acquire Genzyme and has not conducted any unrelated activities since its organization. All outstanding shares of the capital stock of the Purchaser are owned by Sanofi.

Acquisition of Genzyme by Sanofi

5. On April 8, 2011, Sanofi completed its acquisition of Genzyme. The acquisition occurred pursuant to an Agreement and Plan of Merger dated February 16, 2011 (the Merger Agreement) executed by Sanofi, the Purchaser and Genzyme, wherein all of the outstanding Shares of Genzyme Common Stock were acquired by the Purchaser. The Share acquisition transaction was consummated by the Purchaser through both an Exchange Offer and a Subsequent Exchange Offer for all of the outstanding Shares (together, the Exchange Offers). The Exchange Offers were followed by a ''short-form'' merger (*i.e.,* the Merger) of the Purchaser with and into Genzyme that did not require a Genzyme Shareholder vote.

As a result of the Transactions (*i.e.,* the Share acquisition transaction and the Merger), Genzyme survives as a direct wholly-owned subsidiary of Sanofi. All Shares validly tendered and not withdrawn in either the Exchange Offer or the Subsequent Exchange Offer (except for Shares held by Sanofi, Genzyme and their subsidiaries, and Shares held by shareholders who properly perfected appraisal rights under Massachusetts law) were converted into the right to receive (a) $74.00 in cash, less any applicable withholding for taxes and without

[21] Section 407(d)(5) of the Act generally defines the term ''qualifying employer security'' as an employer security which is (a) stock, (b) a marketable obligation, or (c) an interest in an existing publicly traded partnership.

[22] The Applicant states that a *société anonyme* is a stock company or limited company. The Applicant further states that the ''S.A.'' that follows the name of a French société anonyme is comparable to the ''Inc.'' that follows the name of a U.S. corporation.

interest (the Cash Consideration), per Share, and (b) one CVR per Share (together with the Cash Consideration, the Merger Consideration). All Shares not tendered were converted into the right to receive the same Merger Consideration. The Merger Consideration was paid by the Purchaser and delivered by Computershare Trust Company, N.A., the exchange agent for the Exchange Offers (the Exchange Agent), to tendering Shareholders in the Exchange Offer and the Subsequent Exchange Offer on April 4, 2011.

The terms of the Transactions were negotiated on an arm's length basis by the parties and approved by the Boards of Directors of Sanofi, the Purchaser, and Genzyme. In connection with Genzyme's consideration of the Exchange Offer and the Subsequent Exchange Offer and Merger, fairness opinions were prepared by Credit Suisse Securities and Goldman Sachs. Notice of the Transactions was provided by Genzyme to Genzyme Shareholders. Also, Plan participants were given the same consideration as all other holders of Shares.[23] More details about the Transactions are presented below.

The Exchange Offer

6. On April 4, 2011, the Purchaser accepted for exchange all Shares that were tendered and actually delivered. The exchange for such Shares was made in accordance with the terms of the Exchange Offer, which commenced on March 7, 2011 and ended on April 1, 2011 at 11:59 p.m., unless extended by the Purchaser. The Exchange Agent advised Sanofi and the Purchaser that 224,528,469 Shares were validly tendered and not properly withdrawn pursuant to the Exchange Offer by Genzyme Shareholders. The tendered Shares represented approximately 84.6% of all the outstanding Shares as of the April 1, 2011 expiration date of the Exchange Offer. However, 43,285,259 of those Shares were offered up with a guarantee by an ''eligible guarantor institution'' [24] that they would be delivered within a short period of time, and the related Shares (*i.e.,* the Shares for which the guarantor guaranteed delivery of a Share certificate or book-entry confirmation) were not actually accepted for exchange at the expiration of the Exchange Offer. The number of Shares actually delivered and accepted for exchange at the end of the Exchange Offer was 181,243,210 (224,528,469 Shares minus 43,285,259 Shares). Accordingly, following the acceptance of the Shares validly tendered and not properly withdrawn in the Exchange Offer (excluding the Shares subject to guarantees of delivery), Sanofi and the Purchaser owned approximately 68.3% of the outstanding Shares or approximately 62% of the total Shares on a fully-diluted basis (*i.e.,* the number of Shares actually outstanding plus the number of additional Shares that would be outstanding if Shares were issued pursuant to all outstanding stock rights). As a result of such acceptance of Shares in the Exchange Offer, a change in control of Genzyme occurred.

Of the total Shares tendered during the Exchange Offer, 320,294 Shares were tendered by 971 Plan participants. In return for their Shares, Plan participants received cash consideration of $23,701,756 in the aggregate, and a total of 320,294 CVRs with a value of $2.35 per Share, or an aggregate value of $752,690.90, as of the close of trading on April 4, 2011.[25]

The Subsequent Exchange Offer

7. The Purchaser commenced a Subsequent Exchange Offer on April 4, 2011 for all remaining untendered Shares. The Subsequent Exchange Offer expired at 6 p.m., New York City time, on April 7, 2011, in accordance with the applicable rules and regulations of the U.S. Securities and Exchange Commission (the SEC) and the Merger Agreement. Following the close of the Subsequent Exchange Offer, the Exchange Agent advised Sanofi and the Purchaser that 56,069,616 Shares were validly tendered. The tendered Shares represented 21.1% of the issued and outstanding Shares. The Shares included both (a) Shares delivered for exchange pursuant to delivery guarantees made during the Exchange Offer, and (b) Shares newly tendered and delivered for exchange in the Subsequent Exchange Offer.[26] Together with the 181,243,210 Shares delivered and accepted for exchange in the Exchange Offer, the 56,069,616 Shares delivered and accepted in the Subsequent Exchange Offer brought the total Shares acquired by Sanofi in the two offering periods to 237,312,826, or approximately 89.4% of the issued and outstanding Shares.

Of the total Shares tendered in the Subsequent Exchange Offer, 14,567 Shares were exchanged by 66 Plan participants, who received aggregate cash consideration of $1,077,958, and a total of 14,567 CVRs with a value of $2.41 per CVR, or an aggregate value of $35,106.47, as of the close of trading on April 7, 2011, the acceptance date of the Subsequent Exchange Offer.[27]

Steps Taken by Genzyme Prior to the Transactions

8. Genzyme took certain steps prior to the Transactions in preparation for the acquisition of CVRs by the Plan. In this regard, certain provisions of the Plan and the Trust Agreement relating to employer securities were amended to accommodate the acquisition and holding of the CVRs. In addition, notice (the Notice) of the Transactions, dated March 10, 2011, was provided to Genzyme Shareholders as well as to each Plan participant and beneficiary who had invested in Shares through the Plan. The Notice explained that on the effective date of the Exchange Offer, the Plan participant or beneficiary could elect to provide instructions to the Plan Trustee to tender all or some of the Shares held on their behalf under the Plan. The Notice further explained that no action was required if a Plan participant or beneficiary did not wish to tender any of the Shares allocated to their account under the Plan in the Exchange Offer.

Plan participants and beneficiaries also had the opportunity, on a daily basis until the second day preceding the

[23] While this statement is generally accurate, the Applicant notes that Sanofi, the Purchaser and Genzyme did not receive the Merger Consideration for their Shares. Further, dissenting shareholders who perfected their appraisal rights were not entitled to receive the CVRs, but they generally received $74 in cash for each Share they owned, plus interest.

[24] The Applicant represents that ''eligible guarantor institutions,'' as defined in Rule 17Ad–15 of the Securities Exchange Act of 1934 (the 1934 Act), include banks, brokers, dealers, credit unions, national securities exchanges, registered securities associations, clearing agencies, and savings associations. The Applicant states that, typically, the delivery guarantee would have been made by a broker.

