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). If granted, these proposed exemptions allow designated parties to engage in transactions that would otherwise be prohibited provided the conditions stated there in are met. This notice includes the following proposed exemptions: D–11924, The Les Schwab Tire Centers of Washington, Inc., the Les Schwab Tire Centers of Boise, Inc., and the Les Schwab Tire Centers of Portland, Inc.; D–11918, Seventy Seven Energy Inc. Retirement & Savings Plan; D–11940, Tidewater Savings and Retirement Plan; and D–11947, Principal Life Insurance Company (PLIC) and its Affiliates.

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, by February 11, 2019.

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 via mail to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW, Suite 400, Washington, DC 20210. *Attention:* Application No._ stated in each Notice of Proposed Exemption or via private delivery service or courier to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 122 C St. NW, Suite 400, Washington, DC 20001. *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: *e-OED@dol.gov,* by FAX to (202) 693–8474, or online through *http://www.regulations.gov* 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–1515, 200 Constitution Avenue NW, Washington, DC 20210.

WARNING: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

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, unless otherwise stated in the Notice of Proposed Exemption, 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 (76 FR 66637, 66644, October 27, 2011).[1] 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.

The Les Schwab Tire Centers of Washington, Inc. (Les Schwab Washington), the Les Schwab Tire Centers of Boise, Inc. (Les Schwab Boise), and the Les Schwab Tire Centers of Portland, Inc. (Les Schwab Portland), (collectively, with their Affiliates, Les Schwab or the Applicant) Located in Aloha, Oregon; Boise, Idaho; Centralia, Washington; and Other Locations [Application No. D–11924].

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 (76 FR 66637, 66644, October 27, 2011).[2] If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A), 4975(c)(1)(D) and 4975(c)(1)(E) of the Code, shall not apply to the sales (each a ''Sale'' or collectively, the ''Sales'') by the Les Schwab Profit Sharing Retirement Plan (the Plan) of the parcels of real property described herein (each, a ''Parcel'' or collectively, the ''Parcels'') to the Applicant, where the Applicant is a party in interest with respect to the Plan, provided that certain conditions are satisfied.

Summary of Facts and Representations[3]

Background

1. Les Schwab Tire Centers (together with its affiliates, Les Schwab) was founded by its namesake in 1952 in Prineville, Oregon, in order to sell tires, batteries and other automotive equipment, and provide vehicle maintenance services. There are now approximately 482 Les Schwab tire and automotive service centers located primarily in the Northwest and with over $1.7 billion in annual sales. Their

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[2] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

[3] The Summary of Facts and Representations is based solely on the representations of the Applicant and does not reflect the views of the Department, unless indicated otherwise.

facilities are located in Alaska, Washington, Oregon, Montana, Nevada, Utah, California, Colorado, and Idaho.

2. Les Schwab is comprised of 13 distinct legal entities. Certain entities are ''S'' corporations. The 13 entities constitute various controlled groups but do not constitute a single controlled group. The Form 5500 Annual Report for the Plan is filed as a multiple employer plan. The thirteen entities do include Les Schwab Washington, Les Schwab Idaho, Les Schwab Portland, and Les Schwab Warehouse Center, Inc. (the Warehouse Center).

3. All entities within the Les Schwab controlled groups are owned by Alan Schwab, Diana Tomseth, Julie Waibel, and Leslie Tuftin (or by trusts for the benefit of such individuals and/or their children). Mr. Schwab and Ms. Tomseth are siblings, and Ms. Waibel and Ms. Tuftin are siblings. These four individuals are the grandchildren of Les Schwab and they are also currently employees of the Warehouse Center and board members of Les Schwab. The Applicant states that each of these four individuals is a Plan participant, as well as an owner-employee because they each own more than 5 percent of the stock of Les Schwab.[4]

4. The Plan is a qualified multiple-employer, defined contribution profit-sharing plan located in Bend, Oregon. The Plan is sponsored by the Warehouse Center. Thirteen employers, including Les Schwab Washington, Les Schwab Idaho, and Les Schwab Portland participate in the Plan. As of December 31, 2017, the Plan had 7,444 participants and beneficiaries. Also, as of December 31, 2017, the Plan had total assets of $730,454,671. The Applicant states that the Plan is the sole retirement plan available for Les Schwab employees.

5. The Administrative and Investment Committee of the Plan (the Committee) has the sole discretionary investment authority over the Plan and is a named fiduciary. The Committee has the exclusive right and discretionary authority to control, manage and operate the Plan. This includes the authority to direct the investment of the Plan's assets and to appoint and remove the Plan's Trustees and investment managers.

The Committee consists of seven trustees (the Trustees), who include executives and officers of Les Schwab. The Trustees are appointed by the Chief Executive Officer of the Warehouse Center. All of the Trustees are employees of the Warehouse Center, and some are officers of the Warehouse Center and Les Schwab Washington, Les Schwab Idaho and Les Schwab Portland.

Parcel Purchases

6. Over time, the Plan purchased twenty-six parcels of real property (collectively, the Parcels). As described below, following the purchases, the Plan entered into leases with various Les Schwab entities.[5] These Parcels of real property were then improved by the construction of buildings that were paid for by the Les Schwab entities or the Plan. Under the terms of the leases, the Les Schwab entities or the Plan retained title to these buildings.

The Applicant asserts that the Plan was initially motivated to purchase and lease the Parcels to Les Schwab as a means to provide a secure return on the Plan's investments. In this regard, the Plan had intimate knowledge of Les Schwab's business success and creditworthiness, and determined that leasing the Parcels to Les Schwab was a prudent investment decision.

7. On October 6, 2015, the Department issued a notice of final exemption in connection with the sale by the Plan to the Applicant of five Parcels of real property.[6] The Applicant seeks a similar individual exemption for the Sales of 19 Parcels on which Les Schwab leases the Parcels from the Plan and operates tire centers through an affiliate.[7] Given that Les Schwab has retained title to the buildings that have been constructed on some of the Parcels, pursuant to the terms of the relevant leases, in some instances, the purchases do not involve the buildings themselves. Each Parcel that is the subject of the proposed Sales is described below in further detail.

The Aloha Parcel

8. The Plan purchased a 1.97-acre parcel of property, located at 19100 SW Shaw Street in Aloha, Oregon (the Aloha Parcel), from an unrelated party in October 1986, for a total purchase price of $300,194.

The Plan and Les Schwab Portland entered into a lease of the Aloha Parcel (the Aloha Parcel Lease), on January 1, 1987, with the Plan as landlord, and Les Schwab Portland, as tenant. Effective as of its renewal term commencing January 1, 2014, the monthly rent is $14,453 per month.

In March 1988, the Plan completed the construction of two general automotive buildings and the canopy, for a total cost of $614,824. Les Schwab Portland then constructed a third general automotive building for a cost of $171,968.

The Aloha Parcel Lease includes a purchase option under which Les Schwab Portland has the right to purchase the Aloha Parcel. Pursuant to the terms of the Aloha Parcel Lease, the applicable option price is based on the greater of $300,194 plus the landlord's total cost of improvements, or the fair market value of the Aloha Parcel, as determined by the corresponding independent appraisal discussed in paragraph 31 (the Independent Appraisal). Les Schwab Portland now seeks to exercise its option to purchase the Aloha Parcel from the Plan.

The Boise Broadway Parcel

9. On February 13, 1990, the Plan purchased 1.66 acres of land, located at 2045 Broadway Avenue in Boise, Idaho (the Boise Broadway Parcel), from an unrelated party, for a total purchase price, including closing costs, of $398,085.

On June 1, 1990, the Plan and Les Schwab Tire Centers of Boise, Idaho (Les Schwab Boise) entered into a ground lease of the Boise Broadway Parcel (the Boise Broadway Parcel Lease), with the Plan, as landlord, and Les Schwab Boise, as tenant. On May 1, 1991, Les Schwab Boise opened a retail tire store facility on the Boise Broadway Property in a building that it had constructed for $437,061. Effective as of

[4] The term ''owner-employee'' is defined under section 408(d) of the Act to include persons as defined in section 401(c)(3) of the Code, such as an employee who owns the entire interest in an unincorporated trade or business, or in the case of a partnership, a partner who owns more than 10 percent of either the capital interest or profits interest of such partnership. The term ''owner-employee'' also includes, in relevant part, (a) a shareholder-employee, which is an employee or officer of an S corporation who owns more than 5 percent of the outstanding stock of such corporation; (b) a member of the family of such owner-employee; or (c) a corporation in which such shareholder-employee owns, directly or indirectly, 50% or more of the total combined voting power of all classes of voting stock of a corporation or 50% or more of the total value of all classes of stock of such corporation.

[5] The Applicant represents that these leases are exempt under section 408(e) of the Act. Section 408(e) of the Act provides, in pertinent part, that the restrictions of sections 406 and 407 of the Act shall not apply to the acquisition, sale or lease by a plan of qualifying employer real property if—(a) such acquisition, sale, or lease is for adequate consideration; (b) no commission is charged with respect thereto; and (c) the plan is an eligible individual account plan.

[6] See PTE 2015–18, 80 FR 60503 (October 6, 2015).

[7] Les Schwab represents that, in addition to the five parcels covered by PTE 2015–18 and the 19 parcels covered by this proposed exemption, the Plan owns a parcel in Aberdeen, Washington (the Aberdeen Parcel) and a parcel in Moscow, Idaho (the Moscow Parcel). With respect to the Aberdeen Parcel, Les Schwab represents that the Applicant has not made a business decision on whether Les Schwab Washington will purchase the property. Les Schwab represents that, with respect to the Moscow Parcel, the option to purchase the property from the Plan is not yet exercisable.

the lease renewal term of January 1, 2016, the monthly rent is $6,163 per month.

The Boise Broadway Parcel Lease includes a purchase option under which Les Schwab Boise has the right to purchase the Boise Broadway Parcel. Pursuant to the terms of the Boise Broadway Parcel Lease, the applicable option price is based on the greater of $398,085, plus the landlord's total cost of improvements, or the fair market value of the Boise Broadway Parcel, as determined by the Independent Appraisal. Les Schwab Boise now seeks to exercise its option to purchase the Boise Broadway Parcel from the Plan.

The Boise State Street Parcel

10. On May 12, 1978, the Plan purchased 1.41 acres of real property located at 6520 West State Street in Boise, Idaho (the Boise State Street Parcel) from an unrelated party. The total purchase price for the Boise State Street Parcel was $238,600. The Boise State Street Parcel is comprised of: (a) Two buildings: A 7,000 square foot retail store building, and a 6,400 square foot building housing a shop warehouse; and (b) two canopy areas, of 1,920 square feet and 1,400 square feet, that are attached to the retail store building.

On April 1, 1981, the Plan and Les Schwab Boise entered into a ground lease of a portion of the Boise State Street Parcel, with the Plan as landlord, and Les Schwab Boise, as tenant (the Boise State Street Parcel Lease). The Plan purchased additional land in 1988, which was added to the leased premises. The additional land was used for the construction of a brake and alignment center to expand Les Schwab Boise's business. The cost of the additional land was $42,185. The Plan in 1988 constructed a brake and alignment building on recently-purchased land for $137,198. The Plan made improvements to the roof system in 1989, for which the Plan paid $10,807. Effective as of its lease renewal term of August 1, 2017, the monthly rent for the Boise State Street Parcel is $11,977.

The Boise State Street Parcel Lease includes a purchase option under which Les Schwab Boise has the right to purchase the Boise State Street Parcel. Pursuant to the terms of the Boise State Street Parcel Lease, the applicable option price is based on the greater of $103,900 plus the landlord's total cost of improvements, or the fair market value of the Boise State Street Parcel, as determined by the Independent Appraisal. Les Schwab Boise now seeks to exercise its option to purchase the Boise State Street Parcel from the Plan.

The Centralia Parcel

11. On June 18, 1987, the Plan purchased a 1.06 acre parcel of real property consisting of vacant land located at 1211 Harrison Avenue in Centralia, Washington (the Centralia Parcel) from an unrelated party, for a total purchase price, including closing costs of $139,909.

On October 1, 1987, the Plan, as landlord, leased the Centralia Parcel to Les Schwab Washington, as tenant, under the provisions of a ground lease (the Centralia Parcel Lease). In 1988, Les Schwab Washington completed the construction of a building and improvements that were suitable for the operation of a retail tire store and other commercial purposes, at its own expense, for a total cost of $347,378. Since January 1, 2014, Les Schwab Washington has been paying the Plan $1,860 per month under the Centralia Parcel Lease.

The Centralia Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Centralia Parcel. Pursuant to the terms of the Centralia Parcel Lease, the applicable option price is based on the greater of $139,909, or the fair market value of the Centralia Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Centralia Parcel from the Plan.

The Chehalis Parcel

12. On April 21, 1980, the Plan purchased a 44,615 square foot parcel of real property located at 36 N Market Boulevard in Chehalis, Washington, including the land and a building (the Chehalis Parcel), from an unrelated party, for a total purchase price of $200,000.

On June 1, 1980, the Plan, as landlord, entered into a lease of the Chehalis Parcel (the Chehalis Parcel Lease) with Les Schwab Washington, as tenant, which commenced on September 1, 1980. Pursuant to the current Chehalis Parcel Lease, since August 1, 2017, Les Schwab Washington pays the Plan monthly rent of $10,487.

The Plan constructed, at its own expense, two buildings and related improvements on the Chehalis Parcel that were suitable for the operation of a retail tire store and other purposes by Les Schwab Washington. The cost of the building and improvements was $286,947.

The Chehalis Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Chehalis Parcel. Pursuant to the terms of the Chehalis Parcel Lease, the applicable option price is based on: The greater of (a) $120,000 plus the Plan's total cost of improvements made on the Chehalis Parcel, or (b) the fair market value of Chehalis Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Chehalis Parcel from the Plan.

The Ellensburg Parcels

13. In August 1977, Les Schwab Washington purchased approximately 71,438 square feet of land located at 1206 South Canyon Road, Ellensburg, Washington from unrelated parties for $80,000. Les Schwab Washington then subdivided the land into three parcels: Ellensburg Parcel #1, Ellensburg Parcel #2, and Ellensburg Parcel #3. Because Les Schwab Washington retained Ellensburg Parcel #3, and subsequently sold it to an unrelated party, the property and lease descriptions below pertain solely to Ellensburg Parcels #1 and #2, which are together referred to herein as the ''Ellensburg Parcels.''

In December 1979, Les Schwab Washington and the Plan entered into a sale and leaseback arrangement, whereby Les Schwab Washington sold Ellensburg Parcel #1 to the Plan for $108,600. Effective January 1, 1980, the Plan entered into a lease with Les Schwab Washington (the Ellensburg Parcel #1 Lease). The Plan paid $214,567 to construct a building and related improvements suitable for the retail tire store and other purposes. Les Schwab Washington has been paying the Plan $7,503 per month since January 1, 2016.

With respect to Ellensburg Parcel #2, which shares the same street address as Ellensburg Parcel #1, the Applicant represents that Les Schwab Washington constructed a small general purpose commercial building (an alignment center) thereon for $85,834. The building was subsequently incorporated into the Ellensburg Parcel #1 Leases.

The Ellensburg Parcel #1 Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Ellensburg Parcels. Under the terms of the Ellensburg Parcel #1 Lease, the option price will be the greater of $425,232 plus the landlord's total cost of improvements, or the fair market value of the Ellensburg Parcels, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise the option to purchase the Ellensburg Parcels from the Plan.

