

instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20004.

Dated: September 21, 2001.

Richard A. Sloan,

Department Clearance Office, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01-24149 Filed 9-26-01; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)-1320]

The Young Offender Initiative: Reentry Grant Program; Amendment

AGENCY: Office of Justice Programs, Justice.

ACTION: Amendment to Notice of Funding Availability.

SUMMARY: This document amends the deadline for applications to the Young Offender Initiative: Reentry Grant Program. The deadline for applications to be received by October 1, 2001, by 5:30 p.m. Eastern Standard Time, published in the **Federal Register** on Friday, June 1, 2001, (66 FR 29837) has been extended to Tuesday, October 9, 2001, 5:30 p.m. Eastern Standard Time.

DATES: Applications must be received by October 9, 2001, 5:30 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION: The Young Offender Initiative: Reentry Grant Program is authorized by P.L. 106-553, 114 Stat. 2762A-65. The program is designed to enhance community safety by successfully reintegrating young offenders into the community by helping them:

- Become productive, responsible, and law-abiding citizens;
- Obtain and retain long-term employment;

- Maintain a stable residence; and
- Successfully address their substance abuse issues and mental health needs.

Originally, applications for this program were due on October 1, 2001. The due date is being amended to October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. June Kress, the Corrections Program Office at 1-202-616-2915.

Mary Lou Leary,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. 01-24171 Filed 9-26-01; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10954, et al.]

Proposed Exemptions; Metropolitan Life Insurance Company (MetLife Insurance Company) et al.

AGENCY: Pension and Welfare Benefits 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 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

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

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW.,

Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

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

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

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

Metropolitan Life Insurance Company, (MetLife Insurance Company) and Its Affiliates (collectively, MetLife), Located in New York, NY

[Application No. D-10954]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part

2570, subpart B (55 FR 32836, 32847, August 10, 1990).¹

Section I. Retroactive Exemption for the Acquisition, Holding and Disposition of MetLife, Inc. Common Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) 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)(1)(D) and (E) of the Code, shall not apply, as of December 7, 2000 until the date this proposed exemption is granted, to the acquisition, holding and disposition of the common stock of MetLife, Inc. (the MetLife, Inc. Stock), by Index and Model-Driven Funds (collectively, the Funds) that are managed by MetLife, in which client plans of MetLife invest, provided that the following conditions and the General Conditions of Section III are met:

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

(b) All aggregate daily purchases of MetLife, Inc. Stock by the Funds do not exceed on any particular day the greater of—

(1) 15 percent of the average daily trading volume for the MetLife, Inc. Stock, occurring on the applicable exchange and automated trading system (as described in Section I(c) below) for the previous 5 business days, or

(2) 15 percent of the trading volume for MetLife, Inc. 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 occurring on that date.

(c) All purchases and sales of MetLife, Inc. Stock occur (i) either on a recognized U.S. securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis; (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is registered under the Securities Exchange Act of 1934 (the 1934 Act) and thereby subject to regulation by the

Securities and Exchange Commission (SEC), or an automated trading system 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 (iii) in a direct, arm's length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC.

(d) No transactions by a Fund involve purchases from, or sales to, MetLife (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 such party in interest would otherwise be subject to an exemption).

(e) No more than 5 percent of the total amount of MetLife, Inc. Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by MetLife.

(f) MetLife, Inc. Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A fiduciary of a plan, which is independent of MetLife, authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife, Inc. Stock, pursuant to the procedures described herein.

(h) A fiduciary independent of the MetLife directs the voting of MetLife, Inc. Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife, Inc. Stock are required or permitted to vote.

Section II. Prospective Exemption for the Acquisition, Holding and Disposition of MetLife, Inc. Stock and/or the Common Stock of a MetLife Affiliate

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) 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)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of MetLife, Inc. Stock and/or common stock issued by a MetLife affiliate (the MetLife Affiliate Stock; together, the MetLife Stock), by Index and Model-Driven Funds that are managed by MetLife, in which client plans of MetLife invest, provided that the

following conditions and the General Conditions of Section III are met:

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

(b) Whenever MetLife Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of MetLife Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(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 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of MetLife 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(i) below) operated by a broker-dealer independent of MetLife that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an

¹ For purposes of this proposed exemption, references to provisions of the Act refer also to corresponding provisions of the Code.

anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(i) below) that is operated by a recognized U.S. securities exchange (as defined in Section IV(j) below), 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 MetLife Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require MetLife Stock, MetLife appoints a fiduciary which is independent of MetLife to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of MetLife Stock to its specified weighting in the index or model pursuant to the restrictions described in Section II(b) above, all aggregate daily purchases of MetLife Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for MetLife Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous 5 business days, or

(2) 15 percent of the trading volume for MetLife Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in MetLife Stock not otherwise described above in Section II (b) are either—(i) 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 such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section IV(j) below) 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 (iii) effected through a recognized U.S. securities exchange (as defined in

Section IV(j) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, MetLife (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 such party in interest would otherwise be subject to an exemption).