[25] The Applicant notes that the CVRs in which the Plan acquired an ownership interest on April 4, 2011 were received by the Plan on April 7, 2011. The Applicant further notes that the value of the CVRs at the close of trading on April 7, 2011 was $2.41 per CVR, or $771,908.54 for all CVRs received on that date.

[26] The Applicant notes that the Form 8–K filed by Genzyme with the SEC on April 8, 2011 does not indicate how many of the 56,069,616 Shares were Shares delivered pursuant to delivery guarantees made during the Exchange Offer and how many were Shares newly tendered and delivered for exchange. The Applicant also notes that additional Shares may have been newly offered up during the Subsequent Exchange Offer with a guarantee that they would be delivered within a short period of time, but the Form 8–K does not contain disclosure regarding such guarantees because the related Shares had not been accepted for exchange at that time.

[27] The Applicant notes that the CVRs in which the Plan acquired an ownership interest on April 7, 2011 were received by the Plan on April 8, 2011. The Applicant further notes that the value of the CVRs at the close of trading on April 8, 2011 was $2.32 per CVR or $33,795.44 for all CVRs received on that date.

closing of the Exchange Offer and the Subsequent Exchange Offer, to transfer funds held on their behalf in Genzyme Common Stock to other investment funds under the Plan if they did not wish to receive interests in CVRs under the Plan. The Notice furnished to Plan participants and beneficiaries included notice of the period of time immediately preceding the closing of the tender offer during which they would be unable to give further instructions regarding the investment of the portion of their accounts invested in Genzyme Common Stock.

Top-Up Option

9. In the Merger Agreement, Genzyme granted an irrevocable option (*i.e.,* the Top-Up Option) to the Purchaser to purchase newly-issued Shares directly from Genzyme. On April 8, 2011, subsequent to the acceptance of Shares in the Subsequent Exchange Offer, the Purchaser exercised the Top-Up Option granted to the Purchaser to purchase newly issued Shares directly from Genzyme in accordance with the Merger Agreement. The Purchaser purchased 16,245,894 newly issued Shares at a price of $76.33 per Share and paid the purchase price (a) By issuing a promissory note to Genzyme in the amount of $1,239,886,631 and (b) by paying $162,459 in cash to Genzyme. Subsequent to the exercise of the Top-Up Option, Sanofi and the Purchaser had an aggregate ownership of over 90% of the outstanding Shares.

Short-Form Merger and Cancellation of Shares

10. Sanofi completed its acquisition of Genzyme by effecting a ''short-form merger,'' which did not require a shareholder vote, pursuant to section 11.05 of the Massachusetts Business Corporation Act between the Purchaser and Genzyme. As a result of the Merger, Genzyme became a direct, wholly-owned subsidiary of Sanofi. Any Shares not tendered in the Exchange Offer or the Subsequent Exchange Offer (other than Shares held in Genzyme's treasury or owned by Sanofi, which Shares were cancelled and retired without any conversion thereof) were cancelled and converted into the right to receive the same Merger Consideration that was paid in the Exchange Offer and the Subsequent Exchange Offer. The total number of Shares outstanding on the effective date of the Merger that became eligible to be cancelled and converted into a right to receive the Merger Consideration was 28,173,190. Of the total Shares eligible to be cancelled, 308,464.81 Shares were owned by and allocated to participant accounts under the Plan, for which the Plan received the Merger Consideration shortly after the appraisal period expired on May 28, 2011 in the form of cash consideration of $22,826,395.94, in the aggregate, and a total of 308,465 CVRs. No specific action was taken by the Plan to exercise or relinquish appraisal rights.[28]

The CVRs

11. The CVRs are general, unsecured, contingent payment obligations of Sanofi that rank equally with all existing and future unsecured unsubordinated indebtedness of Sanofi and senior to all subordinated indebtedness of Sanofi. They were issued by Sanofi pursuant to a CVR Agreement that was executed on March 30, 2011 by and between Sanofi and American Stock Transfer & Trust Company, LLC (the CVR Trustee), an unrelated party. In accordance with requirements of the Trust Indenture Act of 1939, the CVRs were also issued under an indenture with the CVR Trustee, which was appointed to protect and enforce the rights of the CVR holders. The indenture trust that holds the CVRs is not a plan asset vehicle. The CVR Trustee (a) Will receive from Sanofi amounts due under the CVRs and promptly remit payment to the CVR holders, (b) may demand payment and institute legal proceedings to collect amounts due and unpaid if Sanofi fails to pay amounts due under the CVRs, (c) must transmit notice to the CVR holders of breaches under the CVR Agreement, subject to certain conditions and expectations, and (d) may institute legal proceedings to protect and enforce the rights of the CVR holders upon the occurrence of a breach under the CVR Agreement.

The CVR Trustee also performs various administrative functions that include, but are not limited to, (a) Serving as the initial Security Registrar for the purposes of registration and transfer of the CVRs, (b) notifying the CVR holders of certain amendments to the CVR Agreement, and (c) providing the CVR holders with certain reports concerning its actions and filing a copy of each such report with the Nasdaq Global Market, the SEC and Sanofi.

[28] The Applicant represents that, under Massachusetts law, holders of Shares of Genzyme Common Stock that were not tendered had the opportunity to exercise appraisal rights to demand fair value for their Shares for a specified time after the Merger. The deadline for the exercise of appraisal rights was May 28, 2011. However, the Applicant notes that the Plan did not provide for appraisal rights to be passed through to participants, and the Committee did not direct the Trustee either to exercise such rights or to relinquish them before they expired. Accordingly, no participant in the Plan exercised appraisal rights affecting the disposition of Shares held by the Plan.

Under the CVR Agreement, Sanofi is required to pay to the CVR Trustee, and the CVR Trustee is required to pay to the holders of CVRs, specified amounts upon achievement of certain milestones, as described below, up to a maximum payment of $14 in the aggregate per CVR. In accordance with the CVR Agreement, Sanofi is obligated to use commercially reasonable efforts to ensure that the CVRs are publicly traded on a national securities exchange.[29]

The CVRs were registered under the Securities Act of 1933 (the 1933 Act), as required by the CVR Agreement, effective March 29, 2011. The CVRs were also registered under the 1934 Act, effective March 28, 2011. No CVRs may be issued after the initial issuance in connection with the Transactions, and no payments will be due under the CVR Agreement for any milestones achieved after the earlier of (a) December 31, 2020 or (b) the date that Product Sales Milestone #4 (as described below) is achieved.

12. The CVR Agreement provides for payments to the holders of CVRs on attainment of the following production and development milestones:

• *Production Milestone.* A payment of $1.00 per CVR will be made upon the completion, not later than December 31, 2011, of production and release of specified quantities of Cerezyme® and Fabrazyme®, two of Genzyme's enzyme replacement therapies, with payment to be made 20 business days following achievement of the milestone but not earlier than January 3, 2012.

• *Approval Milestone.* A payment of $1.00 per CVR will be made within 20 business days following the receipt, not later than March 31, 2014, of FDA approval for use of the drug alemtuzumab for treatment of multiple sclerosis (alemtuzumab MS).

In addition, the CVR Agreement provides for payments to the holders of CVRs on attainment of targets for sales of alemtuzumab MS, as follows.

• *Product Sales Milestone #1.* A payment of $2.00 per CVR will be made if sales during the four calendar quarter period that begins on the first anniversary of the major market launch of alemtuzumab MS equal or exceed $400,000,000.