The Independence Parcel

14. In December 1979, the Plan purchased a 53,000-square foot parcel of

property located at 1710 Monmouth Avenue, Independence, Oregon (the Independence Parcel), consisting of land and a building from Les Schwab Portland for $301,149.

On January 1, 1980, the Plan began leasing the Independence Parcel to Les Schwab Portland, under the provisions of a written lease (the Independence Parcel Lease). Les Schwab Portland has been paying the Plan $6,984 per month since January 1, 2016.

The Independence Parcel Lease includes a purchase option under which Les Schwab Portland has the right to purchase the Independence Parcel. Pursuant to the terms of the Independence Parcel Lease, the applicable option price is based on the greater of $329,197 plus the landlord's total cost of improvements, or the fair market value of the Independence Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Independence Parcel from the Plan.

The Lakewood Parcel

15. On May 31, 1988, the Plan purchased two parcels of land, located at 3809 Steilacoom Boulevard SW, Tacoma, Washington (with the additions described below, the Lakewood Parcel), and totaling 43,050 square feet, from unrelated parties, for $200,388. On June 1, 1988, the Plan entered into a ground lease of one of the parcels with Les Schwab Washington, for an initial monthly rent of $1,336 (the Lakewood Parcel Lease).

In January 1989, the Plan purchased an additional 11,760 square foot parcel of land, from unrelated parties, for $59,033. Furthermore, in 2002, the Plan purchased a 12,000 square foot tract of land on the Lakewood Parcel, from unrelated parties, for $85,596. In 2005, the Plan purchased 7,730 square feet of land from unrelated parties, for $126,480. Since January 1, 2014, the monthly rent for the Lakewood Parcel has been $5,429.

The Lakewood Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Lakewood Parcel. Pursuant to the terms of the Lakewood Parcel Lease, the applicable option price is based on the greater of $200,388, plus the landlord's total cost of improvements, or the fair market value of the Lakewood Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Lakewood Parcel from the Plan.

The Longview Parcel

16. On December 18, 1979, Les Schwab Washington purchased 1.89 acres of land located at 1420 Industrial Way in Longview, Washington (the Longview Parcel) from an unrelated party for $86,350. On May 14, 1981, Les Schwab Washington sold the Longview Parcel to the Plan for $90,704.

On May 14, 1981, the Plan and Les Schwab Washington entered into a commercial lease of the land comprising the Longview Parcel, with the Plan as landlord, and Les Schwab Washington, as tenant (the Longview Parcel Lease). Since August 1, 2017, the monthly rent has been $13,979.

In 1981, the Plan completed improvements on the Longview Parcel that included a 14,830 square foot retail tire store costing $267,902. Other improvements were funded and constructed by the Plan in 1983, at an expense of $70,174, and in 1986, at an expense of $88,773, for a 3,600 square foot warehouse building.

The Longview Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Longview Parcel. Pursuant to the terms of the Longview Parcel Lease, the applicable option price is based on the greater of $90,704 plus the landlord's total cost of improvements, or the fair market value of the Longview Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Longview Parcel from the Plan.

The Marysville Parcels

17. On July 24, 1984, the Plan purchased 61,346 square feet of land located at 8405 State Avenue, Marysville, Washington (Marysville Parcel A) from an unrelated party, for a total contract price of $235,287. Pursuant to a ground lease dated August 1, 1984, the Plan began leasing the land ''as is'' to Les Schwab Washington (the Marysville Parcel Lease). Les Schwab Washington subsequently completed construction of a retail store at its own cost in 1985.

The Plan acquired 26,136 square feet of additional land (Marysville Parcel B)[8] in March 1999 for a price of $160,125. Marysville Parcel B was added to the Marysville Parcel Lease, effective June 15, 1999. Since August 1, 2014, the monthly rent charged by the Plan to Les Schwab Washington was $6,229.

[8] Marysville Parcel A and Marysville Parcel B are together referred to herein as the ''Marysville Parcels.''

The Marysville Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Marysville Parcels. Pursuant to the terms of the Marysville Parcel Lease, the applicable option price is based on the greater of $398,564, or the fair market value of the Marysville Parcels, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Marysville Parcels from the Plan.

The North Bend Parcel

18. On June 3, 1988, the Plan purchased land located at 610 E North Bend Way, North Bend, Washington (the North Bend Parcel) from an unrelated party for $200,364. On September 1, 1988, the Plan and Les Schwab Washington entered into a ground lease of the land comprising the North Bend Parcel, with the Plan as landlord, and Les Schwab Washington, as tenant (the North Bend Parcel Lease).

In 1991, Les Schwab Washington opened a 3,500-square-foot retail tire store facility on the North Bend Parcel that it had constructed for $878,000. Since January 1, 2014, the monthly rent charged to Les Schwab Washington has been $2,578.

The North Bend Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the North Bend Parcel. Pursuant to the terms of the North Bend Parcel Lease, the applicable option price is based on the greater of $200,364 plus Landlord's total cost of improvements, or the fair market value of the North Bend Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the North Bend Parcel from the Plan.

The Oregon City Parcels

19. In October 1980, the Plan purchased two parcels of land. The first parcel comprised of 41,951 square feet of land (Oregon City Parcel #1), and the second parcel comprised of 42,757 square feet of land (Oregon City Parcel #2), located at 1625 Beavercreek Road, Oregon City, Oregon, from an unrelated third party for $250,000. In July 1984, the Plan sold Oregon City Parcel #2 to Les Schwab Portland for $151,000.

On November 1, 1981, the Plan and Les Schwab Portland entered into a ground lease of the land comprising Oregon City Parcel #1, with the Plan, as landlord, and Les Schwab Portland, as tenant (the Oregon City Parcel #1 Lease).

In 1982, Les Schwab Portland opened a 7,850-square-foot retail tire store facility on Oregon City Parcel #1 that it

had constructed for $366,000. Since August 1, 2017, the monthly rent charged to Les Schwab Portland increased to $4,470.

The Oregon City Parcel #1 Lease includes a purchase option under which Les Schwab Portland has the right to purchase Oregon City Parcel #1. Pursuant to the terms of the Oregon City Parcel #1 Lease, the applicable option price is based on the greater of $136,500, or the fair market value of Oregon City Parcel #1, as determined by the Independent Appraisal. Les Schwab Portland now seeks to exercise its option to purchase Oregon City Parcel #1 from the Plan.

The Pullman Parcel

20. In November 1981, the Plan purchased 0.77 acres of land, located at 160 SE Bishop Boulevard in Pullman, Washington (the Pullman Parcel), from an unrelated party for a total purchase price of $75,704.

On November 10, 1981, the Plan and Les Schwab Washington entered into a ground lease of the land comprising the Pullman Parcel, with the Plan, as landlord, and Les Schwab Washington, as tenant (the Pullman Parcel Lease). In 1987, Les Schwab Washington opened a 7,300-square-foot retail tire store facility on the Pullman Parcel that it had constructed for $345,000. Since August 1, 2017, the monthly rent charged to Les Schwab Washington has been $3,356.

The Pullman Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Pullman Parcel. Pursuant to the terms of the Pullman Parcel Lease, the applicable option price is based on the greater of $80,704, or the fair market value of the Pullman Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Pullman Parcel from the Plan.

The Silverton Parcel

21. In November 1986, the Plan purchased 1.18 acres of land, located at 911 North 1st Street in Silverton, Oregon (the Silverton Parcel), from an unrelated party for a total purchase price of $50,739.

On March 1, 1987, the Plan and Les Schwab Portland entered into a ground lease of the land comprising the Silverton Parcel, with the Plan, as landlord, and Les Schwab Portland, as tenant (the Silverton Parcel Lease).

As agreed upon under the Silverton Parcel Lease, in 1987, the Plan constructed a tire store facility on the Silverton Parcel, for a total cost of $307,725. In 1992 the Plan funded additional improvements on the Silverton Parcel at a cost of $153,276. Since January 1, 2013, the monthly rent charged to Les Schwab Portland has been $7,900.

The Silverton Parcel Lease includes a purchase option under which Les Schwab Portland has the right to purchase the Silverton Parcel. Pursuant to the terms of the Silverton Parcel Lease, the applicable option price is based on the greater of $50,730 plus the landlord's total cost of improvements, or the fair market value of the Silverton Parcel, as determined by the Independent Appraisal. Les Schwab Portland now seeks to exercise its option to purchase the Silverton Parcel from the Plan.

The Snohomish Parcel

22. In March 1992, the Plan purchased 1.01 acres of land located at 711 Avenue D, Snohomish, Washington, from an unrelated party for an aggregate purchase price of $614,534. In January 1993, the Plan purchased approximately 0.07 acres of land adjacent to the initial tract for $46,800, also from an unrelated party. For purposes of this proposed exemption, both tracts of land are referred to herein as the ''Snohomish Parcel.''

On July 1, 1992, the Plan and Les Schwab Washington entered into a ground lease with the Plan of the initial tract of land comprising the Snohomish Parcel (the Snohomish Parcel), with the Plan as landlord, and Les Schwab Washington, as tenant.

In 1993, Les Schwab Washington opened a 14,300-square-foot retail tire store facility on the Snohomish Parcel that it had constructed for $825,000. Since January 1, 2013, the monthly rent charged to Les Schwab Washington has been $7,283.

The Snohomish Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Snohomish Parcel. Pursuant to the terms of the Snohomish Parcel Lease, the applicable option price is based on the greater of $614,534, plus the landlord's total cost of improvements, or the fair market value of the Snohomish Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Snohomish Parcel from the Plan.

The Spanaway Parcel

23. In January 1985, the Plan purchased 0.97 acres of land located at 16819 Pacific Avenue South, Spanaway, Washington (the Spanaway Parcel) from an unrelated third party for an aggregate purchase price of $283,340. In July 1990, the Plan purchased a 14,100 square foot parcel next to the initial parcel from an unrelated third party for $45,743. In May 1999, the Plan purchased an additional 8,000 square foot parcel from an unrelated third party for $58,000. The three land parcels totaling 1.48 acres comprise the Spanaway property (the Spanaway Parcel). On February 1, 1985, the Plan and Les Schwab Washington entered into a ground lease of the land comprising the initial parcel (the Spanaway Parcel Lease), with the Plan, as landlord, and Les Schwab Washington, as tenant.

In late 1985, Les Schwab Washington opened a 15,000-spare-foot retail tire store facility on the Spanaway Parcel that it had constructed for $406,000. Since August 1, 2015, the monthly rent charged to Les Schwab Washington has been $6,615.

The Spanaway Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Spanaway Parcel. Pursuant to the terms of the Spanaway Parcel Lease, the applicable option price is based on the greater of $329,083, or the fair market value of the Spanaway Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Spanaway Parcel from the Plan.

The Spokane Parcel

24. In November 1981, the Plan purchased 0.88 acres of land, located at 8103 North Division Street, Spokane, Washington (the Spokane Parcel), from an unrelated third party for an aggregate purchase price of $205,000.

On November 10, 1981, the Plan and Les Schwab Washington entered into a ground lease of the land comprising the Spokane Parcel, with the Plan, as landlord, and Les Schwab Washington, as tenant (the Spokane Parcel Lease).

In 1982, Les Schwab Washington opened a 7,400-square-foot retail tire store facility on the Spokane Parcel that it had constructed for $263,000. Since August 1, 2012, the monthly rent to Les Schwab Washington has been $5,175.

The Spokane Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Spokane Parcel. Pursuant to the terms of the Spokane Parcel Lease, the applicable option price is based on the greater of $205,172, or the fair market value of the Spokane Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Spokane Parcel from the Plan.

The Vancouver Andresen Parcel

25. On October 12, 1989, the Plan purchased 0.78 acres of land located at 2420 NE Andresen Road, Vancouver, Washington (the Vancouver Andresen Parcel), from an unrelated third party for an aggregate purchase price of $245,265.

On January 1, 1990, the Plan and Les Schwab Washington entered into a ground lease of the land comprising the Vancouver Andresen Parcel (the Vancouver Andresen Parcel Lease), with the Plan, as landlord, and Les Schwab Washington, as tenant.

In 1991, Les Schwab Washington opened a 10,300-square-foot retail tire store facility on the Vancouver Andresen Parcel that it had constructed for $557,000. Since January 1, 2015, the monthly rent charged to Les Schwab Washington has been $3,671.

The Vancouver Andresen Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Vancouver Andresen Parcel. Pursuant to the terms of the Vancouver Andresen Parcel Lease, the applicable option price is based on the greater of $245,264, or the fair market value of the Vancouver Andresen Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Vancouver Andresen Parcel from the Plan.

The Vancouver Cascade Park Parcel

26. On August 26, 1981, the Plan purchased 0.69 acres of land located at 216 SE 118th Avenue, Vancouver, Washington (the Vancouver Cascade Park Parcel), from an unrelated third party for an aggregate purchase price of $156,300.

On July 1, 1983, the Plan and Les Schwab Washington entered into a ground lease of the land comprising the Vancouver Cascade Park Parcel (the Vancouver Cascade Park Parcel Lease), with the Plan, as landlord, and Les Schwab Washington, as tenant.

In late 1983, Les Schwab Washington opened a 13,000-square-foot retail tire store facility on the Vancouver Cascade Park Parcel that it had constructed for $304,000. Since January 1, 2015, the monthly rent charged to Les Schwab Washington has been $3,765.

The Vancouver Cascade Park Parcel Lease includes a purchase option under which Les Schwab Washington has the right to purchase the Vancouver Cascade Park Parcel. Pursuant to the terms of the Vancouver Cascade Park Parcel Lease, the applicable option price is based on the greater of $156,300, or the fair market value of the Vancouver Cascade Park Parcel, as determined by the Independent Appraisal. Les Schwab Washington now seeks to exercise its option to purchase the Vancouver Cascade Park Parcel from the Plan.

Terms of the Sales

27. Each Sale must be a one-time transaction for cash. At the time of the Sales, the Plan will receive no less than the fair market value of each Parcel, as determined by the Appraisers, whose current Appraisals will be updated on the date of the Sales. In this regard, to the extent the terms of any lease allow a Sale price that is greater than a Parcel's fair market value, then the price received by the Plan for such Parcel will equal such greater Sale price. In addition, the Applicant represents that the Plan will not pay any costs, including brokerage commissions, fees, appraisal costs, or any other expenses associated with the Sales. Further, the terms and conditions of each Sale will be at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party. Finally, a qualified independent fiduciary will represent the interests of the Plan with respect to each Sale. Among other things, such independent fiduciary will monitor each sale throughout its duration, review and approve the methodology and ultimate valuation determination of the qualified independent appraiser (the Independent Appraiser), and determine, on behalf of the Plan, whether it is prudent to proceed with the transaction.

The Independent Fiduciary

28. Les Schwab represents that American Realty Advisors (ARA) of Glendale, California was retained to serve as a qualified independent fiduciary (the Independent Fiduciary) to the Plan for purposes of evaluating and approving the Sales. ARA represents that it is an investment manager of institutional quality commercial real estate portfolios with 529 investors and over $8.7 billion in assets under management as of June 30, 2018. ARA is one of the largest privately-held real estate investment management firms in the United States and has been providing real estate investment management for over 28 years.