• *Product Sales Milestone #2.* A payment of $3.00 per CVR will be made if sales in any period of four consecutive calendar quarters during the term of the CVR Agreement equal or exceed $1,800,000,000. If Product Sales Milestone #2 is achieved as a result of sales of alemtuzumab MS outside of the United States but the Approval Milestone is not achieved by March 31, 2014, the Product Sales Milestone #2 payment will be $4.00 per CVR rather than $3.00 per CVR.

[29] According to the Applicant, the CVRs were listed on the Nasdaq Stock Market under the symbol ''GCVRZ'' on March 31, 2011 at an opening price of $2.20 per CVR.

- *Product Sales Milestone #3.* A payment of $4.00 per CVR will be made if sales in any period of four consecutive calendar quarters during the term of the CVR Agreement equal or exceed $2,300,000,000 (excluding any quarter in which sales were used to determine whether Product Sales Milestone #1 or #2 was achieved).
- *Product Sales Milestone #4.* A payment of $3.00 per CVR will be made if sales in any period of four consecutive calendar quarters during the term of the CVR Agreement equal or exceed $2,800,000,000 (excluding any quarter in which sales were used to determine whether Product Sales Milestone #1, #2 or #3 was achieved).

Each payment to be made on any of the Product Sales Milestones is required to be made within 20 business days following notice by Sanofi to the CVR Trustee that the applicable target was achieved in the most recently ended calendar quarter, such notice to be provided within 50 days following the end of the calendar quarter. All notices required to be filed with the CVR Trustee are required to be made available simultaneously to the holders of CVRs on Sanofi's Web site.

In the event Sanofi fails to make timely payment with respect to any of the payment milestones, interest will accrue on unpaid amounts at a rate equal to the prime rate plus three percent. The CVR Trustee is empowered to institute legal or equitable actions in order to collect amounts that are due and unpaid. The CVR Trustee can be directed to exercise its remedies by action of the holders of 30% or more of the CVRs.

13. The CVR Agreement also provides that Sanofi has the right to repurchase, and subsequently cancel, all outstanding CVRs on a date on or after the third anniversary of the launch date of alemtuzumab MS, if certain conditions indicating lack of success are present.[30]

Specifically, under the Repurchase Right, Sanofi may purchase all outstanding CVRs (but not fewer than all outstanding CVRs) upon providing notice to the CVR Trustee between 30 and 60 days following the date as of which both of the following conditions have occurred: (a) The volume weighted average trading price per CVR for all CVRs traded over the previous 45 trading days is less than fifty cents, and (b) sales of alemtuzumab MS for the four most recently ended calendar quarters are less than $1,000,000,000 in the aggregate. The price at which Sanofi would purchase each outstanding CVR pursuant to an exercise of this right is the volume weighted average price paid per CVR for all CVRs traded over the 45 trading days prior to the fifth trading day preceding the date Sanofi gives notice of its intent to exercise its Repurchase Right.

It is also possible that Sanofi may purchase CVRs on the open market in circumstances where the Plan is selling CVRs into the market. Any such purchase would be at market price.

14. The CVRs do not provide any rights that could lapse by reason of a failure on the part of the holder to take timely action. Holders of CVRs will have the right to receive payments over time upon achievement of one or more of the above milestones during the term of the CVR, without the need for the CVR holder to take action. The rights of a CVR holder will not change in any way as a result of any action or inaction on the part of the holder, but are expected to remain in effect until all payment obligations under the CVR Agreement are satisfied or have terminated. The only exception would be if the CVRs are repurchased by Sanofi pursuant to its Repurchase Right, in which case, the holders of CVRs would not see their rights lapse and become worthless but would receive value for their CVRs in accordance with the terms of the Repurchase Right. With regard to the date on which the CVRs are scheduled to terminate, if not earlier repurchased by Sanofi pursuant to the Repurchase Right, the CVR Agreement provides that if any milestone has been achieved prior to December 31, 2020 but the related payment has not been paid as of that date, the CVR Agreement and the rights of CVR holders under the Agreement will not terminate until the payment has been made in full.

Fairness Opinions

15. Credit Suisse Securities, an investment banking firm that operates in the United States and a subsidiary of Credit Suisse, advised Genzyme that the Merger Consideration to be received by Genzyme Shareholders in exchange for their Shares was ''fair,'' from a financial point of view. In arriving at its opinion, Credit Suisse Securities, among other things, (a) Reviewed the Merger Agreement, a form of the CVR Agreement and certain publicly available business and financial information relating to Genzyme; (b) reviewed certain other information relating to Genzyme, including financial forecasts, provided to or discussed with Credit Suisse Securities by Genzyme and have met with Genzyme's management to discuss the business and prospects of Genzyme; (c) considered certain financial and stock market data of Genzyme, and Credit Suisse Securities has compared that data with similar data for other publicly held companies in businesses Credit Suisse Securities has deemed similar to that of Genzyme and Credit Suisse Securities has considered, to the extent publicly available, the financial terms of certain other business combinations and other transactions which have recently been effected; and (d) considered such other information, financial studies, analyses and investigations and financial, economic and market criteria which Credit Suisse Securities deemed relevant.

In rendering its opinion, Credit Suisse Securities did not independently verify any of the foregoing information and assumed and relied on such information being complete and accurate in all material respects. For example, with respect to the updated financial forecasts for Genzyme and the assessments as to the probability and estimated timing of achievement of the Approval Milestone, each of the Product Sales Milestones and the Production Milestone provided to Credit Suisse Securities by Genzyme, the management of Genzyme advised Credit Suisse Securities, and Credit Suisse Securities assumed, that such forecasts and assessments were reasonably prepared on bases reflecting the best currently available estimates and judgments of Genzyme's management as to the future financial performance of Genzyme and the probability and timing of achievement of the Approval Milestone, each of the Product Sales Milestones and the Production Milestone.

Furthermore, in rendering its opinion, Credit Suisse addressed only the fairness of the Merger Consideration to be received in the Transactions, from a financial point of view, to the holders of Genzyme Common Stock (other than Sanofi and its affiliates). It did not address any other aspect of the Transactions or any other agreement, arrangement or understanding entered into in connection with the Transactions, including the fairness of the amount or nature of any compensation paid to any officers, directors or employees of any party to the Transactions, or class of such persons, relative to the Merger Consideration or otherwise. In addition, Credit Suisse did not express any opinion as to the price at which the CVRs would trade at any time or as to the solvency or viability of Genzyme or Sanofi or the ability of Genzyme or Sanofi to pay its obligations, including

[30] For this purpose, the product launch date is the first day of the calendar quarter beginning one full calendar quarter after the end of the calendar quarter in which a first commercial sale occurs in the United States, the United Kingdom, France, Germany, Italy, or Spain.

in respect of the CVRs, when they come due.

Credit Suisse issued its opinion with the understanding that the opinion would be for the information of the Board of Directors of Genzyme in connection with its consideration of the Transactions and would not constitute advice or a recommendation to any holder of Genzyme Common Stock as to whether or not such holder should tender such Shares in connection with the Exchange Offers, or how such stockholder should vote or act on any matter relating to the proposed Merger or any other matter. The issuance of the opinion was approved by an authorized internal committee of Credit Suisse.

16. Goldman Sachs, a full-service global investment banking and securities firm, advised Genzyme that the Merger Consideration to be received by Genzyme Shareholders in exchange for their Shares was also ''fair,'' from a financial point of view. In connection with its opinion, Goldman Sachs reviewed, among other things, (a) The Merger Agreement, (b) annual reports to shareholders and Annual Reports on Form 10K of Genzyme for the five fiscal years ended December 31, 2009; (c) certain interim reports to shareholders and Quarterly Reports on Form 10–Q of Genzyme; (d) annual reports to shareholders and Annual Reports on Form 20–F of Sanofi for the five fiscal years ended December 31, 2009; (e) certain interim reports to shareholders and quarterly reports included in Reports on Form 6–K of Sanofi; (f) certain other communications from Genzyme and Sanofi to their respective shareholders; (g) certain publicly available research analyst reports for Genzyme and Sanofi; (h) the Tender Offer Statement on Schedule TO filed by Sanofi and the Purchaser, with the SEC on October 4, 2010, as amended through Amendment No. 14 to the Tender Offer Statement on Schedule TO filed by Sanofi and the Purchaser with the SEC on February 9, 2011; (i) The Solicitation/Recommendation Statement of Genzyme filed on Schedule 14D–9 filed by Genzyme with the SEC on January 31, 2011; (j) and certain financial analyses and forecasts for Genzyme prepared by its management, including management's updated forecasts and its assessments as to the probability and estimated timing of achievement of the Approval Milestone, the Product Sales Milestones and the Production Milestone (each as defined in the CVR Agreement) approved for Goldman Sachs' use by Genzyme (the Forecasts). Goldman Sachs also (a) Held discussions with members of the senior management of Genzyme regarding the past and current business operations, financial condition and future prospects of Genzyme; (b) reviewed the reported price and trading activity for the Shares; (c) compared certain financial and stock market information for Genzyme and Sanofi with similar information for certain other companies the securities of which are publicly traded; (d) reviewed the financial terms of certain recent business combinations in the biotechnology industry and in other industries; and (e) performed such other studies and analyses, and considered such other factors, as they deemed appropriate.

For purposes of rendering its opinion, Goldman Sachs relied upon and assumed, without assuming any responsibility for independent verification, the accuracy and completeness of all the financial, legal, regulatory, tax, accounting and other information provided to, discussed with or reviewed by, Goldman Sachs; and Goldman Sachs does not assume any responsibility for any such information. In that regard, Goldman Sachs assumed with Genzyme's consent that the forecasts were reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of Genzyme. Goldman Sachs also did not make an independent evaluation or appraisal of the assets and liabilities (including any contingent, derivative or other off-balance-sheet assets and liabilities) of Genzyme, Sanofi or any of their respective subsidiaries and they were not furnished with any such evaluation or appraisal. Furthermore, Goldman Sachs assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the Transactions would be obtained without any adverse effect on Genzyme, Sanofi or on the expected benefits of the Transactions in any way meaningful to their analysis. Finally, Goldman Sachs assumed that the Transactions would be consummated on the terms set forth in the Merger Agreement, without the waiver or modification of any term or condition the effect of which would be in any way meaningful to its analysis.

In rendering its opinion, Goldman Sachs did not address the underlying business decision of Genzyme to engage in the Transactions, or the relative merits of the Transactions as compared to any strategic alternatives that may have been available to Genzyme. Additionally, Goldman Sachs did not address any legal, regulatory, tax or accounting matters. Instead, Goldman Sachs addressed only the fairness, from a financial point of view, of the Merger Consideration to be paid to the holders of Genzyme Common Stock (other than Sanofi and any of its affiliates) pursuant to the Merger Agreement, as of February 16, 2011, the date of its opinion.

In addition, Goldman Sachs did not express any view on, nor did its opinion address, any other term or aspect of the Merger Agreement, the CVR Agreement or the Transactions, or any term or aspect of any other agreement or instrument contemplated by the Merger Agreement, the CVR Agreement or entered into or amended in connection with the Transactions, including, without limitation, the fairness of the Transactions to, or any consideration received in connection therewith by, the holders of any other class of securities, creditors, or other constituencies of Genzyme; nor as to the fairness of the amount or nature of any compensation to be paid or payable to any of the officers, directors or employees of Genzyme, or class of such persons in connection with the Transactions. Further, Goldman Sachs did not express any opinion as to the price at which the CVRs would trade at any time or as to the impact of the Transactions on the solvency or viability of Genzyme or Sanofi or the ability of Genzyme or Sanofi to pay its obligations when they come due. In sum, Goldman Sachs based its opinion on economic, monetary, market and other conditions in effect on, and the information made available to it as of, February 16, 2011. Goldman Sachs assumed no responsibility for updating, revising or reaffirming its opinion based on circumstances, developments or events occurring after that date.

The advisory services and opinion expressed by Goldman Sachs were provided for the information and assistance of the Board of Directors of Genzyme in connection with its consideration of the Transactions, and such opinion did not constitute a recommendation as to whether or not any holder of Genzyme Common Stock should tender such Shares in connection with the Exchange Offer or how any holder of Shares should vote with respect to the Merger or any other matter. The opinion of Goldman Sachs was approved by a fairness committee of Goldman Sachs.

Request for Exemptive Relief

17. Genzyme has requested an administrative exemption from the Department for (a) The acquisition by the Plan of CVRs as a result of the Plan's ownership of Genzyme Common Stock, in connection with (i) The purchase of Shares of Genzyme Common Stock pursuant to the Exchange Offers by the

Purchaser, and (ii) the Merger of Sanofi into Genzyme; (b) the continued holding of CVRs by the Plan; and (c) the resale of the CVRs by the Plan to Sanofi, pursuant to the exercise of the Repurchase Rights available under certain circumstances specified in the CVR Agreement. If granted, the exemption would be effective as of April 4, 2011 and it would also apply to successor plans to the current Plan.

Genzyme concluded that if the CVRs were to be acquired by the Plan, it would be advisable to seek exemptive relief from the Department because the CVRs would likely be ''employer securities,'' but might not constitute ''qualifying employer securities,'' as defined in section 407(d)(5) of the Act (*i.e.,* stock or marketable obligations). The Applicant states that, as registered securities issued by Sanofi, the CVRs would likely be ''employer securities'' under section 407(d)(1) of the Act because Sanofi would be an ''affiliate'' of Genzyme within the meaning of section 407(d)(7) immediately following the closing of the tender offer inasmuch as it would be more than 50% owned by Sanofi. However, the Applicant further states that it is not clear whether the CVRs, although not ''stock,'' constitute ''marketable obligations'' within the meaning of section 407 of the Act.

18. The Applicant represents that if the CVRs are employer securities, but not qualifying employer securities, the Plan's acquisition and holding of CVRs would violate sections 406(a)(1)(E), 406(a)(2) and 407(a)(1) of the Act, absent an administrative exemption. In addition, the Applicant represents that if Sanofi were to acquire CVRs from the Plan pursuant to an exercise of its Repurchase Right, the transaction would, absent an exemption, constitute a sale or exchange of property between the Plan and a party in interest, in violation of section 406(a)(1)(A) of the Act, and a transfer to a party in interest of assets of the Plan, in violation of section 406(a)(1)(D) of the Act. Moreover, the Applicant states that, to the extent Sanofi or an affiliate is a fiduciary of the Plan at the time of such a transaction, such a fiduciary could be viewed, absent an exemption, as dealing with Plan assets for the fiduciary's own account, in violation of section 406(b)(1) of the Act, or as acting in a transaction involving the Plan on behalf of a party whose interests are adverse to the interests of the Plan or the interests of its participants or beneficiaries, in violation of section 406(b)(2) of the Act. Finally, the Applicant states that because the price at which the Repurchase Right is exercisable is based on an average trading price for the CVRs over a forty-five day trailing average, circumstances could exist that might cause the purchase price to be viewed as less than ''adequate consideration'' for purposes of Section 408(e) of the Act.