ARA represents that it qualifies as an independent fiduciary under the Department's Prohibited Transaction Exemption Procedures (see 29 CFR 2570, October 27, 2011, at 29 CFR 2570.34(d)).[9] ARA states that it acknowledges, understands, and accepts its duties under ERISA and is acting as the Independent Fiduciary to the Plan in relation to the exemption application. Further, ARA represents that it is authorized by the Plan to take all appropriate actions to safeguard the interests of the Plan and will, during the pendency of the Sales: (a) Monitor the Sales on behalf of the Plan; (b) ensure that the Sales remain in the interests of the Plan and, if not, take any appropriate actions available under the particular circumstances; and (c) enforce compliance with all conditions and obligations imposed on any party dealing with the Plan with respect to each transaction.

ARA represents that it does not have any relationship with the parties involved in the proposed transaction, beyond its role as the Independent Fiduciary.

As part of its Independent Fiduciary duties and responsibilities, ARA completed the following tasks: (a) Toured each of the Parcels and inspected comparable land sales, as outlined in each of the appraisals CBRE, Inc. (CBRE) completed for each Parcel (the Independent Appraisals); (b) engaged the Independent Appraisers and instructed them with respect to the objectives of each Independent Appraisal, the specific nuances of the Parcel leases between Les Schwab and the Plan (the Leases), and the valuation process, taking into account the questions posed by the Department during its review of the exemption application in connection with its granting of PTE 2015–18; (c) reviewed the Independent Appraisals; (d) reviewed the annual audited financial statements for the Plan from 1980 to the present to assess the treatment of the Leases by the auditor and obtained additional documentation from Les Schwab in support of the rental payments made under the Leases; (e) reviewed and summarized the terms and conditions of the Leases and relevant amendments; (f) researched additional questions posed by the Department; and (g) reviewed the composition of the existing real estate portfolio of the Plan and the Plan's Statement of Investment Policy dated September 1, 2015. Further, the Independent Fiduciary examined

[9] 29 CFR 2570.34(d) requires that an Independent Fiduciary provide to the Department, under penalty of perjury: (1) A summary of the Independent Fiduciary's qualifications to serve in such capacity; (2) a description of any relationship between the Independent Fiduciary and a party in interest with respect to the transaction or its affiliates; (3) an acknowledgement by the Independent Fiduciary of its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the plan; and (4) the percentage of the Independent Fiduciary's current revenue that is derived from any party in interest involved in the transaction or its affiliates.

whether the Plan received rental income on a timely basis under the Leases, and reviewed audited financial statements for the Plan prepared by PriceWaterhouse Coopers and Roberts, McMains, Sellman & Co. for the years 1981–2015.

The Independent Fiduciary represents that it will represent the interests of the Plan in the proposed Sales. In so doing, the Independent Fiduciary will: (a) Determine whether it is prudent to go forward with each Sale; (b) negotiate, review, and approve the terms and conditions of each Sale; (c) monitor and manage the Sales on behalf of the Plan throughout their duration, taking any appropriate actions it deems necessary to safeguard the interests of the Plan.

The Independent Fiduciary Reports

29. ARA submitted to the Department its reports, dated September 8, 2016 (the Independent Fiduciary Reports), that document ARA's analysis of the proposed Sale for each Parcel and ARA's recommendations for the Plan.

In the Independent Fiduciary Reports, ARA represents that the Sales are the most favorable option for the Plan and its participants and beneficiaries, because the improvements have significant age and limited future value (in addition to the current value of the underlying land), to anyone other than Les Schwab.

ARA concludes that the Leases between the Plan and the applicable Les Schwab affiliates with their rental rates and Consumer Price Index (CPI) adjustments are consistent with market terms and conditions at the time the Leases were negotiated and are consistent of similar transactions between unrelated parties. ARA also concludes that the appraised values of the Parcels as presented within the Independent Appraisals are accurate reflections of current market conditions and form the basis for establishing fair market prices for the Sales.

Further, ARA notes that the Plan's real estate holdings as outlined by the 2015 audited statement are approximately 14.7% of the total assets of the Plan and are just below the parameters of the Plan's Statement of Investment Policy dated January 1, 2015. The proposed Sales of the Parcels, in addition to the recent January 2016 sale of the Lacey, Renton, Bothell, Sandy and Twin Falls Parcels, would reduce the real estate holdings of the Plan to approximately 10.8% of the total assets of the Plan. This falls below the investment threshold but would modestly increase the liquidity of the Plan. The Investment Policy Statement establishes the policy range for real estate and other real assets within a range of 15% and 25% of the portfolio. The Sales results in a real estate allocation that is under the policy range but would allow the Plan to continue its diversification strategy away from directly owned real estate toward real estate assets with greater liquidity, increased diversification and decreased liability risk.

ARA also represents, in the Independent Fiduciary Reports, that it has reviewed audited financial statements of the Plan, as noted above, for the years 1981 through 2015, unaudited financial statements to the end of February 2016, the Plan records of rental income received from the present back to 1995, and the scheduled rent for all of the leases individually from inception to the present. ARA states that there is no reason to conclude that the lessees owe the Plan any additional rent related the failure of either party to comply with the terms and conditions of the Leases.

Further, ARA concludes, in the Independent Fiduciary Reports, that the Sales are administratively feasible and would be fairly routine executions for an experienced real estate investment manager. ARA represents that it will: (a) Monitor and manage the proposed transactions on behalf of the Plan; (b) take any appropriate actions to safeguard the interests of the Plan; (c) represent the interests of the Plan in the proposed Sales; and (d) negotiate, review, and approve the terms and conditions of the proposed Sales.

The Independent Appraisers

30. The Applicant represents that the appraisals of the Parcels were conducted by Whitney Haucke, David Adamson, Jeff Grose, Katriina White, and Kevin Nguyen of CBRE. (Ms. Haucke, Mr. Adamson, Mr. Grose, Ms. White, and Mr. Nguyen are referred to herein as the ''Independent Appraisers.'') Ms. Haucke, Mr. Adamson, Mr. Grose, and Mr. Nguyen are Certified General Real Estate Appraisers in the areas where the Parcels are located, and they are all Members of the Appraisal Institute. Ms. White is a Registered Real Estate Appraiser Trainee in the State of Washington. The Independent Appraisers also have experience in appraising residential properties, vacant land, and commercial properties.

Pursuant to its Appraisal Engagement Letter, CBRE was retained to perform, among other things, the following tasks, on behalf of the Plan: (a) Provide a fair market valuation of the Parcels using commercially acceptable methods of valuation for unrelated third party transactions; (b) explain whether or not, in the Independent Appraisers' opinion, the Plan has received adequate consideration from the Leases; and (c) opine on whether the proper CPI was used for the rent increases for each Parcel. The Applicant represents that the appraisal work completed by CBRE produced fees from Les Schwab to CBRE of $98,250 in 2016 and $0.00 in 2017. According to CBRE's 2017 10K filing, its 2016 gross revenue was $13.09 billion and its 2017 gross revenue was $14.21 billion. As such, CBRE's revenue from the Les Schwab appraisal work was less than 2% of its revenue for 2016 and 2017.

The Independent Appraisals

31. In valuing the Parcels, the Independent Appraisers applied the Sales Comparison Approach and the Income Capitalization Approach to valuation. As represented by the Independent Appraisers, the Sales Comparison Approach is typically used for retail sites that are feasible for either immediate or near-term development. The Income Capitalization Approach, according to the Independent Appraisers, reflects the property's income-producing capabilities, and is based on the assumption that value is created by the expectation of benefits to be derived in the future. The Independent Appraisers did not use the Cost Approach to valuation because they did not consider this methodology to be applicable in the estimation of market value due to age of the improvements and lack of depreciation data for the Parcels.

a. *The Aloha Parcel Appraisal.* The Independent Appraisers used the Sales Comparison Approach and the Income Capitalization Approach methodologies in determining the fair market value of the Aloha Parcel. Based on the Sales Comparison Approach, the Independent Appraisers evaluated eight properties, which included fee simple or leased fee sales or listings of comparable properties. The Independent Appraisers determined that the fee simple sales comparables indicated an adjusted range of $131 per square foot to $149 per square foot, at an average of $136 per square foot. According to the Independent Appraisers, the Sales Comparison Approach yielded a value of $135 per square foot, which when multiplied by the actual square footage of the Aloha Parcel (16,700 square feet), equaled a fair market value of $2,250,000 for the Aloha Parcel as of April 1, 2016.

In employing the Income Capitalization Approach, the Independent Appraisers noted that there

were no rents of buildings or facilities similar to the subject property. Therefore, the Independent Appraisers expanded their search for comparable rental properties, regionally, and they evaluated six rental property comparables. After reviewing the rental incomes and operating expenses of these properties, the Independent Appraisers determined that, under the Income Capitalization Approach, the Independent Appraisers concluded that the fair market value of the Aloha Parcel was $129 per square foot, or $2,150,721, rounded to $2,150,000 as of April 1, 2016.

The Independent Appraisers determined that the Sales Comparison Approach should be given primary consideration in the reconciliation process. As such, the Independent Appraisers determined the fair market value of the Aloha Parcel as of April 1, 2016, was $2,250,000.

b. *The Boise Broadway Parcel Appraisal.* The Independent Appraisers used the Sales Comparison Approach to value the Boise Broadway Parcel. The Independent Appraisers evaluated six prior sales and one pending sale. Based on the Sales Comparison Approach and evaluating land sale comparables, the Independent Appraisers derived a fair market value for the Boise Broadway Parcel of $13 per square foot, which when multiplied by the actual square footage of the Boise Broadway Parcel (72,310 square feet) equaled a fair market value of $940,000 as of April 1, 2016.

c. *The Boise State Street Parcel Appraisal.* The Boise State Street Appraisal provides that the Independent Appraisers employed the Sales Comparison Approach and Income Capitalization Approach to value the Boise State Street Parcel. In using the Sales Comparison Approach, the Independent Appraisers evaluated two prior fee simple sales, two pending fee simple sales, two prior leased fee sales, and two pending leased fee sales. The Independent Appraisers determined that, based on the Sales Comparison Approach, evaluating the land sale comparables derived a fair market value for the Boise State Street Parcel of $2,100,000 as of April 1, 2016.

In using the Income Capitalization Approach, the Independent Appraisers evaluated five lease comparables and one comparable listing for a lease. After reviewing the rental incomes and operating expenses of the six comparables, the Appraiser determined that, under the Income Capitalization Approach, the fair market value of the Boise State Street Parcel is $2,060,000 as of April 1, 2016.

The Independent Appraisers determined that both methodologies should be given equal emphasis, and determined the fair market value of the Boise State Street Parcel as of April 1, 2016, to be $2,090,000.

d. *The Centralia Parcel Appraisal.* The Independent Appraisers used the Sales Comparison Approach to value the Centralia Parcel. The Independent Appraisers evaluated three prior sales and one listing. The Independent Appraisers determined that, based on the Sales Comparison Approach, evaluating the land sale comparables derived a fair market value for the Centralia Parcel of $8.01 per square foot, which when multiplied by the actual square footage of the Centralia Parcel (46,200 square feet) equaled a fair market value of $370,000, as of April 1, 2016.

e. *The Chehalis Parcel Appraisal.* The Independent Appraisers employed the Sales Comparison Approach and Income Capitalization Approach to value the Chehalis Parcel. In using the Sales Comparison Approach, the Independent Appraisers evaluated five prior sales and one pending sale, and determined the fair market value of the Chehalis Parcel to be $1,150,000, as of April 1, 2016.

In using the Income Capitalization Approach, the Independent Appraisers evaluated five lease comparables. After reviewing the rental incomes and operating expenses of the five comparables, the Independent Appraisers determined the fair market value of the Chehalis Parcel to be $1,100,000 as of April 1, 2016.

The Independent Appraisers noted that market participants are analyzing properties based on their income generating capability. As such, the income capitalization approach was given primary emphasis in the final value estimate. Thus, based on the Income Capitalization Approach, the Independent Appraisers determined the fair market value of the Chehalis Parcel was $1,100,000 as of April 1, 2016.

f. *The Ellensburg Parcels Appraisal.* The Independent Appraisers employed the Sales Comparison Approach and Income Capitalization Approach to value the Ellensburg Parcels. In using the Sales Comparison Approach, the Independent Appraisers evaluated five prior sales and one sale listing. The Independent Appraisers determined that evaluating the land sale comparables derived a fair market value after adjustments for the Ellensburg Parcels of $1,080,000 as of April 1, 2016.

In using the Income Capitalization Approach, the Independent Appraisers evaluated six lease comparables. After reviewing the rental incomes and operating expenses of the six comparables, the Independent Appraisers determined that, under the Income Capitalization Approach, the fair market value of the Ellensburg Parcels was $1,096,990, rounded to $1,100,000, as of April 1, 2016.

The Independent Appraisers noted that market participants were analyzing properties based on their income-generating capability. As such, the Income Capitalization Approach was given primary emphasis in the final value estimate. Thus, based on the Income Capitalization Approach, the Independent Appraisers determined the fair market value of the Ellensburg Parcels was $1,100,000 as of April 1, 2016.

g. *The Independence Parcel Appraisal.* The Independent Appraisers employed the Sales Comparison Approach and Income Capitalization Approach to value the Independence Parcel. In using the Sales Comparison Approach, the Independent Appraisers evaluated four prior fee simple sales and four prior leased fee sales of comparable parcels. The Independent Appraisers calculated the value of the Independence Parcel to be $990,000, as of April 1, 2016.

In using the Income Capitalization Approach, the Independent Appraisers evaluated six lease comparables. After reviewing the rental incomes and operating expenses of the six comparables, the Independent Appraisers determined that, under the Income Capitalization Approach, the fair market value of the Independence Parcel was $918,034 as of April 1, 2016 ($920,000, if rounded).

After giving more weight to the Sales Comparison Approach, the Independent Appraisers concluded that the Independence Parcel had a fair market value of $990,000 as of April 1, 2016.

h. *The Lakewood Parcel Appraisal.* The Independent Appraisers employed the Sales Comparison Approach to value the Lakewood Parcel. They valued Parcels A and B and Parcels C and D, comprising the Lakewood Parcel, using different comparables. With respect to Parcels A and B, the Independent Appraisers evaluated four comparable land sales and one land sale listing that was current at the time of the valuation. The Independent Appraisers determined that the fair market value for Parcels A and B was $600,000 as of April 1, 2016.

With respect to the valuation of Parcels C and D, the Independent Appraisers evaluated four comparable land sales and one land sale listing that

was current at the time of the valuation. The Independent Appraisers determined that the fair market values of Parcel C and Parcel D were $21,000 and $44,000, respectively, as of April 1, 2016.

i. *The Longview Parcel Appraisal.* The Independent Appraisers used the Sales Comparison Approach and Income Capitalization Approach to value the Longview Parcel. In using the Sales Comparison Approach, the Independent Appraisers evaluated sales of eight comparable properties, four representing fee simple sales, and four representing leased fee sales, and determined that the fair market value of the Longview Parcel was $2,385,000, rounded to $2,400,000, as of April 1, 2016.

Using the Income Capitalization Approach, the Independent Appraisers evaluated six lease comparables. After reviewing the rental incomes and operating expenses of the six comparables, the Independent Appraisers determined that, under the Income Capitalization Approach, the fair market value of the Longview Parcel was $2,373,521, rounded to $2,370,000, as of April 1, 2016.