Rationale for the Transactions

19. In light of the foregoing prohibitions, the Applicant represents that Genzyme considered whether it would better serve the interests of participants and beneficiaries in the Plan to remove Genzyme Common Stock from the Plan prior to the Transactions or to retain Genzyme Common Stock in the Plan and apply for exemptive relief covering any CVRs received by the Plan in the Transactions. According to the Applicant, Genzyme determined that a decision to eliminate Genzyme Common Stock from the Plan would deprive participants and beneficiaries with interests in Genzyme Common Stock of the ability to realize the full value of the consideration that would be paid to other shareholders, by forcing a pre-closing sale and effectively depriving participants of investment discretion, including the discretion to retain an investment in CVRs.

20. The Applicant believes that an exemption permitting the Plan to acquire and hold CVRs in connection with the Transactions is in the interest of the Plan's participants and beneficiaries because it maximizes their ability to realize the full value of the consideration offered in exchange for their interests in Genzyme Common Stock by continuing to give them the discretionary ability to hold or sell the employer securities allocated to their accounts. The Applicant represents that a pre-closing sale of Genzyme Common Stock by the Plan would preclude Plan participants from choosing to hold CVRs within the Plan and thereby retain the possibility of substantial future payouts, and would instead force them to settle for the current implied market value of the CVRs.

21. The Applicant believes that the proposed exemption is protective of the rights of the Plan's participants and beneficiaries because it permits them to realize the same benefits as other shareholders in connection with the Transactions. The Applicant states that the conditions of the exemption would ensure that the participants have the same rights with respect to CVRs allocated to their accounts under the Plan as other holders of CVRs, including with respect to any repurchase by Sanofi. The Applicant further states that the Plan's past acquisition of the CVRs was a one-time transaction and the proposed exemption is not intended to cover any future acquisitions of CVRs by the Plan. However, the Applicant represents that the Plan would not prevent participants from investing in CVRs outside the Plan on the same basis as unrelated parties.

In addition, the Applicant represents that all rights available to holders of CVRs held outside the Plan are available on the same basis to participants with respect to CVRs held in accounts under the Plan. Moreover, the Applicant states that during the period in which CVRs remain a Plan investment, the retention or disposition of CVRs allocated to a participant's or beneficiary's account will be administered in accordance with the provisions of the Plan in effect for individually-directed investment of participant accounts.

22. The Applicant believes that it is administratively feasible to grant the proposed exemption because all conditions of the exemption either will have been satisfied prior to the grant of the exemption or are required to be satisfied by the documents governing issuance of the CVRs. In addition, the Applicant represents that the fact that the CVRs are registered ensures that the regulatory scheme under the 1933 Act and the 1934 Act will apply in full force to the CVRs.

23. In summary, the Applicant represents that the proposed transactions have satisfied or will satisfy the statutory requirements for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) Plan participants holding Genzyme Common Stock received one CVR for each Share on the effective date of the tender or cancellation of their Shares, in connection with the Transactions.

(b) The acquisition of CVRs by the Plan occurred in connection with the Transactions on the same terms and in the same manner as the acquisition of CVRs by all other holders of Genzyme Common Stock, other than Sanofi, the Purchaser, Genzyme and dissenting shareholders.

(c) The Plan's acquisition of CVRs resulted either from a decision by a participant or beneficiary to tender Shares allocated to his or her account or, following a decision by a participant or beneficiary not to tender Shares, by reason of the Merger.

(d) The Plan did not pay any fees or commissions in connection with the acquisition of the CVRs, nor will it pay any fees or commissions in connection with the holding or sale of CVRs to Sanofi pursuant to an exercise of Sanofi's repurchase right under the CVR Agreement.

(e) Credit Suisse Securities and Goldman Sachs advised Genzyme that the consideration to be received by Genzyme Shareholders, including Plan participants, in exchange for their Shares was ''fair,'' from a financial point of view.

(f) The Plan has not acquired or held CVRs, and will not acquire or hold CVRs, other than those acquired in connection with the Transactions.

(g) Plan participants have had and will continue to have the same rights with respect to CVRs allocated to their accounts in the Plan (including with respect to any repurchase of CVRs by Sanofi) as unrelated parties and they may direct the Plan Trustee to sell CVRs allocated to their respective accounts at any time.

(h) For so long as CVRs remain a permissible Plan investment, the retention or disposition by the Plan of CVRs allocated to a participant's or beneficiary's account has been administered and will continue to be administered in accordance with the provisions of the Plan that are in effect for individually-directed investment of participant accounts.

Notice to Interesed Persons

Within fifteen (15) days of the date of publication of the proposed exemption in the **Federal Register**, the Applicant will provide notice of the proposed exemption (consisting of a copy of the proposed exemption, as published in the **Federal Register**, and the supplemental statement required by 29 CFR 2570.43(b)(2), (together, the Notice)) to all current participants and beneficiaries of the Plan. The Applicant will provide interested persons with a copy of the Notice, as well as an explanatory cover letter, by first class mail, at its own expense. The Notice will specify that the Department must receive all written comments and requests for a hearing no later than thirty (30) days from the last date of the mailing of such Notice. Therefore, interested persons will have forty-five (45) days to provide their written comments and/or hearing requests to the Department.

For Further Information Contact: Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Retirement Program for Employees of EnPro Industries (Plan), Located in Charlotte, NC

[Application No. D–11662]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[31] If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code, shall not apply, effective July 15, 2011, to the in kind contribution (the Contribution) to the Plan of a guaranteed investment contract (the Annuity), issued by the Metropolitan Life Insurance Company (MetLife), an unrelated party, by EnPro Industries, Inc. (EnPro or the Applicant); provided that the following conditions are satisfied:

(a) A qualified, independent fiduciary (the Independent Fiduciary), acting on behalf of the Plan, determined whether the Contribution was in the interests of the Plan and protective of the Plan's participants and beneficiaries;

(b) The Independent Fiduciary reviewed, negotiated and approved the terms of the Contribution on behalf of the Plan in accordance with the fiduciary provisions of the Act;

(c) A qualified, independent appraiser (the Appraiser) determined the fair market value of the Annuity prior to the Contribution, and it updated such valuation on the date of the Contribution;

(d) The Annuity represented approximately 19% of the Plan's assets at the time of the Contribution;

(e) The Plan incurred no fees, commissions, or other charges or expenses in connection with the Contribution;

(f) The terms of the Contribution were no less favorable to the Plan than the terms negotiated at arm's length under similar circumstances between unrelated parties; and

(g) EnPro amended the Investment Policy Statement for the Plan in conformity with the recommendations of the Independent Fiduciary prior to the Contribution.

Effective Date: If granted, this proposed exemption will be effective as of July 15, 2011.

Summary of Facts and Representations

1. EnPro, based in Charlotte, NC, and its companies manufacture and market a variety of industrial products. EnPro's businesses include: Garlock Sealing Technology (Garlock), a manufacturer of gaskets and sealing systems;[32] GGB, a manufacturer of various types of lubricated plain bearings; Stemco, a manufacturer of wheel-end component parts and long-life systems in the medium- and heavy-duty truck and trailer markets; Compressor Products International, a leading supplier of sealing components and services for reciprocating compressors used in chemical plants, refineries and natural gas processing and transmission; and Fairbanks Morse Engine, which manufacturers diesel and dual fuel engines and provides parts and services for such engines. EnPro stock is publicly traded on the New York Stock Exchange under the symbol ''NPO.'' EnPro operates manufacturing facilities throughout the world and employs approximately 5,000 employees. EnPro also sponsors several employee benefit plans, including the Plan.

2. The Plan, which is closed to new participants, is a defined benefit plan covering U.S.-based hourly and salaried employees of EnPro. As of January 26, 2011, the Plan had 1,400 active employees and 1,400 deferred vested and retirees eligible for benefits under the Plan.[33] As of January 1, 2011, the Plan had assets of $112,488,412 and accumulated benefit obligations of $179,539,776.

The named fiduciary of the Plan is the EnPro Industries, Inc. Benefits Committee (the Committee). The Vanguard Fiduciary Trust Company serves as the Plan's trustee. The Committee appointed Evercore Trust Company, N.A. (Evercore) to serve as Independent Fiduciary for the Plan with respect to the Contribution.

3. The Plan also constitutes a single plan that is comprised of three separate plan documents, which reflect different benefit formulas for (a) The EnPro Industries, Inc. Retirement Program for Salaried Employees; (b) the EnPro Industries, Inc. Retirement Program for Hourly Employees; and the (c) Pension

[31] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[32] EnPro represents that Garlock is currently in Chapter 11 Bankruptcy Proceedings in the Bankruptcy Court for the Western District of North Carolina, but operates in the ordinary course under Bankruptcy Court protection from asbestos claims. Further, EnPro represents that this bankruptcy filing will protect EnPro and its other lines of business while permanently resolving asbestos claims against Garlock.

[33] The Applicant represents that effective January 1, 2007, future benefit accruals under the Plan were frozen for a significant number of then current employees of EnPro. As a result, many current employees of EnPro who were employed on January 1, 2007 are entitled to a future benefit under the Plan following termination of employment, but no longer accrue benefits under the Plan. These non-accruing current employees are included in the number of deferred vested participants under the Plan, as well as former employees who are entitled to future Plan benefits.

Plan Between Quincy Compressor Division and Lodge 822 of the International Association of Machinists and Aerospace Workers.

The Origins of the Annuity

4. The Annuity, that is the subject of this exemption request, was formerly an asset of a grantor trust (the Grantor Trust) established by Colt Industries, Inc. and Colt Industries Operating Corp. (together, CIOC), predecessors to Coltec Industries, Inc. (Coltec), a subsidiary of EnPro. The Grantor Trust (a rabbi trust) and another trust known as the ''Colt Midland Retiree Medical Trust'' (the CIOC Trust) were established in connection with the settlement of litigation in 1985 to retiree benefits involving Coltec (the CIOC Settlement). The lawsuit was filed by the United Steel Workers of America against Colt Industries Operating Corp. on January 5, 1985. Although the litigation was filed and settled before EnPro came into existence as an independent corporation, the obligations of the settlement became EnPro's obligations when it was spun off from the Goodrich Corporation in 2002.

5. Under the terms of the CIOC Settlement, CIOC was required to fund both the CIOC Trust and the Grantor Trust, both of which would be managed by independent parties. The CIOC Trust was established to fund lifetime retiree medical benefits for certain CIOC retirees and their dependents and is a voluntary employees beneficiary association. The CIOC Trust was funded with $14,800,000. An actuary was to review the funding of the CIOC Trust as of June 30, 1994, June 30, 2004, and June 30, 2014 to determine the projected future costs of providing lifetime medical benefits as of January 1, 1995, January 1, 2005 and January 1, 2015, respectively. If the assets of the CIOC Trust fell below pre-set levels on those dates, the CIOC Settlement required CIOC to provide additional funding to the CIOC Trust.[34]

To ensure that the liability of any additional funding obligations would be fulfilled, the CIOC Settlement required CIOC to establish and fund the Grantor Trust.[35] The Grantor Trust would serve as a supplemental source of funding for those benefits only if the CIOC Trust was financially unable to fund its obligations. The Grantor Trust was initially funded with a series of MetLife guaranteed annuity contracts, whose aggregate funding amount is not known. The Grantor Trust also held a group annuity contract that was a predecessor to the Annuity (the Old Annuity), having a face value of $13,781,486. The Old Annuity was issued by MetLife to the CIOC Trustee on December 11, 1997. The Old Annuity paid interest at an effective annual rate of 6.82%. It permitted the contractholder to withdraw $8.4 million on December 31, 2004 and no less than $26,209,835.28 on December 14, 2014, the maturity date.

If no additional funding was necessary as of January 1, 1995, January 1, 2005 or January 1, 2015, the CIOC Settlement permitted CIOC to withdraw a portion of the assets of the Grantor Trust. Further, any assets remaining in the Grantor Trust after January 1, 2015, subject to the fulfillment of any contribution due to the CIOC Trust, would revert to CIOC.[36]

6. On May 25, 2010, Coltec reached an agreement with the trustees of the CIOC Trust and the Grantor Trust that would allow the transfer of ownership of the Old Annuity to EnPro. The agreement required that Coltec would make a one-time $900,000 cash payment to the CIOC Trust to be used by the CIOC trustees for any purpose permitted under the CIOC Trust. The parties also agreed that the Old Annuity would be split into two contracts. The first contract would have a value of $2.3 million. It would be transferred to an escrow account (the Escrow Account) in the name of Coltec and the CIOC Trust to ensure that funds would be available to the CIOC Trust regardless of the financial condition of Coltec. The second contract, the current Annuity, would have a remaining value of approximately $17.85 million and would be eventually issued to EnPro. The parties also agreed that EnPro would guarantee the performance of Coltec's funding obligations with respect to the CIOC Trust and the Escrow Account and that it would be prudent for the parties to seek judicial approval since the process would involve modification of the CIOC Settlement.

7. In June 2010, this matter was presented to the United States District Court for the Western District of Pennsylvania (the Court), which had jurisdiction over the retiree medical benefits litigation and had retained jurisdiction over the CIOC and the Grantor Trusts pursuant to the CIOC Settlement. As a condition of approval, the Court required notice to, and an opportunity to comment from, the CIOC Trust beneficiaries. Following the notice period, the Court set a hearing on July 27, 2010. The settlement agreement transferring ownership of the Annuity to EnPro and establishment of the Escrow Account was approved by the Court on July 27, 2010. As permitted by the Court's order, the escrow account was funded and the Grantor Trust was terminated. Unencumbered title to the portion of the Old Annuity not deposited in the Escrow Account is vested in EnPro.

The Annuity

8. On January 7, 2011, Metlife issued a new group annuity contract, the Annuity, naming EnPro as the contractholder. The Annuity had a face value of $17,852,632.22 on the date of issuance. Under the terms of the Annuity, Metlife will pay the Annuity's contractholder, in a single payout, no less than $23,214,698.70 on December 31, 2014. Metlife will credit interest, payable at a fixed rate, on amounts in the Annuity's funding account. Such interest will be credited at a rate compounded daily equivalent to an effective annual rate of 6.82%. The Annuity is fully funded and does not require any further payments to MetLife by any person. The Annuity also does not permit early withdrawal, including payment of Plan benefits prior to the final maturity date.

The Transaction

9. On July 15, 2011, EnPro contributed the Annuity to the Plan in order to meet its funding obligations under the Act. Therefore, EnPro requests an administrative exemption from the Department for the Contribution. Absent an exemption, the Contribution to the Plan by EnPro, a party in interest, would violate section 406(a)(1)(A) of the Act. Additionally, because EnPro is also a fiduciary with respect to the Plan, the Contribution would violate sections 406(b)(1) and (2) of the Act.