After giving more weight to the Income Capitalization Approach, the Independent Appraisers concluded that the Independence Parcel had a fair market value of $2,385,000 as of April 1, 2016.

j. *The Marysville Parcels Appraisal.* The Independent Appraisers valued the Marysville Parcel using the Sales Comparison Approach. With respect to both Marysville Parcels A and B, the Independent Appraisers evaluated four similar sale-listings in the area and determined that the fair market values of Marysville Parcel A and Parcel B were $740,000 and $265,000, respectively, as of April 1, 2016.

k. *The North Bend Parcel Appraisal.* The Independent Appraisers valued the North Bend Parcel using the Sales Comparison Approach. The Independent Appraisers evaluated four prior sales. The Appraisers determined that the fair market value of the North Bend Parcel was $1,220,000, as of April 1, 2016.

l. *The Oregon City Parcel Appraisal.* The Independent Appraisers used the Sales Comparison Approach to value the Oregon City Parcel. The Independent Appraisers evaluated two prior sales, one pending sale of a single parcel, and one pending sale of two adjacent parcels. The Appraisers determined that the fair market value of the Oregon City Parcel was $600,000 as of April 1, 2016.

m. *The Pullman Parcel Appraisal.* The Independent Appraisers used the Sales Comparison Approach to value the Pullman Parcel. The Independent Appraiser evaluated six prior land sales of similar parcels, based on zoning and intended uses. The Independent determined that the fair market value of the Pullman Parcel was $575,000 as of April 1, 2016.

n. *The Silverton Parcel Appraisal.* The Independent Appraisers valued the Silverton Parcel using the Sales Comparison Approach and the Income Capitalization Approach. In using the Sales Comparison Approach, the Independent Appraisers evaluated sales of eight comparable properties, four representing fee simple sales, and four representing leased fee sales. The Independent Appraisers determined the fair market value of the Silverton Parcel was $1,451,000, rounded to $1,450,000, as of April 1, 2016.

Using the Income Capitalization Approach, the Independent Appraisers evaluated six lease comparables. After reviewing the rental incomes and operating expenses of the six comparables, the Independent Appraisers determined that the fair market value of the Silverton Parcel was $1,375,895, rounded to $1,380,000, as of April 1, 2016.

After giving more weight to the Income Capitalization Approach, the Independent Appraisers concluded that the Silverton Parcel had a fair market value of $1,415,000 as of April 1, 2016.

o. *The Snohomish Parcel Appraisal.* The Independent Appraisers used the Sales Comparison Approach to value the Snohomish Parcel. The Independent Appraisers evaluated four prior land sales of similar parcels, based on zoning and intended uses. The Independent Appraisers determined that the fair market value of the Snohomish Parcel was $590,000, rounded, as of April 1, 2016.

p. *The Spanaway Parcel Appraisal.* The Independent Appraisers valued the Spanaway Parcel using the Sales Comparison Approach. The Independent Appraisers evaluated five similar sale-listings in the area. The Independent Appraisers determined the fair market value of the Spanaway Parcel to be approximately $540,000, rounded, as of April 1, 2016.

q. *The Spokane Parcel Appraisal.* The Independent Appraisers used the Sales Comparison Approach to value the Spokane Parcel. The Independent Appraisers evaluated five prior land sales of similar parcels, based on zoning and intended uses. The Independent Appraisers determined the fair market value of the Spokane Parcel to be $725,000, rounded, as of April 1, 2016.

r. *The Vancouver Andresen Parcel Appraisal.* The Independent Appraisers valued the Vancouver Andresen Parcel using the Sales Comparison Approach. The Independent Appraisers evaluated five similar sale-listings in the area, which included two under contract/offer sales. The Independent Appraisers determined the fair market value of the Vancouver Andresen Parcel to be $450,000, rounded, as of April 1, 2016.

s. *The Vancouver Cascade Park Parcel Appraisal.* The Independent Appraisers used the Sales Comparison Approach to value the Vancouver Cascade Park Parcel. The Independent Appraisers evaluated three prior sales and two pending sales. The Independent Appraisers determined the fair market value of the Vancouver Cascade Park Parcel to be $390,000 as of April 1, 2016.

Analysis

31. The Applicant represents that the statutory exemption under ERISA section 408(e) is not available for the proposed transactions due to the application of section 408(d)(l)(C) of the Act, which provides that the statutory exemption under section 408(e) of the Act will not apply to a transaction in which a plan sells any property to a corporation in which an owner-employee with respect to the plan owns, directly or indirectly, 50% or more of the total combined voting power of all classes of stock entitled to vote or 50% or more of the total value of shares of all classes of stock of the corporation.

The Applicant notes that section 408(d)(2)(A) of the Act provides that a ''shareholder-employee'' will be treated as an owner-employee. Further, the Applicant states that section 408(d)(3) of the Act provides that a ''shareholder-employee'' is an employee or officer of an ''S'' corporation who owns more than 5% of the outstanding stock of the corporation on any day during the taxable year of such corporation. According to the Applicant, both Julie Waibel and Leslie Tuftin own more than 5% of S corporations that are within the various controlled groups with employees that participate in the Plan. As such, due to their ownership interest in these S corporations, the Applicant asserts that Ms. Waibel and Ms. Tuftin are owner-employees with respect to the Plan.

The Applicant represents that because Ms. Waibel and Ms. Tuftin are owner-employees, and each is deemed to own 50% or more of the total combined voting power of all classes of the S corporations' stock entitled to vote,

section 408(d)(l)(C) of the Act precludes the reliance upon section 408(e) of the Act with respect to the Sales.

Section 406(a)(l)(A) of the Act prohibits a fiduciary with respect to a plan from causing the plan to engage in a transaction if he or she knows or should know that such transaction constitutes a direct or indirect sale, exchange, or lease of any property between the plan and a party in interest. Therefore, the proposed transactions would constitute prohibited transactions under section 406(a)(l)(A) of the Act because the Plan would be selling real property to parties in interest and disqualified persons with respect to the Plan.

Section 406(a)(l)(D) of the Act prohibits a fiduciary with respect to a plan to cause the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any asset of the plan. The Applicant represents that the proposed transactions would violate section 406(a)(l)(D) of the Act because the Plan will transfer Plan assets to parties in interest and disqualified persons with respect to the Plan.

In addition, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary, with respect to a plan, from acting in a transaction involving the plan on behalf of a party whose interests are adverse to those of the plan or of its participants and beneficiaries. As described above, the Trustees and the Committee are fiduciaries of the Plan. The Trustees are also comprised of certain executive officers of Les Schwab, including officers of the Warehouse Center, Les Schwab Washington, Les Schwab Idaho, and Les Schwab Portland, and are appointed by the Chief Executive Officer of the Warehouse Center, the Plan sponsor.

The proposed Sales of the Parcels by the Plan to Les Schwab would involve a violation of section 406(b)(1) of the Act because Les Schwab, as a Plan fiduciary, would be dealing with the assets of the Plan for its own interest or own account. Les Schwab, as a Plan fiduciary, in effecting the Sales to itself, is acting on behalf of itself and of the Plan in violation of section 406(b)(2) of the Act.

Statutory Findings

32. The Department has tentatively determined that the requested exemption is administratively feasible because: (a) The Sales are one-time transactions for cash; and (b) the price paid by Les Schwab to the Plan for each Parcel will be no less than the fair market value of each Parcel (exclusive of the buildings or other improvements paid for by Les Schwab, to which Les Schwab retains title), as determined by the Independent Appraisers in separate Independent Appraisals that are updated on the date of each Sale.

The Department has tentatively determined that the proposed exemption is in the interest of the Plan because: (a) The Sales will allow the Plan to diversify its holdings and invest the proceeds from the Sales in more productive investments; (b) the Plan will not incur any transaction costs in connection with such Sales; (c) the Sales will not be subject to any financing contingencies because Les Schwab will make a one-time, lump-sum, cash payment on the closing date for each respective Parcel; and (d) the Sales will eliminate ongoing appraisal fees, administrative costs, and legal responsibilities that are associated with the Plan's continuing ownership of the Parcels.

The Department has tentatively determined that the proposed exemption is protective of the participants and beneficiaries because the Independent Fiduciary will represent the interests of the Plan's participants and beneficiaries with respect to: (a) The decision to sell the Parcels to the Applicant; (b) the terms and execution of the Sales; and (c) the selection of the Independent Appraiser. In addition, the Applicant states that the Independent Fiduciary will determine whether the transactions are prudent and in the best interest of the participants and beneficiaries, including whether or not the terms and conditions of the Sales are equivalent to an arm's-length transaction with an unrelated party. Finally, the Applicant states that the Independent Appraisers will appraise the fair market value of the Parcels as of the transaction date and ensure that the Plan receives adequate consideration, based on appropriate appraisal methodologies used by the Independent Appraisers in Independent Appraisals that will be updated on the date of each Sale.

Summary

33. In summary, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of ERISA, provided that the conditions described below are satisfied.

Proposed Exemption

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A), 4975(c)(1)(D) and 4975(c)(1)(E) of the Code, shall not apply to the sales (the Sales) by the Les Schwab Profit Sharing Retirement Plan (the Plan) of the following parcels of real property (each, a ''Parcel'' and collectively, the ''Parcels'') to the Applicant:

(a) The Parcel located at 19100 SW Shaw Street, Aloha, Oregon;

(b) The Parcel located at 2045 Broadway Avenue, Boise, Idaho;

(c) The Parcel located at 6520 W State Street, Boise, Idaho;

(d) The Parcel located at 1211 Harrison Avenue, Centralia, Washington;

(e) The Parcel located at 36 N Market Boulevard, Chehalis, Washington;

(f) The Parcels located at 1206 Canyon Road, Ellensburg, Washington;

(g) The Parcel located at 1710 Monmouth Avenue, Independence, Oregon;

(h) The Parcel located at 3809 Steilacoom Boulevard SW, Lakewood, Washington;

(i) The Parcel located at 1420 Industrial Way, Longview, Washington;

(j) The Parcel located at 8405 State Avenue, Marysville, Washington;

(k) The Parcel located at 610 E. North Bend Way, North Bend, Washington;

(l) The Parcel located at 1625 Beavercreek Road, Oregon City, Oregon;

(m) The Parcel located at 160 SE Bishop Boulevard, Pullman, Washington;

(n) The Parcel located at 911 N 1st Street, Silverton, Oregon;

(o) The Parcel located at 711 Avenue D, Snohomish, Washington;

(p) The Parcel located at 16819 Pacific Avenue S, Spanaway, Washington;

(q) The Parcel located at 8103 N Division Street, Spokane, Washington;

(r) The Parcel located at 2420 NE Andresen Road, Vancouver, Washington; and

(s) The Parcel located at 216 SE 118th Avenue, Vancouver, Washington; where the Applicant is a party in interest with respect to the Plan, provided that the conditions set forth in Section II of this proposed exemption are met.

Section II. General Conditions

(a) The price paid by Les Schwab to the Plan for each Parcel is no less than the fair market value of each Parcel

(exclusive of the buildings or other improvements paid for by Les Schwab, to which Les Schwab retains title), as determined by qualified independent appraisers (the Independent Appraisers), working for CBRE, Inc., in separate appraisal reports (the Independent Appraisals) that are updated on the date of each Sale.

(b) Each Sale is a one-time transaction for cash.

(c) The Plan does not pay any costs, including brokerage commissions, fees, appraisal costs, or any other expenses associated with each Sale.

(d) The Independent Appraisers determine the fair market value of their assigned Parcel, on the date of the Sale, using commercially accepted methods of valuation for unrelated third-party transactions, taking into account the following considerations:

(1) The fact that a lease between Les Schwab and the Plan is a ground lease and not a standard commercial lease;

(2) The assemblage value of the Parcel, where applicable;

(3) Any special or unique value the Parcel holds for Les Schwab; and

(4) Any instructions from the qualified independent fiduciary (the Independent Fiduciary) regarding the terms of the Sale, including the extent to which the Independent Appraiser should consider the effect that Les Schwab's option to purchase a Parcel would have on the fair market value of the Parcel.

(e) The Independent Fiduciary represents the interests of the Plan with respect to each Sale, and in doing so:

(1) Determines that it is prudent to go forward with each Sale;

(2) Approves the terms and conditions of each Sale;

(3) Reviews and approves the methodology used by the Independent Appraiser and ensures that such methodology is properly applied in determining the Parcel's fair market value on the date of each Sale;

(4) Reviews and approves the determination of the purchase price; and

(5) Monitors each Sale throughout its duration on behalf of the Plan for compliance with the general terms of the transaction and with the conditions of this exemption, if granted, and takes any appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries.

(f) The terms and conditions of each Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Notice to Interested Parties

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all individuals who are participants and beneficiaries in the Plan. It is represented that all such interested persons will be notified of the publication of the Notice by first class mail to each such interested person's last known address within fifteen (15) days of 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(a)(2), which will advise all interested persons of their right to comment on and/or to request a hearing. All written comments or hearing requests must be received by the Department from interested persons within forty-five (45) days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

Seventy Seven Energy Inc. Retirement & Savings Plan, (the Plan or the Applicant), Located in Oklahoma City, OK, [Application No. D–11918].

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 (76 FR 46637, 66644, October 27, 2011). If the exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2),and 407(a)(1)(A) of the Act shall not apply, effective August 1, 2016 through April 20, 2017, to: (1) The acquisition by participant accounts in the Plan (the Plan Accounts) of warrants (the Warrants) issued by Seventy Seven Energy, Inc. (SSE), the Plan sponsor, in connection with SSE's bankruptcy; and (2) the holding of the Warrants by the Plan, provided that certain conditions set forth below are met.

Summary of Facts and Representations

Background

1. SSE (or the Applicant) is an Oklahoma-based company that offers drilling, pressure-pumping, oilfield rental tools and trucking services. On June 30, 2014, SSE became an independent, publicly-traded company by separating from Chesapeake Energy Corporation (CHK) in a series of transactions (the Spin-Off). Prior to the Spin-Off, SSE was an Oklahoma limited liability company operating under the name ''Chesapeake Oilfield Operating, L.L.C.'' (COO), and an indirect, wholly-owned subsidiary of CHK. As a result of the Spin-Off, approximately 5,200 employees of COO and its subsidiaries became employees of SSE.

2. The Plan, which provides for participant-directed investments, is a defined contribution plan that was created by SSE for the exclusive benefit of SSE employee-participants and their beneficiaries, as well as for SSE affiliates that have adopted the Plan. The Plan is intended to qualify under sections 401(a), 401(k) and 4975(e)(7) of the Internal Revenue Code of 1986, as amended (the Code). The trust created under the Plan is intended to be exempt under section 501(a) of the Code.

The Plan was established, effective July 1, 2014, as the result of a spin-off from the Chesapeake Energy Corporation Savings and Incentive Stock Bonus Plan (the CHK Plan.) At that time, $196,210,229 in assets was transferred from the CHK Plan to the Plan. As of August 1, 2016, the Plan had total assets of approximately $72,786,235 and 2,450 participants. On July 31, 2016, the Plan held 3,571,255 shares of SSE common stock (Old SSE Common Stock) that was valued at $393,012.66, and represented approximately 0.54% of the fair market value of the assets of the Plan. The shares of Old SSE Common Stock were allocated to the individual accounts (Plan Accounts) of 2,228 participants and held in a stock fund (the Stock Fund) within the Plan.[10]

The Plan's directed trustee (the Trustee) and recordkeeper is Delaware Charter Guarantee & Trust Company of Wilmington, Delaware, which conducts business under the trade name ''Principal Trust Company.''

3. SSE's Administrative Committee formerly served as the administrator and

[10] The Applicant represents that after 2015, SSE ceased making employer matching contributions to the Plan of Old SSE Common Stock due to the financial condition of SSE.

named fiduciary for the Plan. However, in connection with the merger (the Merger) of SSE with Patterson-UTI Energy, Inc. (Patterson-UTI) and Pyramid Merger Sub, Inc. (Merger Sub), effective as of April 20, 2017, the Plan administrator and named fiduciary was changed to the Seventy Seven Energy LLC 401(k) Plan Committee (the Committee).

The Reorganization Plan

4. On May 9, 2016, SSE and all of its wholly-owned subsidiaries entered into an Amended and Restated Restructuring Support Agreement with certain lenders, which set forth a ''pre-packaged'' or pre-negotiated plan of reorganization (the Reorganization Plan). Also, on this date, SSE started soliciting creditors.

On May 12, 2016, the Reorganization Plan was revised and executed to add certain noteholders as signatories and to provide the noteholders with nominal concessions. On June 7, 2016, the revised Reorganization Plan, was filed with the U.S. Bankruptcy Court for the District Court of Delaware (the Bankruptcy Court), under Chapter 11 of Title I of the U.S. Bankruptcy Code (the Bankruptcy Code).[11] After the Reorganization Plan was accepted by a sufficient number of creditors and was confirmed by the Bankruptcy Court during the Chapter 11 cases, a reorganized SSE emerged from bankruptcy on August 1, 2016 (the Emergence Date).[12]

The Warrants

5. On the Emergence Date, the Warrants were issued to SSE shareholders, including the Plan Accounts, in accordance with the Reorganization Plan by Computershare Inc. (Computershare), a Delaware corporation, and its wholly-owned subsidiary, Computershare Trust Company, N.A., a federally-chartered trust company (CTS), both of which served in the capacity as the ''Warrant Agent.'' (Neither Computershare nor CTS is affiliated with SSE.)

The Warrants were: (a) Registered pursuant to Section 12(g) the U.S. Securities Exchange Act of 1934 (the Exchange Act), and the rules and regulations promulgated thereunder; and (b) exempt from registration under the U.S. Securities Act of 1933, as amended, pursuant to Section 1145 of the Bankruptcy Code.

Neither the Trustee nor SSE's Administrative Committee had any involvement with the bankruptcy proceedings or the decision to issue the 5-year Warrants (the Series B Warrants) and the 7-year warrants (the Series C Warrants) to shareholders in connection with the emergence of SSE from bankruptcy. The Plan was in the same position as the other holders of Old SSE Common Stock. Thus the Warrants were issued to the Plan Accounts on the same basis that they were issued to all other shareholders of Old SSE Common Stock.

6. Each shareholder of Old SSE Common Stock received 0.05004 5-Year Warrants (the Series B Warrants) and 0.05560 7-Year Warrants (the Series C Warrants), to replace their shares of Old SSE Common Stock. Accordingly, 2,875,814 Series B Warrants and 3,195,352 Series C Warrants were distributed to all shareholders of Old SSE Common Stock as of the Emergence Date, with 178,703 of the Series B Warrants and 198,560 of the Series C Warrants received by the Plan with respect to 2,230 Plan participants. The Trustee allocated the Warrants to the Plan Accounts based upon the share positions held by the Accounts of Old SSE Common Stock within the Stock Fund. The Applicant states that Plan participants were not allowed by the Trustee to purchase additional Warrants, as there was no market for the Warrants.

Under the Warrant Agreement, each shareholder of Old SSE Common Stock, including the Plan's Stock Fund, received a pro rata share of Series B Warrants and Series C Warrants to replace Old SSE Common Stock prior to the Emergence Date. The Warrants could be exercised for post-emergence common stock of SSE (New SSE Common Stock). Based on the number of Warrants issued by the reorganized SSE, each Series B Warrant and each Series C Warrant could be exercised for one share of New SSE Common Stock, having a par value $0.01 per share, at an exercise price of $69.08 per share for each Series B Warrant, and $86.93 per share for each Series C Warrant. The Warrants could be exercised during the period beginning on the date of the Warrant Agreement and ending on the five-year or seven-year anniversary of the date of the Warrant Agreement.

7. Upon the exercise of a Warrant, SSE would not be required to issue any fractional shares of New SSE Common Stock. Instead, SSE would be required to round up to the nearest whole share the number of shares of New SSE Common Stock designated in the applicable Exercise Notice. The Warrant Agreement provided that payment of the exercise price could be made at the option of the holder of the Warrants either: (a) Through a net share settlement; or (b) by paying or submitting payment for the exercise price.[13]

8. According to the Applicant, the Warrants could be sold, assigned, transferred, pledged, encumbered, or in any other manner transferred or disposed of, in whole or in party in accordance with the terms of the Warrant Agreement and all applicable laws. In this regard, the Applicant represents that the Plan had the right to sell the Warrants allocated to the Plan Accounts at any time prior to the Warrants' expiration date, in the same manner as other holders of the Warrants.

All decisions regarding the exercise or sale of the Warrants acquired by the Plan Accounts in connection with the Reorganization Plan could be made only by the individual Plan participants in whose Accounts the Warrants were allocated, in accordance with the terms of the Warrant Agreement, as well as in accordance with the respective provisions of the Plan and the regulations pertaining to the individually-directed investment of such accounts. According to the Applicant, if no action was taken by a Plan participant to exercise or sell the Warrants, then the Warrants would expire at the end of their respective term.

9. The Warrants were described to Plan participants in frequently-asked questions (FAQs) regarding the Reorganization Plan, which the Applicant states were posted to SSE's website on or about May 18, 2016, and taken down from the website on or before October 1, 2016. The Applicant represents that SSE's CEO sent an initial

[11] The Applicant represents that none of the changes between the May 9, 2016 and May 12, 2016 versions of the Reorganization Plan had any effect on the terms of the Warrants.

[12] The Applicant represents that the Old SSE Common Stock was able to be traded until the Emergence Date. In addition, the Applicant confirms that the Trustee and Plan participants were able to trade the Old SSE Common Stock in their accounts up until the Emergence Date when the stock was replaced by the Warrants.

[13] Following the Emergence Date, the Applicant states that SSE and the Trustee were working together to set up a system and procedures to facilitate the exercise or sale of the Warrants. However, the Applicant states that these procedures were not finalized prior to the Merger of SSE with Patterson-UTI. The Applicant states that upon the closing of the Merger on April 20, 2017 (the Merger Date), all of the Warrants were cancelled, rendering the completion of the system and procedures for exercising and/or selling the Warrants moot. However, the Applicant states that it is its understanding that at all times during the period that the Warrants were held by the Plan (from the Emergence Date to the Merger Date), both classes of Warrants (the Series B Warrants and the Series C Warrants) held by the Plan were underwater. Thus, the Applicant states that none of the Warrants would have been exercised from a practical standpoint.

email to all employees with a link to the FAQs on or about May 18, 2016, followed by a second email with a link to updated FAQs on or about August 1, 2016.

According to the Applicant, as of October 17, 2016, New SSE Common Stock was not traded on a national securities exchange, but was instead traded over-the-counter. Although the Bankruptcy Court authorized 22,000,000 shares of New SSE Common Stock to be issued under the Reorganization Plan, former shareholders of Old SSE Common Stock received Warrants, but they did not receive any shares of New SSE Common Stock.

The Applicant also represents that the value of SSE as of the Emergence Date was anticipated to be $345,000,000. However, based on this projected market value, the Applicant states that the imputed fair market value per share of New SSE Common Stock was only approximately $15.68 per share.[14] Therefore, the Applicant represents that as of October 17, 2016, the Warrants were ''underwater.''

The Merger

10. On December 12, 2016, SSE entered into an Agreement and Plan of Merger (the Merger Agreement) with Patterson-UTI and Merger Sub. The Merger was effective on April 20, 2017 (the Merger Date). Pursuant to the Merger Agreement, the Warrants were treated in accordance with the terms of the Warrant Agreement. Holders of the Warrants were provided a notice of the merger at least fifteen days prior to the effective time of the Merger. Any Warrants that were not exercised immediately prior to the effective time of the Merger expired, and all rights of the Warrant holders ceased.

The Merger's Effect on the Warrants

11. Because the Warrants were underwater, all Warrants expired (unexercised) immediately prior to the Merger Date. The Applicant represents that when the Committee decided to keep New SSE Common Stock as an investment option under the Plan, knowing that New SSE Common Stock would be converted into Warrants, the Committee was of the view that this was in the participants' interest as it potentially allowed the participants to participate in the appreciation of New SSE Common Stock. While ultimately this potential was not realized, the Applicant does not believe that this result should be considered in hindsight.

In this regard, the Applicant represents that SSE and the Trustee set up a system and procedures to facilitate the exercise of the Warrants or the sale of the Warrants (if the Warrants had become listed on a market, which they were not). However, these plans were not finalized prior to the announcement of the Merger with Patterson-UTI because, upon closing of the Merger on April 20, 2017, the Warrants were cancelled.

Merger-Related Litigation

12. According to the Applicant, several SSE shareholder and Warrant holder plaintiffs filed class action lawsuits against SSE in connection with the Merger.[15]

In this regard,

- On February 22, 2017, an SSE shareholder challenged the disclosures made in connection with the Merger against SSE and the members of SSE's Board of Directors (the Board) in the United States District Court for the Western District of Oklahoma (the Oklahoma District Court), and alleged inadequacies in the Merger price, the process leading up to it, and claimed that the Joint Proxy Statement/Prospectus filed in connection with the merger failed to disclose certain material information. Based on these allegations, the shareholder sought to enjoin the shareholder vote on the Merger unless and until SSE disclosed the allegedly omitted material information summarized above. On February 26, 2018, the Oklahoma District Court entered an order awarding the shareholder's counsel $128,354.50 in attorneys' fees and expenses. The parties subsequently settled for an amount less than the Oklahoma District Court's award.
- On March 31, 2017, a shareholder of Series B and Series C Warrants, filed a class action lawsuit against SSE, Patterson-UTI and Merger Sub in the U. S. District Court for the Southern District of New York (the New York District Court), alleging: (a) That SSE had breached the Warrant Agreement; and (b) tortious interference with the Warrant Agreement by Patterson-UTI and Merger Sub. Based on these allegations, the Warrant holder sought to enjoin the cancelation of SSE's Series A, Series B, and Series C Warrants in connection with the proposed Merger on February 6, 2018. The New York District Court dismissed the Warrant holder's complaint and struck the Warrant holder's amended complaint. On March 6, 2018, Warrant holder filed a notice of appeal of the dismissal. According to the Applicant, the parties have reached an agreement to resolve the matter and are working to prepare and finalize a formal settlement agreement.
- On April 7, 2017, an SSE shareholder filed a class action lawsuit challenging the disclosures made in connection with the Merger against SSE and the members of SSE's Board. The lawsuit in was filed in the Court of Chancery of the State of Delaware (the Delaware Chancery Court), and alleged that SSE's Board had breached its fiduciary duties by failing to disclose in the Joint Proxy Statement/Prospectus filed in connection with the merger certain material information. Based on these allegations, the Warrant holder sought to enjoin damages if the Merger was consummated. On July 20, 2017, the Warrant holder filed a notice and proposed order voluntarily dismissing the action, and on July 21, 2017, the Delaware Chancery Court signed the order dismissing the action.
- On April 10, 2017, an SSE shareholder filed a class action lawsuit, challenging the disclosures made in connection with the Merger against SSE, the members of SSE's Board, Patterson-UTI, and Merger Sub in the Delaware Chancery Court. On July 20, 2017, the shareholder filed a notice and proposed order voluntarily dismissing the action, and on July 21, 2017, the Delaware Chancery Court dismissed the action.
- On February 24, 2017, an SSE shareholder filed a class action lawsuit on behalf of herself and others, alleging that the Plan's investment in, or retention of, a stock fund invested in CHK stock amounted to a breach of fiduciary duty under ERISA. On June 26, 2017, defendants, representing SSE's Administrative Committee and the Trustee filed respective motions to dismiss the shareholder's complaint for failure to state a claim and the motions have been fully briefed. As of this time, the parties are awaiting the Court's decision on the defendants' motions to dismiss.

Analysis

13. The Applicant has requested retroactive exemptive relief that is effective for the period, August 1, 2016 through April 20, 2017, from sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act.[16] Section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any ''employer security in violation of section 407(a) of the Act.''

[14] The Applicant states that New SSE Common Stock was not traded on an exchange on October 17, 2016 and so the Applicant has no market price for the stock on that date. The Applicant is not aware that a specific value was calculated for SSE as of the Emergence Date. As a result, the Applicant provided an imputed value based on the anticipated value of SSE as of the Emergence Date, which was intended to show that the warrants were underwater.

[15] See Maria Comeaux et al. v. Seventy Seven Energy, Inc. et al., Case No. CIV–5:17–191M, U.S. District Court for the Western District of Oklahoma; Garud Sudarsan et al. v. Seventy Seven Energy, Inc. et al. Case No. 1:17–cv–02342, U.S. District Court for the Southern District of New York; Mainard Gael et al. v. Seventy Seven Energy, Inc. et al., Case No. 2017–0266, Court of Chancery of the State of Delaware; Louis Scarantino et al. v. Seventy Seven Energy, Inc. et al., Case No. 2017–0278, Court of Chancery of the State of Delaware; and, Kathleen J. Myers v. Administrative Committee, Seventy Seven Energy, Inc. Retirement and Savings Plan, et al., Case No. CIV–17–200–D, United States District Court for the Western District of Oklahoma.

[16] The Applicant states that, although the Warrants constitute ''employer securities,'' as defined under section 407(d)(1) of the Act, they do not satisfy the definition of ''qualifying employer securities'' as defined under section 407(d)(5) of the Act because they are not ''stock,'' ''marketable securities,'' or ''interests in a publicly-traded partnership.''

Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any ''employer security'' that violates section 407(a) of the Act. Section 407(a)(1)(A) of the Act provides that a plan may not acquire or hold an ''employer security'' which is not a ''qualifying employer security.'' Therefore, the acquisition and holding by the Plan Accounts of the Warrants constitute prohibited transactions in violation of the Act.

Statutory Findings

14. SSE represents the proposed exemption is administratively feasible because Old SSE Common Stock held by the Plan was automatically converted into the Warrants. In addition, SSE represents that the proposed exemption is in the interests of the Plan and participants because the Plan held shares of Old SSE Common Stock on the date the Warrants were issued pursuant to the Reorganization Plan. Therefore, SSE represents that the Plan acquired the Warrants automatically in the same manner as all other shareholders of Old SSE Common Stock. SSE also states that neither the Plan nor the Plan's fiduciaries took any action to cause the shares of Old SSE Common Stock to be replaced with the Warrants and were not part of, and did not participate in, the bankruptcy process or the Reorganization Plan.