[34] Pursuant to the terms of the CIOC Settlement, Coltec, as successor of CIOC, provided approximately $2 million of additional funding to the CIOC Trust following the January 1, 1995 valuation. However, Coltec was not required to provide additional funding to such trust following the January 1, 2005 valuation and withdrew a portion of funds available in the Grantor Trust in accordance with the terms of the CIOC Settlement.

[35] EnPro represents that the assets of the Grantor Trust have always been assets of EnPro's corporate predecessors or EnPro and, as such, they have never been plan assets.

[36] According to the most recent actuarial valuations, the CIOC Trust's assets are more than sufficient to meet all of it funding needs. Therefore, Coltec will not be required to provide additional funding to the CIOC Trust in 2015. Further, in the unlikely event additional funding would be required, under an analysis of the ''worst case scenario,'' the maximum contribution from the Grantor Trust would be $2.7 million. This amount is far below the approximated value of $22 million held in the Grantor Trust prior to its termination (See Representation 7).

Annuity Appraisals

10. In an April 25, 2011 letter, the Cognient Group, LLC of Chicago, IL confirmed and acknowledged its status as a qualified, independent appraiser on behalf of Evercore, the Independent Fiduciary. The Appraiser has also worked for the Independent Fiduciary (and its predecessor) on other types of assignments. However, prior to this engagement, the Appraiser had not provided financial advisory services to EnPro or its retirement plans. The Appraiser represents that its fee from this assignment represents less than 1% of its annual gross income.

The Appraiser states that it has been involved as an independent financial adviser to plan fiduciaries for over 25 years in numerous ERISA securities transactions. Prior to its 2009 formation, the Appraiser explains that most of its professionals had spent a majority of their professional careers at the financial services and business valuation firm of Duff & Phelps for approximately 25 years. The Appraiser's professionals have represented independent fiduciaries and company plan committees in numerous ERISA-related transactions.

The Appraiser represents that its ERISA-related work for clients includes contributions of large blocks of restricted securities to public company retirement plans and the sale of securities to employee stock ownership plans for both publicly-traded and closely-held companies. Such securities have also included certain fixed income securities, such as guaranteed investment contracts.

11. In a valuation analysis (the Appraisal), the Appraiser valued the Annuity initially at $20,709,088 as of March 15, 2011. The Appraiser valued the Annuity based on the expected cash flows discounted at a rate that appropriately reflected the risk of the Contractholder receiving full payment on the final payment date. For the cash flow analysis, the Appraiser noted that the Annuity's funding account had a balance of $18,024,481.02 as of February 28, 2011 and that interest accrued on this balance at a rate, compounded daily, equivalent to an effective annual rate of 6.82%. This would result in a projected funding account balance of $23,227,291 as of December 31, 2014.

12. In order to select the appropriate discount rate to apply to the expected lump sum payment on December 31, 2014, the Appraiser reviewed MetLife's credit ratings and recent bond offerings. The Appraiser noted that the major credit rating firms currently rate Metlife's senior unsecured corporate bonds at investment grade and that Metlife was rated ''A-'' by Standard and Poor's, ''A3'' by Moody's Investors Service and ''A-'' by Fitch. The Appraiser also considered publicly traded MetLife bonds maturing in 2014 and 2015. The first was a $350 million bond due on June 30, 2014 with a coupon rate of 5.5% or current yield to maturity of 2.59%. The second was a $1,000 million due June 30, 2015 with a coupon rate of 5.0% or current yield to maturity of 2.95%. In addition, the Appraiser represents that MetLife issued $1,000 million in new unsecured bonds due February 6, 2014 at a coupon rate of 2.375%. Based on this information, the Appraiser determined that the appropriate discount rate for the Annuity, given its maturity date of December 31, 2014, was 3.02% as of March 15, 2011. According to the Appraiser, this discount rate would reflect current MetLife market bond yields and the non-publicly traded nature of the Contract.

The Appraiser then applied the discount rate to the projected funding account balance for the annuity of $23,227,291 as of December 31, 2014. After applying the discount rate and considering the Annuity's time to maturity from March 15, 2011 to December 31, 2014 (1,387 days), the Appraiser determined that the Annuity's present value was $20,709,088 as of March 15, 2011. Thus, the annuity would represent approximately 18% of the Plan's assets.

13. The Appraiser updated the Appraisal (the Appraisal Update) on the date of the Contribution. In the Appraisal Update, the Appraiser placed the fair market value of the Annuity at $21,406,713 as of July 15, 2011. Although the Appraiser utilized the same valuation methodology in the Appraisal Update as it had done in the Appraisal, there were differences in the amounts previously calculated. For example, in the cash flow analysis, the Appraiser noted that the Annuity's funding account balance had increased to $18,426,370.25, in contrast to the $18,024,418.02 balance originally determined in the Appraisal. Thus, because of a change in the daily interest rate, the projected funding account balance for the Annuity as of December 31, 2014 in the Appraisal Update would be $23,223,092, instead of $23,227,291, as evidenced in the Appraisal.

Additionally, the Appraiser determined, in the Appraisal Update, that the appropriate discount rate for the Annuity was 2.35% instead of 3.02%, which was the rate set forth in the Appraisal. In applying the July 15, 2011 discount rate of 2.35% to the Annuity's projected funding balance of $23,223,092 as of December 31, 2014, and considering the Annuity's time to maturity (*i.e.,* 1,265 days instead of 1,387 days), the Appraiser calculated the Annuity's fair market value at $21,406,713 as of July 15, 2011. This amount represented an increase from the $20,709,088 fair market value of the Annuity as of March 15, 2011 that was set forth in the Appraisal. The fair market value of the Annuity also represented approximately 19% of the Plan's assets at the time of the Contribution.

Independent Fiduciary's Recommendation

14. Pursuant to engagement letter executed on October 6, 2010 (the Engagement Letter), EnPro retained Evercore as the Independent Fiduciary to determine whether the proposed Contribution was in the interests of the Plan and its participants and beneficiaries. The Independent Fiduciary represents that it is independent of and unrelated to EnPro and that (a) It does not directly or indirectly control, is not controlled by, and is not under common control with EnPro; (b) neither it, nor any of its officers, directors, or employees is an officer, director, partner or employee of EnPro (or is a relative of such person); and (c) it does not directly or indirectly receive any compensation or other consideration for its own account in connection with the Contribution, except that the Independent Fiduciary may receive compensation from EnPro for performing the services described in the Engagement Letter as long as amount of such payment is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision.

The Independent Fiduciary also represents that its total fee in connection with the subject exemption application represents less than 1% of its 2010 gross business income. The Independent Fiduciary further represents that it acknowledges and understands its duties, responsibilities and liabilities under the Act in acting as a fiduciary on behalf of the Plan with respect to the proposed transaction.

15. The Independent Fiduciary represents that it is a national trust bank, chartered by the U.S. Office of the Comptroller of Currency. The Independent Fiduciary, which formerly comprised U.S. Trust's Special Fiduciary Services division, states that it has served as an independent fiduciary to employee benefit plans since 1987, including serving as an independent fiduciary to qualified plans

in connection with prior exemptions granted by the Department. The Independent Fiduciary also asserts that it has extensive experience in serving as an independent fiduciary to defined benefits plans in connection with proposed contributions to such plans of qualifying employer securities.