SSE represents that the exemption is protective of the rights of the Plan participants because: (a) The issuance of the Warrants, which was the result of the Reorganization Plan, occurred without any participation on the part of the Plan; (b) Plan participants were treated similarly to all other holders of Old SSE Common Stock under the Reorganization Plan; (c) the Trustee did not allow Plan participants to exercise the Warrants held by their Plan Accounts because the fair market value of New SSE Common Stock did not, at any time prior to the date that the Warrants expired, exceed the exercise price of the Warrants; and (d) the Plan did not pay any fees or commissions with respect to the acquisition or holding of the Warrants.

Summary

15. Given the conditions described below, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of the Act.

Proposed Exemption Operative Language

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 (76 FR 46637, 66644, October 27, 2011). If the exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act shall not apply, effective August 1, 2016 through April 20, 2017, to: (1) The acquisition by participant-directed accounts (the Accounts) in the Plan of certain warrants (the Warrants), issued by Seventy Seven Energy, Inc. (SSE), the Plan sponsor, in connection with SSE's bankruptcy; and (2) the holding of the Warrants by the Plan, provided that the following conditions were or would have been met:

(a) The Plan acquired the Warrants automatically in connection with the Reorganization Plan, under which all holders of Old SSE Common Stock, including the Plan, were treated in the same manner;

(b) The Plan acquired the Warrants without any unilateral action on its part;

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

(d) Had the Warrants not expired unexercised, all decisions regarding the exercise or sale of the Warrants acquired by the Plan would have been made by the Plan participants in whose Plan Accounts the Warrants were allocated, in accordance with the terms of the Warrant Agreement and in accordance with the Plan provisions and regulations pertaining to the individually-directed investment of the Plan Accounts; and

(e) The Plan trustee did not allow Plan participants to exercise the Warrants held by their Plan Accounts because the fair market value of New SSE Common Stock did not, at any time prior to the date that the Warrants expired, exceed the exercise price of the Warrants.

Effective Date: If granted, this proposed exemption will be effective as of August 1, 2016 through April 20, 2017.

Notice to Interested Persons

SSE will provide notice of the proposed exemption to all interested persons, including all participants in the Plan, former employees with vested account balances in the Plan, all retirees and beneficiaries currently receiving benefits from the Plan, all employers with employees participating in the Plan, all unions with members participating in the Plan (of which there are none), and all Plan fiduciaries, by first class mail, within 10 days of the date of publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment with respect to the proposed exemption. Comments regarding the proposed exemption are due within 40 days of the date of publication of the notice of pendency in the **Federal Register**. *All comments will be made available to the public.*

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but do not submit information that you consider to be confidential, or otherwise protected (such as social security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Tidewater Savings and Retirement Plan (the Plan), Located in New Orleans, LA, [Application No. D–11940].

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, as amended, (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 (76 FR 66637, 66644, October 27, 2011). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act will not apply, effective July 31, 2017, to: (1) The acquisition, by certain participant-directed accounts (the Accounts) in the Plan, of Series A Warrants and Series B Warrants (together, the Equity Warrants), issued by Tidewater Inc., the Plan sponsor and a party in interest with respect to the Plan; and (2) the holding of the Equity Warrants by the Accounts, provided the conditions set forth below in Section I are met.

Summary of Facts and Representations [17]

Background

1. Tidewater (the Applicant) is a publicly-traded international petroleum service company headquartered in New Orleans, Louisiana. Tidewater operates a fleet of ships, providing vessels and marine services to the offshore petroleum industry.

2. Tidewater sponsors the Plan, a defined contribution profit-sharing plan with approximately 565 participants and $89,496,494 total assets, as of March 31, 2018. Generally, all employees are eligible to make employee pre-tax contributions to the Plan and receive matching contributions. Prior to January 1, 2016, the matching contributions were in Tidewater common stock.

3. Bank of America, N.A. serves as the directed trustee of the Plan. The Plan is administered by the Employee Benefits Committee (the Committee), whose eight members are appointed by Tidewater. The Committee members are also Tidewater officers.

Tidewater's Bankruptcy and Plan of Reorganization

4. On May 11, 2017, Tidewater reached an agreement with certain of its creditors to support a restructuring under the terms of a prepackaged plan of reorganization. On May 12, 2017, Tidewater provided notice to Plan participants and employees in the form of memoranda explaining Tidewater's Restructuring Support Agreement with lenders and noteholders.

On May 17, 2017, Tidewater and certain subsidiaries filed voluntary petitions for reorganization in the United States Bankruptcy Court for the District of Delaware (the Bankruptcy Court) seeking relief under the provisions of Chapter 11 of Title 11 of the United States Code (the Bankruptcy Cases).

On July 17, 2017, the Bankruptcy Court issued a written order (the Confirmation Order) confirming the Second Amended Joint Prepackaged Chapter 11 Plan of Reorganization of the Affiliated Debtors (the Prepackaged Plan). On July 31, 2017 (the Effective Date), the Prepackaged Plan became effective in accordance with its terms and Tidewater emerged from the Bankruptcy Cases.

5. As of the Effective Date, all shares of Tidewater's pre-bankruptcy common stock (the Old Common Stock) were cancelled, and those stockholders of Tidewater received, in the aggregate, 1.5 million shares of the New Common Stock, which represented 5% of the pro forma common equity in the reorganized Tidewater. In addition, holders of the Old Common Stock received approximately: 0.0516 Series A Warrants for each share of the Old Common Stock the shareholder previously owned, and 0.0558 Series B Warrants for each share of the Old Common Stock the shareholder previously owned. Further, the Series A Warrants and the Series B Warrants entitled each shareholder to purchase one share of the New Common Stock for $57.06 and $62.28, respectively. Unless terminated earlier, each Equity Warrant has a six year duration.

Effect of the Prepackaged Plan on the Plan

6. The Applicant represents that on June 30, 2017, Plan participants held approximately 277,716 shares of the Old Common Stock. On July 31, 2017, when Tidewater emerged from bankruptcy, these shares were cancelled and, in consideration, Plan participants received approximately 8,800 shares of the New Common Stock and approximately 29,800 Equity Warrants to purchase additional shares of the New Common Stock. The New Common Stock and the Equity Warrants, which are traded on the New York Stock Exchange (the NYSE), were held in the Plan's trust (the Trust), and managed by Bank of America Merrill Lynch (Merrill Lynch), an unrelated party.

Sale of the Equity Warrants

7. The Applicant represents that the Committee met on multiple occasions to monitor the Equity Warrants. On November 1, 2017, Committee members proposed that it would be prudent to direct Merrill Lynch to liquidate the Equity Warrants held by the Plan. Each sale transaction would be for cash, and no sale would enrich the Plan fiduciaries. As structured by the Committee, the sale of the Equity Warrants would be for no less than the fair market value of the Equity Warrants as traded on the NYSE. Also, Plan participants would not be charged a commission or fee in connection with the sales. Further, the Committee would authorize the sale of the Equity Warrants through the Merrill Lynch trading desk.[18]

8. The Applicant represents that Plan participants received notice, dated November 7, 2017, regarding the Committee's decision to sell the Equity Warrants. Plan participants were informed that: (a) Derivative investments, like the Equity Warrants, were not typically part of a retirement plan's holdings; and (b) these investments only had a value for a specified period of time (*i.e.,* six years in the case of the Equity Warrants). Plan participants were also informed that the Committee had elected to sell the Equity Warrants on the NYSE in three tranches over a six month period to minimize the impact on the market price of these securities. Plan participants were told that the sale proceeds would be reinvested in their individual accounts under the Plan (the Plan Accounts), with the cash invested in accordance with the Plan participant's current investment allocation.

With the exception of those Plan participants who were reporting persons under SEC Rule 16(b), Plan participants could elect to sell their Equity Warrants at any time by contacting a Merrill Lynch representative or direct the investment change at the Plan's website. The sale of Equity Warrants was not restricted to the six month period (November 9, 2017 to May 9, 2018), but participants were told that the positions would be liquidated in lots by the end of the six month time frame. According to the Applicant, twenty Plan participants sold a total of 116.001 Equity Warrants between August 24, 2017 and April 25, 2018, for an aggregate sales price of $323.81 and $240.88, respectively. The final tranche of the Equity Warrants was sold on May 11, 14, and 15, 2018.

Exemptive Relief Requested/Analysis

9. The Applicant has requested retroactive exemptive relief that is effective as of July 31, 2017, the date the Plan Accounts acquired the Equity Warrants, and requests exemptive relief from sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act.[19] Section 406(a)(1)(E) of the Act prohibits the

[17] The Summary of Facts and Representations is based on the Applicant's representations, unless indicated otherwise.

[18] The Applicant represents that the services provided by Merrill Lynch in connection with the sale of the Equity Warrants would be exempt under section 408(b)(2) of the Act. However, the Department is not opining on whether the conditions, as set forth in section 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408(b)(2) were satisfied. In addition, the Department is not providing exemptive relief in connection with the sale of the Equity Warrants in blind transactions to unrelated parties in open market transactions on the NYSE beyond that provided under section 408(b)(2) and 29 CFR 2550.408(b)(2).

[19] The Applicant states that, although the Equity Warrants constitute ''employer securities,'' as defined under section 407(d)(1) of the Act, they do not satisfy the definition of ''qualifying employer securities'' as defined under section 407(d)(5) of the Act because they are not ''stock,'' ''marketable securities,'' or ''interests in a publicly-traded partnership.''

acquisition, on behalf of a plan, of any ''employer security in violation of section 407(a) of the Act.'' Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any ''employer security'' that violates section 407(a) of the Act. Section 407(a)(1)(A) of the Act provides that a plan may not acquire or hold an ''employer security'' which is not a ''qualifying employer security.'' Therefore, the acquisition and holding by the Plan Accounts of the Equity Warrants constitute prohibited transactions in violation of the Act.[20]

Statutory Findings

10. The Applicant represents that the proposed exemption with respect to the Equity Warrants is administratively feasible because all shareholders of Tidewater, Inc., including the Plan, were, and will be treated in the same manner with respect to any acquisition, holding and exercise or other disposition of the Equity Warrants.

11. The Applicant represents that the proposed exemption is in the interests of the Plan and participants because: (a) Plan participants were treated in the same manner as other stockholders; (b) Plan participants could acquire shares of the New Common Stock for their Plan Accounts by exercising their purchase rights under the Equity Warrants; (c) Plan participants could direct Merrill Lynch to sell the Equity Warrants, at any time on the NYSE; and (d) Plan participants were notified when the Committee approved the sale of the Equity Warrants.

12. The Applicant represents that the proposed exemption is protective of the rights of Plan participants and beneficiaries because the Equity Warrants could be sold by Merrill Lynch on the NYSE, at the direction of either the Plan participants or the Committee. Further, the Applicant represents that the Plan did not pay any fees or commissions with respect to the acquisition or holding of the Equity Warrants.

Summary

13. Given the conditions described below, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of the Act.

Proposed Exemption Operative Language

Section I. Covered Transactions

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended, (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 (76 FR 66637, 66644, October 27, 2011). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act will not apply, effective July 31, 2017, to: (1) The acquisition in the Tidewater Savings and Retirement Plan (the Plan), by the participant-directed accounts (the Accounts) of certain participants, of Series A Warrants and Series B Warrants (collectively, the Equity Warrants) of Tidewater, Inc. (Tidewater), the Plan sponsor and a party in interest with respect to the Plan; and (2) the holding of the Equity Warrants by the Accounts, provided that the conditions set forth in Section II below are or were satisfied.

Section II. Conditions for Relief

(a) The acquisition of the Equity Warrants by the Accounts of Plan participants occurred in connection with Tidewater's bankruptcy proceeding;

(b) The Equity Warrants were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual participants in the Plan, a portion of whose Accounts in the Plan held shares of old Tidewater common stock (the Old Common Stock);

(c) Each shareholder of the Old Common Stock, including each Account of an affected Plan participant, was issued the same proportionate shares of the Equity Warrants based on the number of shares of the Old Common Stock held by the shareholder as of July 31, 2017;

(d) All holders of the Equity Warrants, including the Accounts, were treated in a like manner;

(e) The decisions with regard to the acquisition, holding or disposition of the Equity Warrants by an Account were made by each Plan participant whose Account received the Equity Warrants;

(f) The Accounts did not pay any brokerage fees, commissions, or other fees or expenses to any related broker in connection with the acquisition and holding of the Equity Warrants, nor did the Accounts pay any brokerage fees or commissions in connection with the sale of the Equity Warrants;

(g) Each sale transaction involving the Equity Warrants was for cash, and no sale would enrich the Plan fiduciaries;

(h) Plan participants could: (1) Acquire shares of the New Common Stock for their Plan Accounts by exercising their purchase rights under the Equity Warrants; or (2) direct Merrill Lynch to sell the Equity Warrants held in their Accounts, at any time; and

(i) Plan participants were notified when the Committee approved the sale of the Equity Warrants.

Effective Date: This proposed exemption, if granted, will be effective for the period beginning July 31, 2017, and ending whenever the Equity Warrants are exercised by Plan participants or they expire.

Notice to Interested Persons

Notice of the proposed exemption (the Notice) will be provided by Tidewater to interested persons within fifteen (15) days of publication in the **Federal Register**. Tidewater will provide the Notice to Plan participants who are affected by the cancellation of the Old Common Stock and the issuance of the New Common Stock and the Equity Warrants. The Notice will be provided to Plan participants by: (1) First class U.S. mail to the last known address of these individuals, or (2) electronic delivery to each shipping vessel Tidewater operates and posting on bulletin boards. The Notice will contain a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within forty-five (45) days of the publication of the Notice in the **Federal Register**. All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

[20] The Applicant represents that the receipt, by the Plan Accounts, of the New Common Stock from Tidewater as the result of the cancellation of the Plan's shares of the Old Common Stock is covered by the statutory exemption under section 408(e) of the Act. The Department is not expressing an opinion herein on whether the acquisition by the Plan Accounts of New Common Stock is statutorily exempt under section 408(e) of the Act.

Principal Life Insurance Company (PLIC) and its Affiliates (collectively, Principal or the Applicant), Located in Des Moines, IA, [Application No. D–11947].

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, as amended (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 (76 FR 66637, 66644, October 27, 2011).[21] If the proposed exemption is granted, the restrictions of sections 406(a)(l)(D), 406(b)(l), and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(l)(D) and (E) of the Code, shall not apply, to the direct or indirect acquisition, holding, and disposition of common stock issued by Principal Financial Group, Inc. (PFG), and/or common stock issued by an affiliate of PFG (together, the Principal Stock), by index funds (Index Funds) and model-driven funds (Model-Driven Funds) that are managed by PLIC, an indirectly wholly-owned subsidiary of PFG, or an affiliate of PLIC (collectively, Principal), in which client plans of Principal invest, provided that the conditions in Sections II and III are met.

Summary of Facts and Representations

The Parties

1. PLIC is an indirect, wholly-owned subsidiary of PFG. As a stock life insurance company domiciled in Iowa, PLIC provides recordkeeping, administrative, and investment management services to plans.

2. PFG is a publicly-traded company that is incorporated in Delaware. PFG offers businesses, individuals, and institutional clients a wide range of financial products and services, including retirement, asset management, and insurance through a diverse family of financial services companies. As of December 31, 2017, PFG had $669 billion in total assets under management and 22.8 million customers, worldwide.

The Funds

3. Principal maintains, or may in the future maintain, insurance company separate accounts, separately-managed accounts, collective trusts, or other investment funds, accounts, or portfolios that: (a) Will hold plan assets, as defined in section 3(42) of the Act and 29 CFR 2510.3–101; and (b) are designed to track a Standard & Poor's (S&P) or other third-party index (the Index Funds). Principal manages, or will manage, the Index Funds' assets as a fiduciary under the Act.

The Index Funds currently managed by Principal include three pooled insurance company separate accounts that directly invest in equity securities that mirror, and replicate the investment performance of, Indexes maintained by S&P. The Index Funds presently consist of: (a) The Principal LargeCap S&P 500 Index Separate Account (the LargeCap Separate Account); (b) the Principal MidCap S&P 400 Index Separate Account (the MidCap Separate Account); and (c) the Principal SmallCap S&P 600 Index Separate Account (the SmallCap Separate Account). The Index Funds also include the Principal Total Market Stock Index Separate Account (the Total Market Separate Account), a pooled insurance company separate account that mirrors and replicates the investment performance of the S&P Supercomposite 1500 Index by investing in the LargeCap Separate Account, the Mid-Cap Separate Account, and the SmallCap Separate Account.

As of July 31, 2017, 20,632 plans participated in the Large Cap Separate Account; 14,839 plans participated in the Mid-Cap Separate Account; 15,901 plans participated in the SmallCap Separate Account; and 522 plans participated in the Total Market Separate Account. Also, as of July 31, 2017, the total plan assets invested in the Index Funds were as follows: The Large Cap Separate Account—$20,016,535,718; the Mid-Cap Separate Account—$5,559,742,215; the SmallCap Separate Account—$4,293,584,718; and the Total Market Separate Account—$122,178,926.

The Index Funds are managed by PLIC. The LargeCap Separate Account, the MidCap Separate Account and the SmallCap Separate Account are subadvised by Principal Global Investors LLC, an affiliate. The Total Market Separate Account is subadvised by Principal Financial Advisors, Inc., another affiliate.

4. According to the Applicant, Principal may, in the future, maintain insurance company separate accounts, separately-managed accounts, collective trusts, or other investment funds, accounts, or portfolios that hold plan assets. These investment vehicles are designed to invest in securities, of which the identity and the amount would be determined by a computer model that is based on prescribed, objective criteria using independent, third-party data to transform an independently-maintained index that would not be within Principal's control (the Model-Driven Funds). The Applicant represents that Principal would manage the assets of the Model-Driven Funds as a fiduciary under the Act.[22]

Investing in Principal Stock

5. Although PFG Stock is included in the S&P 500 Index, the LargeCap Separate Account does not currently hold any PFG Stock. However, the Applicant represents that it intends to invest the LargeCap Separate Account in PFG Stock to track the performance of the S&P 500 Index more closely. The Applicant states that, if the S&P were to remove PFG Stock from the S&P 500 Index and include it in the S&P 400 Index or the S&P 600 Index, PLIC would invest the corresponding Index Fund in PFG Stock.

6. The Applicant represents that the Total Market Separate Account does not indirectly hold any PFG Stock through the Total Market Account's investments in the three underlying separate accounts: The LargeCap Separate Account, the MidCap Separate Account, and the SmallCap Separate Account. However, the Applicant states, if one of the underlying Index Funds were to hold PFG Stock, the Total Market Separate Account would indirectly hold PFG Stock.

In addition, the Applicant represents that if Principal establishes a new Index Fund or Model-Driven Fund, and if PFG Stock or the stock of an affiliate of PFG (collectively, Principal Stock) is included in the relevant Index, Principal intends to invest the assets of the Index Fund or the Model-Driven Fund in Principal Stock. The Applicant states that, similar to the Total Market Separate Account, a newly-established Index Fund may indirectly invest in Principal Stock through another Index Fund. Although only PFG Stock is currently publicly-traded, the Applicant represents that Principal intends to invest both Index Funds and Model-Driven Funds in the common stock of an affiliate of PFG, if due to a corporate reorganization or other action, the common stock is included in the relevant Index.

[21] For purposes of this proposed exemption, references to the provisions of section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[22] Unless otherwise noted, the Index Funds and the Model-Driven Funds are collectively referred to herein as ''the Funds.''

7. The Applicant represents that the acquisition or disposition of Principal Stock will be for the sole purpose of maintaining strict quantitative conformity with the Index upon which the Index Fund or Model-Driven Fund is based and not for the purpose of benefitting Principal. Each Index must be, among other things, created and maintained by an organization independent of Principal.

8. The Applicant represents that it intends to invest the LargeCap Separate Account in PFG Stock in order to track more closely the performance of the S&P 500 Index. The Applicant states that, if S&P were to remove PFG Stock from the S&P 500 Index and include it in the S&P 400 Index or the S&P 600 Index, PLIC would invest the corresponding Index Fund in PFG Stock. The Applicant also states that the Total Market Separate Account will indirectly invest in PFG Stock if one of the Index Funds, in which the Total Market Account invests, were to invest in PFG Stock. The Applicant further represents that, even though currently the only Index Funds or Model-Driven Funds in existence are those referenced above, and the only Principal Stock is PFG Stock, the proposed exemption would cover: (a) Any future Index Fund that directly or indirectly invests in any Principal Stock; and (b) any future Model-Driven Fund that invests in any Principal Stock.

9. The Applicant represents that the proposed exemption is necessary to allow Funds holding ''plan assets'' to purchase and hold Principal Stock in order to replicate the capitalization-weighted or other specified composition of Principal Stock in an independently-maintained third-party index used by an Index Fund, or to achieve the transformation of an Index used to create a portfolio for a Model-Driven Fund.[23] The Applicant represents that the inclusion or exclusion of Principal Stock from an Index and the weighting or changes to the weighting of Principal Stock in an Index are based on data, criteria, and methodology determined by the organization that creates and maintains the Index, which cannot be varied by PLIC. The Applicant represents that changes in the weighting of Principal Stock in an Index Fund or Model-Driven Fund would occur when there is a change in factors underlying the applicable weighting methodology. Changes in Index weightings are, for the most part, triggered by corporate actions, such as buying back shares, issuing more shares or acquiring another company for stock.

In addition, the Applicant represents that there will be instances, once the proposed exemption is granted, when Principal Stock will be added to an Index on which a Fund is based, or will be added to a Fund portfolio which seeks to track an Index that includes Principal Stock. In these instances, acquisitions of Principal Stock will be necessary to bring the Fund's holdings of Principal Stock either to its capitalization-weighted or other specified composition in the Index, as determined by an independent organization maintaining the Index, or to the correct weighting for the Stock, as determined by a computer model that has been used to transform the Index. If the Index Fund or Model-Driven Fund holds ''plan assets,'' all acquisitions of Principal Stock by the Fund must comply with the ''Buy-up'' condition set forth in Section II(b) of this proposed exemption.[24]

Independent Fiduciary (Independent Fiduciary) Appointment

10. The Applicant states that, in the case of a Buy-up, if the necessary number of shares of Principal Stock cannot be acquired within ten (10) business days from the date of the event that causes the particular Index Fund or Model-Driven Fund to require Principal Stock, PLIC, or another affiliated fund manager (the Affiliated Fund Manager) will appoint an Independent Fiduciary to design acquisition procedures and monitor PLIC's, or the Affiliated Fund Manager's compliance with these procedures. The Applicant represents that Institutional Shareholder Services, Inc. (ISS) is expected to serve as the Independent Fiduciary with respect to the transactions.

The Applicant represents that the Independent Fiduciary and its principals will be completely independent from PLIC and its affiliates. The Applicant represents that the Independent Fiduciary will be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third-party indices. Furthermore, the Applicant states that the Independent Fiduciary will not act as the broker for any purchases or sales of Principal Stock and will not receive any commissions as a result of this initial acquisition program. The Applicant notes that the Independent Fiduciary will have, as its primary goal, the development of trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the Index Funds or Model-Driven Funds.

The Applicant represents that under the trading procedures established by the Independent Fiduciary, the trading activities will be conducted in a low-profile, mechanical, non-discretionary manner and would involve a number of small purchases over the course of each day, randomly timed. The Applicant also represents that this program will allow PLIC, or other Affiliated Fund Manager, to acquire the necessary shares of Principal Stock for the Index Funds or Model-Driven Funds with minimum impact on the market, and in a manner that will be in the best interests of any employee benefit plans that participate in these Funds.

The Applicant represents that the Independent Fiduciary will also be required to monitor PLIC's or other Affiliated Fund Manager's compliance with the trading program and procedures developed for the initial acquisition of Principal Stock.

The Applicant represents that, during the course of any initial acquisition program, the Independent Fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify PLIC, or other Affiliated Fund Manager, should any non-compliance be detected. The Applicant represents that the Independent Fiduciary must consult with PLIC, or other Affiliated Fund Manager, and must approve in advance any alteration of the trading procedures should the trading procedures need modifications due to unforeseen events or consequences.

Future Fund Transactions

11. The Applicant represents that subsequent to initial acquisitions pursuant to a Buy-up, all aggregate daily purchases of Principal Stock by the Index Funds and Model-Driven Funds will not exceed, on any particular day, the greater of: (a) Fifteen (15) percent of the average daily trading volume for the Principal Stock occurring on the applicable exchange and automated trading system for the previous five (5)

[23] The Applicant is not requesting any relief from sections 406 or 407(a) of the Act in connection of the acquisition and holding of Principal Stock by any employee benefit plans established and maintained by the Applicant or its affiliates for its own employees that invest in Index Funds or Model-Driven Funds. In this regard, these transactions are covered by the statutory exemption under section 408(e) of the Act, if the conditions of this statutory exemption are met.

[24] The Applicant anticipates that, generally, acquisitions of Principal Stock by an Index Fund or a Model-Driven Fund in a ''Buy-up'' will occur within ten (10) business days from the date of the event that causes the particular Fund to require the addition of Principal Stock. The Applicant does not anticipate that the amounts of Principal Stock acquired by any Index Fund or Model-Driven Fund in a ''Buy-up'' will be significant.

business days;[25] or (b) fifteen (15) percent of the trading volume for Principal Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on this date.

12. The Applicant represents that all future transactions by the Index Funds and Model-Driven Funds involving Principal Stock, which do not occur in connection with a Buy-up of the Stock by an Index Fund or a Model-Driven Fund will be either: (a) Entered into on a principal basis with a broker-dealer that is registered under the 1934 Act, and thereby subject to regulation by the SEC; (b) effected on an automated trading system operated by a broker-dealer independent of PLIC subject to regulation by the SEC, or on an automated trading system operated by a recognized securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (c) effected through a recognized securities exchange (as defined in Section III(i) of this proposed exemption, so long as the broker is acting on an agency basis.[26]

13. All future acquisitions and dispositions of Principal Stock by Index Funds or Model-Driven Funds maintained by PLIC or its affiliates also will not involve any purchases from or sales to PLIC (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets in the fund (unless the transaction by the fund with this party in interest would otherwise be subject to an exemption), other than on a blind basis through an exchange or automated trading system, where the identity of each counterparty is not known to the other.

14. The Applicant represents that, for purposes of future acquisitions and holdings of Principal Stock by Index Funds and Model-Driven Funds, if the proposed exemption is granted, Principal Stock will constitute no more than five (5) percent of any independent third-party index on which the investments of an Index Fund or Model-Driven Fund are based. The Applicant represents that, with respect to an Index's specified composition of particular stocks in its portfolio, future Index Funds or Model-Driven Funds may track an Index where the appropriate weighting for stocks listed in the Index is not capitalization-weighted.

As such, the Applicant states that Index Funds and Model-Driven Funds maintained by PLIC and its affiliates may track Indexes where the selection of a particular stock by the Index, and the amount of stock to be included in the Index, is not established based on the market capitalization of the corporation issuing the stock.

The Applicant also represents that since an independent organization may choose to create an Index where there are other Index weightings for stocks comprising the Index, the proposed exemption should allow for Principal Stock to be acquired by an Index Fund or Model-Driven Fund in the amounts that are specified by the particular Index, subject to the other restrictions imposed by this proposed exemption.

The Applicant represents that in all instances, acquisitions or dispositions of Principal Stock by an Index Fund or a Model-Driven Fund will be for the sole purpose of maintaining strict quantitative conformity with the relevant Index upon which the Index Fund is based or, in the case of a Model-Driven Fund, a modified version of the Index, as created by a computer model based on prescribed objective criteria and third-party data.

Plan Fiduciary Consent To Fund Investments

15. With respect to any plan holding an interest in an Index Fund or Model-Driven Fund that intends to start investing in Principal Stock, the Applicant represents that before Principal Stock is purchased directly or indirectly by the Index Fund or Model-Driven Fund, Principal will provide the independent plan fiduciary (the Independent Plan Fiduciary) with a notice through email. The email will state that if the Independent Plan Fiduciary does not indicate disapproval of investments in Principal Stock within sixty (60) days from the date of the email, then the Independent Plan Fiduciary will be deemed to have consented to the investment in Principal Stock. The Department is adding requirements regarding Principal's delivery of the email, as described in paragraph 19.

In addition, the Applicant represents that in the event the Independent Plan Fiduciary disapproves of the investment, plan assets invested in the Index Fund or Model-Driven Fund will be withdrawn, and the proceeds will be processed, as directed by the Independent Plan Fiduciary. The timing of the withdrawal will be as follows:

- With respect to a plan that is not an individual account plan within the meaning of section 3(34) of the Act, the plan's assets will be withdrawn within five (5) days from when the Independent Plan Fiduciary notifies the Applicant of its disapproval of investment in Principal Stock.
- With respect to an individual account plan within the meaning of section 3(34) of the Act, the Applicant will work with the Independent Plan Fiduciary to ensure the timing of withdrawal of the plan's assets from an Index Fund or Model-Driven Fund complies with any participant notification requirement that may be applicable to the plan under the Department's regulation at 29 CFR 2550.404a–5. This regulation generally requires that plan participants be notified at least thirty (30) days in advance of a change in any designated investment alternative available under the plan. (See 29 CFR 2550.404a–5(c)(ii). The Applicant anticipates that the plan's assets will be withdrawn from the Index Fund or Model-Driven Fund within sixty (60) days from the time the Independent Plan Fiduciary notifies Principal of its disapproval of investment in Principal Stock.

For new plan investors in an Index Fund or Model-Driven Fund, the Applicant represents that the Independent Plan Fiduciary will affirmatively consent to the investment in Principal Stock by executing a written subscription or similar agreement for the Index Fund or Model-Driven Fund that contains the appropriate approval language. However, if the Independent Plan Fiduciary does not specifically approve language in the agreement allowing the investment of plan assets in Funds which hold or may hold Principal Stock, then no investment will be made.

Voting of Principal Stock

17. The Applicant will appoint an independent fiduciary that will direct the voting of Principal Stock held by the Funds. The Applicant expects that ISS, the Independent Fiduciary, will serve in this capacity. The Applicant will provide the Independent Fiduciary with all necessary information regarding the Funds that hold Principal Stock, the amount of Principal Stock held by the Funds on the record date for shareholder meetings of the Applicant, and all proxy and consent materials with respect to Principal Stock. The Independent Fiduciary will maintain records with respect to its activities as an Independent Fiduciary on behalf of

[25] The Department notes that ERISA's fiduciary responsibility provisions would apply to the manager's selection of a trading venue, including an automated trading system, to effect purchases and sales of Principal Stock on behalf of its managed Index and Model-Driven Funds.