16. In its Engagement Letter, a March 29, 2011 report, and a July 29, 2011 supplemental report, the Independent Fiduciary agreed to perform the following duties on behalf of the Plan: (a) Determine whether to accept the proposed Contribution, subject to the Department's grant of an exemption; (b) cause the Appraiser, acting as Evercore's independent valuation expert, to prepare a report as to the fair market value of the Annuity; [37] (c) negotiate the terms and conditions of the proposed Contribution; and (d) render an opinion suitable for submission to the Department in connection with this exemption request.

17. In making its determinations about the Contribution, the Independent Fiduciary explains that it considered several factors. These included the exemption application, the Annuity, the Appraisal, the Appraiser's spreadsheet analysis of the Annuity, the Plan's Investment Annuity Statement, communications between EnPro and its outside counsel and a statement from Towers Watson, the Plan's actuary, that the Plan had sufficient assets to cover benefit payments through December 2014. After reviewing the Appraisal, the Independent Fiduciary determined that the Appraiser's valuation approach was appropriate.

18. The Independent Fiduciary represents that the Plan's assets declined during the recent recession and have yet to recover fully. For Plan Year 2011, the Independent Fiduciary explains that EnPro owed the Plan required minimum contributions totaling approximately $20 million and that it intended to make a first quarter cash contribution of $3 million. (On April 11, 2011, EnPro contributed $3,478,251 to the Plan.)

The Independent Fiduciary states that EnPro estimates that it will owe the Plan annual contributions of $21 to $24 million per year from 2011 through 2014. These contributions, according to the Independent Fiduciary, could impact EnPro's financial strength, limit its operating goals and impair its ability to maintain the Plan in its current form.

[37] In this regard, the Independent Fiduciary reviewed and approved the methodology used by the Appraiser and ensured that such methodology was properly applied in determining the fair market value of the Annuity on the date of the Contribution.

19. The Annuity, valued at $21,406,173 as of July 15, 2011, exceeds the amount of the required minimum contribution for Plan Year 2011, the Independent Fiduciary explains. Once contributed to the Plan, the Annuity would provide the Plan with assets in excess of $24 million. This, in the Independent Fiduciary's view, would give the Plan an incremental benefit of more than $4 million over its required minimum contribution for Plan Year 2011.

20. The Independent Fiduciary also explains that it considered the quality of the Annuity. In this regard, the Independent Fiduciary states that the Annuity is very similar to a zero coupon bond.[38] The Independent Fiduciary represents that were the Plan to purchase a zero coupon bond with a similar time to maturity, from an issuer with a similar credit profile as MetLife, the Plan would not likely obtain a better quality investment. Instead, the Plan would receive an asset with a face value of $17,852,632.22 and a fair market value of $21,406,713 as of July 15, 2011. Such asset would generate a return of 6.82% from face value and 2.35% from fair market value until the date of maturity on December 31, 2014, according to the Independent Fiduciary. Were the Plan to invest in a similar bond, *i.e.,* a bond with a similar time to maturity from an issuer with a similar credit profile, the Independent Fiduciary explains that the return from fair market value or yield to maturity of that hypothetical bond would be no better than the Annuity.

With respect to Plan benefits, the Independent Fiduciary notes that should the Department deny this exemption, one of the options available to EnPro is to impose benefit restrictions on Plan participants. However, the Applicant represents that the Contribution of the Annuity, in lieu of cash, should not have a detrimental effect on the Plan's ability to pay benefits from the Contribution date until the maturity date of the Annuity. The Independent Fiduciary, after confirming with the Plan's actuary, represents that the Plan is in a position to meet its benefit obligations from the date of the Contribution until the maturity date of the Annuity on December 31, 2014.

[38] The Independent Fiduciary explains that zero coupon bonds make no coupon payments and investors in such bonds receive par value at the time of maturity but no interest payments. Such bonds are issued at prices that are considerably below par value and the return comes solely from the difference between the issue price and the payment of par value at maturity. The holder of the Annuity, similarly, will receive no interest payment in installments, but will get a lump sum payment at maturity.

21. The Independent Fiduciary represents that based on its review and analysis of the Contribution and the Appraisal, the Contribution was in the interests of the Plan and its participants and beneficiaries. Furthermore, the Independent Fiduciary has determined that the Contribution was fair and reasonable, and it approved the Plan's acceptance of the Annuity.

22. Finally, the Independent Fiduciary requested that EnPro amend its Investment Policy Statement for the Plan (the Investment Policy Statement). This document was silent with regard to the Contribution of the Annuity. The value of the Annuity would have violated certain diversification guidelines because the Plan's Investment Policy Statement, prior to the Contribution, limited fixed income investments (with the exception of fixed income explicitly guaranteed by the United States) to less than 5% of the Plan's assets. EnPro represents that at the time of the Contribution, the value of the Annuity would exceed the diversification guidelines under the Plan's Investment Policy Statement. Accordingly, the Independent Fiduciary confirmed that the Plan's Investment Policy Statement was amended by EnPro to permit the Contribution.

Rationale for the Proposed Contribution

23. The Applicant represents that the Contribution was administratively feasible because it was a one-time transaction that would be easy to review and audit. In addition, the Plan was not required to pay any fees, commissions or expenses in connection therewith. Moreover, the Independent Fiduciary had been engaged to determine whether to accept the Annuity, and, if so, the value of the Annuity for Contribution and funding purposes. In this regard, the Independent Fiduciary (a) Reviewed and approved the methodology used by the Appraiser, (b) ensured that such methodology was properly applied in determining the fair market value of the Annuity on the date of the Contribution, and (c) determined whether it was prudent to go forward with the transaction. Finally, EnPro would value the Annuity annually with the assistance of the Appraiser or another qualified, independent appraiser.

EnPro states that the Contribution was also in the interests of the Plan and its participants and beneficiaries because the Plan realized an additional contribution of approximately $4 million above the estimated required minimum contribution for Plan Year 2011. In addition, the Plan obtained, with no transaction costs, a high-quality instrument backed by MetLife. Further, EnPro states that the Contribution was protective of the rights of the Plan's participants and beneficiaries because the Plan would be in a position to meet its benefit obligations from the date of the Contribution until the maturity date of the Annuity on December 31, 2014. EnPro notes that the Annuity pays a daily effective interest rate equivalent to a 6.82% annual interest rate and states that the Plan would not likely find a zero coupon bond with a better interest rate.

Summary

24. In summary, the Applicant represents that the Contribution satisfied the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The Independent Fiduciary, acting on behalf of the Plan, determined whether the Contribution was in the interests of the Plan and protective of the Plan's participants and beneficiaries;

(b) The Independent Fiduciary reviewed, negotiated and approved the terms of the Contribution on behalf of the Plan in accordance with the fiduciary provisions of the Act;

(c) The Appraiser determined the fair market value of the Annuity prior to the Contribution and it updated such valuation on the date of the Contribution;

(d) The Annuity represented approximately 19% of the Plan's assets at the time of the Contribution;

(e) The Plan incurred no fees, commissions, or other charges or expenses in connection with the Contribution;

(f) The terms of the Contribution were no less favorable to the Plan than the terms negotiated at arm's length under similar circumstances between unrelated parties; and

(g) EnPro amended the Plan's Investment Policy Statement in conformity with the recommendations of the Independent Fiduciary prior to the Contribution.

Notice to Interested Parties

Notice of the proposed exemption will be given to interested persons within 10 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail or personal delivery. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 40 days of the publication of the notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (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 of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of December, 2011.

Ivan Strasfeld,

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

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