[26] PTE 86–128, 51 FR 41686 (November 18, 1986), as amended at 67 FR 64137 (October 17, 2002), provides a class exemption, under certain conditions, permitting persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of the plans. The Department expresses no opinion on whether the conditions of this class exemption would be satisfied.

the Funds, including the number of shares of Principal Stock voted, the manner in which they were voted, and the rationale for the vote. The Independent Fiduciary will supply the Applicant with this information after each shareholder meeting. The Independent Fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans that invest in the Funds that own Principal Stock, when voting Principal Stock.

Request for Exemptive Relief

18. The Applicant requests an administrative exemption from the Department with respect to the direct or indirect acquisition, holding, and disposition of Principal Stock by Index and Model-Driven Funds that are managed by Principal, in which client plans invest. Section 406(a)(l)(D) of the Act prohibits the use by, or for the benefit of, a party in interest of any assets of a plan, including plan assets held by an Index Fund or a Model-Driven Fund.

The Applicant represents that as the current or future Fund Manager of an Index Fund or Model-Driven Fund, PLIC or an affiliate is (or will become) a party in interest with respect to plans investing in the Index Fund or Model-Driven Fund under sections 3(14)(A) and 3(14)(B) of the Act. The Applicant also represents that the issuer of Principal Stock, such as PFG, is a party in interest with respect to a plan, under section 3(14)(E) of the Act, as the direct or indirect corporate parent of the Fund Manager. According to the Applicant, the acquisition, holding, or disposition of Principal Stock by an Index Fund or a Model-Driven Fund (including an indirect acquisition, holding, or disposition of Principal Stock by an Index Fund through its investment in another Index Fund) would involve the Fund Manager's use of plan assets by or for the benefit of its own interest and/or the interest of another Principal entity, in violation of section 406(a)(l)(D) of the Act.

18. In addition, section 406(b)(l) of the Act prohibits a fiduciary from dealing with the assets of the plan in its own interest or for its own account. Section 406(b)(2) of the Act prohibits a fiduciary from acting in any transaction involving a plan on behalf of a party whose interests are adverse to the interests of the plan. The Applicant represents that a Fund Manager's direct or indirect acquisition, holding, or disposition of Principal Stock as an Index Fund or Model-Driven Fund investment would violate section 406(b)(l) and section 406(b)(2) of the Act due to the Fund Manager's affiliation with the issuer of the Principal Stock. Therefore, the Applicant requests exemptive relief from section 406(b)(1) and section 406(b)(2) of the Act.

Statutory Findings

19. The Department has tentatively determined that the proposed exemption is administratively feasible. Among other things, an Independent Plan Fiduciary must authorize the investment of the plan's assets in an Index Fund or a Model-Driven Fund which directly or indirectly purchases and/or holds Principal Stock. Also, prior to the direct or indirect purchase of Principal Stock by an Index Fund or a Model-Driven Fund, Principal must provide the Independent Plan Fiduciary with an email notice stating that if the Independent Plan Fiduciary does not indicate disapproval of investments in Principal Stock within sixty (60) days of the email, the Independent Plan Fiduciary will be deemed to have consented to the investment in Principal Stock. The Department is requiring that: (1) Principal obtains from such Independent Plan Fiduciary prior consent in writing to the receipt by such Independent Plan Fiduciary of such disclosure via electronic email; (2) Such Independent Plan Fiduciary has provided to Principal a valid email address; and (3) The delivery of such electronic email to such Independent Plan 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 ''Independent Plan Fiduciary'' for the phrase ''the participant, beneficiary or other individual'' as set forth therein).

Furthermore, in the event the Independent Plan Fiduciary disapproves of the investment, plan assets invested in the Index Fund or Model-Driven Fund will be withdrawn and the proceeds processed as directed by the Independent Plan Fiduciary.

For new plan investors in an Index Fund or Model-Driven Fund, Independent Plan Fiduciaries must consent to the investment in Principal Stock through execution of a subscription or similar agreement for the Index Fund or Model-Driven Fund that contains the appropriate approval language.

20. The Department has tentatively determined that the proposed exemption is in the interests of plans invested in the Index Funds and Model-Driven Funds. The exemption is intended to allow Index Funds to track the performance of independently-maintained, third-party Indexes more closely. Furthermore, with respect to Model-Driven Fund plan investors, the investment in Principal Stock by Model-Driven Funds will allow the Funds to match, more closely, the performance of portfolios selected by computer models that are based on prescribed objective criteria and use independent third-party data to transform an independently-maintained third-party Index.

21. The Department has tentatively determined that the proposed exemption is protective of the rights of the plans investing in Index Funds and Model-Driven Funds, and their participants and beneficiaries. In this regard: (a) Each Index Fund and Model-Driven Fund will be based on a securities index that is created and maintained by an organization independent of Principal; (b) the acquisition or disposition of Principal Stock will be for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index Fund or Model-Driven Fund is based; (c) all initial purchases of Principal Stock will occur through a recognized U.S. securities exchange or through an automated trading system operated by a broker-dealer independent of Principal or by a recognized U.S. securities exchange; and (d) subsequent purchases of Principal Stock will also occur as direct, arm's length transactions with broker-dealers independent of Principal, thereby ensuring that the purchases of Principal Stock occur at market price.

The requested exemption contains conditions on the timing and size of purchase transactions designed to preclude possible market price manipulations. Specifically, the proposed exemption requires that no more than five (5) percent of the total amount of Principal Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by PLIC or a Principal affiliate. Furthermore, Principal Stock must constitute no more than five (5) percent of any independent, third-party Index on which the investments of an Index Fund or Model-Driven Fund are based.

22. Finally, an Independent Plan Fiduciary must authorize the investment of the plan's assets in an Index Fund or Model-Driven Fund which will directly or indirectly purchase and/or hold Principal Stock. Further, on any matter for which shareholders of Principal Stock are required or permitted to vote, PLIC or the respective Principal affiliate will cause the Principal Stock held by an Index Fund or Model-Driven Fund to be

voted as determined by an Independent Fiduciary.

Summary

23. Given the conditions described below, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of the Act.

Proposed Exemption

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(l)(D), 406(b)(l), and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(l)(D) and (E) of the Code, shall not apply to the direct or indirect acquisition, holding, and disposition of common stock issued by Principal Financial Group, Inc. (PFG), and/or common stock issued by an affiliate of PFG (together, the Principal Stock), by index funds (Index Funds) and model-driven funds (Model-Driven Funds) that are managed by Principal Life Insurance Company (PLIC), an indirectly wholly-owned subsidiary of PFG, or an affiliate of PLIC (collectively, Principal), in which client plans of Principal invest, provided that the conditions of Sections II and III are met.

Section II. Exemption for the Acquisition, Holding and Disposition of Principal Stock

(a) The acquisition or disposition of Principal Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant Index upon which the Index Fund or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring Principal Stock that is intended to benefit Principal or any party in which Principal may have an interest;

(b) Whenever Principal Stock is initially added to an Index on which an Index Fund or Model-Driven Fund is based, or initially added to the portfolio of an Index Fund or Model-Driven Fund (or added to the portfolio of an underlying Index Fund in which another Index Fund invests), all purchases of Principal Stock pursuant to a Buy-up (as defined in Section III(d)) occur in the following manner:

(1) Purchases are from one or more brokers or dealers;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed, on any particular day, the greater of: (i) Fifteen (15) percent of the aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five business days, or (ii) fifteen (15) percent of the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date;

(6) All purchases and sales of Principal Stock occur either: (i) On a recognized U.S. securities exchange (as defined in Section IV(j) below), (ii) through an automated trading system (as defined in Section IV(b) below) operated by a broker-dealer independent of Principal that is registered under the Securities Exchange Act of 1934 (the 1934 Act), and thereby subject to regulation by the Securities and Exchange Commission (the SEC), which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system that is operated by a recognized U.S. securities exchange, pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Principal Stock cannot be acquired within ten (10) business days from the date of the event which causes the particular Fund to require Principal Stock, Principal appoints a fiduciary, which is independent of Principal (the Independent Fiduciary), to design acquisition procedures and monitor compliance with these procedures;

(c) For transactions subsequent to a Buy-Up, all aggregate daily purchases of Principal Stock by the Funds do not exceed on any particular day the greater of:

(1) Fifteen (15) percent of the average daily trading volume for Principal Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or

(2) Fifteen (15) percent of the trading volume for Principal Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on this date;

(d) All transactions in Principal Stock not otherwise described above in Section II(b) are either:

(1) Entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where the broker-dealer is independent of Principal and is registered under the 1934 Act, and thereby subject to regulation by the SEC;

(2) Effected on an automated trading system operated by a broker-dealer independent of Principal that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system, as defined in Section IV(b), operated by a recognized U.S. securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or

(3) Effected through a recognized U.S. securities exchange, as defined in Section IV(j), so long as the broker is acting on an agency basis;

(e) No purchases or sales of Principal Stock by a Fund involve purchases from, or sales to, Principal (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with the party in interest would otherwise be subject to an exemption). However, this condition would not apply to purchases or sales on an exchange or through an automated trading system (described in paragraphs (on a blind basis where the identity of the counterparty is not known);

(f) No more than five (5) percent of the total amount of Principal Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Principal;

(g) Principal Stock constitutes no more than five (5) percent of any independent third-party Index on which the investments of an Index Fund or Model-Driven Fund are based;

(h) A fiduciary of a plan which is independent of Principal (the Independent Plan Fiduciary, as defined in Section IV(k)) authorizes the investment of the plan's assets in an Index Fund or Model-Driven Fund which directly or indirectly purchases and/or holds Principal Stock. With respect to any plan holding an interest in an Index Fund or Model-Driven Fund that intends to start investing in

Principal Stock, before Principal Stock is purchased directly or indirectly by the Index Fund or Model-Driven Fund, Principal will provide the Independent Plan Fiduciary with a notice through email stating that if the plan fiduciary does not indicate disapproval of investments in Principal Stock within sixty (60) days, then the Independent Plan Fiduciary will be deemed to have consented to the investment in Principal Stock. In this regard: (1) Principal must obtain from such Independent Plan Fiduciary prior consent in writing to the receipt by such Independent Plan Fiduciary of such disclosure via electronic email; (2) Such Independent Plan Fiduciary must have provided to Principal a valid email address; and (3) The delivery of such electronic email to such Independent Plan 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 ''Independent Plan Fiduciary'' for the phrase ''the participant, beneficiary or other individual'' as set forth therein). In the event that the Independent Plan Fiduciary disapproves of the investment, plan assets invested in the Index Fund or Model-Driven Fund will be withdrawn and the proceeds processed, as directed by the Independent Plan Fiduciary. For new plan investors in an Index Fund or Model-Driven Fund, Independent Plan Fiduciaries for the plans will consent to the investment in Principal Stock through execution of a subscription or similar agreement for the Index Funds or Model-Driven Fund that contains the appropriate approval language; and

(i) On any matter for which shareholders of Principal Stock are required or permitted to vote, Principal will cause the Principal Stock held by an Index Fund or Model-Driven Fund to be voted, as determined by the Independent Fiduciary.

Section III. General Conditions

(a) Principal maintains or causes to be maintained for a period of six (6) years from the date of the transactions, the records necessary to enable the persons described in paragraph (b) of this Section III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of 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 paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section III and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section III 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 SEC;

(B) Any fiduciary of a plan participating in an Index Fund or Model-Driven Fund, who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of the fiduciary;

(C) Any contributing employer to any plan participating in an Index Fund or Model-Driven Fund or any duly authorized employee or representative of the employer; and

(D) Any participant or beneficiary of any plan participating in an Index Fund or Model-Driven Fund, or a representative of the participant or beneficiary; and

(2) None of the persons described in subparagraphs (B) through (D) of this Section III(b)(1) shall be authorized to examine trade secrets of Principal or commercial or financial information which are considered confidential.

Section IV. Definitions

(a) An ''affiliate'' of Principal 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 or relative of the person, or partner of any the person; and

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

(b) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS (17 CFR part 242.300), as this definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(5l)(A)(ii) of the 1934 Act (15 U.S.C. 8c(a)(5 l)(A)(ii));

(c) The term ''Buy-up'' means an initial acquisition of Principal Stock by an Index Fund or Model-Driven Fund which is necessary to bring the Fund's holdings of Principal Stock either to its capitalization-weighted or other specified composition in the relevant index (the Index), as determined by the independent organization maintaining the Index, or to its correct weighting as determined by the model which has been used to transform the Index;

(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 ''Fund'' means an Index Fund (as described in Section IV(a)) or a Model-Driven Fund (as described in Section III(b))

(f) The term ''Index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities, but only if:

(1) The organization creating and maintaining the Index is:

(A) Engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients; or

(B) A publisher of financial news or information; or

(C) A public stock exchange or association of securities dealers; and

(2) The Index is created and maintained by an organization independent of Principal; and

(3) The Index is a generally-accepted standardized index of securities which is not specifically tailored for the use of Principal;

(g) The term ''Index Fund'' means any investment fund, trust, insurance company separate account, separately managed account, or portfolio, sponsored, maintained, trusteed, or managed by Principal, in which one or more investors invest, and:

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently-maintained securities index, as described in Section IV(c) below, by either: (i) Investing directly in the same combination of securities which compose the Index or in a sampling of the securities, based on objective criteria and data, or (ii) investing in one or more other Index Funds to indirectly invest in the same combination of securities which compose the Index, or in a sampling of the securities based on objective criteria and data;

(2) For which all assets held outside of any liquidity buffer are invested without Principal using its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold, and the liquidity buffer, if any, does not hold any Principal Stock;

(3) That contains ''plan assets'' subject to the Act;

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, which is intended to benefit Principal or any party in which Principal may have an interest.

(h) The term ''Model-Driven Fund'' means any investment fund, trust, insurance company separate account, separately managed account, or portfolio, sponsored, maintained, trusteed, or managed by Principal, in which one or more investors invest, and:

(1) For which all assets held outside of any liquidity buffer consist of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of Principal, to transform an independently-maintained Index, as defined in Section IV(c) below, and the liquidity buffer, if any, does not hold any Principal Stock;

(2) That contains ''plan assets'' subject to the Act; and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Principal or any party in which Principal may have an interest;

(i) The term ''Principal'' refers to Principal Life Insurance Company, its indirect parent and holding company, Principal Financial Group, Inc., and any current or future affiliate, as defined above in Section IV(a);

(j) The term ''recognized U.S. securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under Section 6 of the 1934 Act (15 U.S.C. 78f), as this definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (*e.g.,* 17 CFR part 240.3b–16); and

(k) The term ''Independent Plan Fiduciary'' means a fiduciary of a plan, where such fiduciary is independent of and unrelated to Principal. The Independent Plan Fiduciary will not be deemed to be independent of and unrelated to Principal if:

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

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

(3) Such Independent Plan 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.

Notice to Interested Persons

Notice of the proposed exemption will be given to all fiduciaries of plans invested in the Index Funds within 30 days of the publication of the notice of proposed exemption in the **Federal Register**, by electronic mail to the last known email address of all fiduciaries. Principal will also publish the notice on a website through which plan fiduciaries communicate with Principal. The 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(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due within 45 days of the publication of the notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693–8561. (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 20th day of December, 2018.

Lyssa Hall,

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

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