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

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

(h) A fiduciary of a plan which is independent of MetLife authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of the MetLife directs the voting of MetLife Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife Stock are required or permitted to vote.

Section III. General Conditions

(a) MetLife maintains or causes to be maintained for a period of six years from the date of the transaction 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 MetLife, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than MetLife 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 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 such fiduciary,

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

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

(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 MetLife or commercial or financial information which is considered confidential.

Section IV. Definitions

(a) The term "Index Fund" means any investment fund, account or portfolio sponsored, maintained, trusteeed, or managed by MetLife, 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) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which MetLife does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); and,

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

(b) The term "Model-Driven Fund" means any investment fund, account or portfolio sponsored, maintained, trusteeed, or managed by MetLife, in which one or more investors invest, and—

(1) Which is composed 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 MetLife, to transform an independently maintained Index, as described in Section IV(c) below;

(2) Which contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); 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 MetLife or any party in which MetLife may have an interest.

(c) 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 in the United States, 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,

(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 MetLife; and,

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

(d) The term "opening date" means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term "Buy-up" means an acquisition of MetLife Stock by an Index or Model-Driven Fund in connection with the initial addition of such stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such stock.

(f) The term "MetLife" refers to Metropolitan Life Insurance Company, its parent, MetLife, Inc. and their current or future affiliates, as defined below in paragraph (g).

(g) An "affiliate" of MetLife 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 such person, or partner of any such person; and

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

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

(i) 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 such definition may be amended from time to time, or an "automated quotation system" as described in Section 3(a)(51)(A)(ii) of the 1934 Act [15 U.S.C. 8c(a)(51)(A)(ii)].

(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 such 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).

Effective Date: If granted, this proposed exemption will be effective as of December 7, 2000 with respect to the transactions described in Section I above, and as of the date grant notice is published in the **Federal Register** for the transactions described in Section II above.

Summary of Facts and Representations

1. MetLife Insurance Company (or the Applicant) is a life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. MetLife Insurance Company is a wholly owned subsidiary of MetLife, Inc., a publicly-held Delaware corporation. As of December 31, 2000, MetLife Insurance Company, including its insurance company subsidiaries, had total assets under management of approximately \$302.3 billion and had approximately \$2 trillion of life insurance in force.

2. Among the insurance products and services offered, MetLife Insurance Company and certain of its affiliates provide funding, asset management and other services for thousands of ERISA-covered employee benefit plans. The Applicant also maintains pooled and single plan separate accounts in which ERISA-covered plans invest. Alone or with its affiliates, MetLife Insurance Company may manage all or a portion of the separate account assets. Further, MetLife Insurance Company has a number of subsidiaries and affiliates that provide a variety of financial

services, including investment management and brokerage services.

MetLife Insurance Company is also the investment manager, adviser or an affiliate of the investment manager or adviser with respect to various portfolios subject to ERISA that are invested in a strategy which tracks or transforms an index maintained by a third party. The index may include the stock issued by MetLife, Inc. or an affiliate.

3. MetLife acts as investment manager of institutional accounts, including employee benefit plans with assets totaling approximately \$28 billion. Additionally, MetLife provides directed trust or investment management services to various employee benefit plans. MetLife is, to the extent of the provision of investment management services, a fiduciary of these plans.

As a fiduciary, MetLife may be either directed by an independent plan fiduciary or plan participants that have the ability to direct investments for their own plan accounts. Alternatively, in those cases in which MetLife manages the investments, the Applicant represents that it does not exercise any discretionary authority over whether an employee benefit plan invests in particular Index or Model-Driven Funds.

4. MetLife manages different collective investment funds, trusts and separate accounts in various ways to enable plan assets to be diversified to reduce risk and to be invested in the types of investments that a particular manager for a plan may determine is appropriate at a particular time. Index Funds and Model-Driven Funds are two examples of MetLife's separate account products which include plan investors.

An Index Fund, as defined above, may be a separately-managed account, an insurance company separate account, a collective investment fund, or collective trust, the objective of which is the replication of the performance of an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The Index Funds are passively-managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indexes rather than according to active evaluation of the investments. Since December 7, 2000, there have been 5 Index Funds holding the assets of ERISA-covered plans that have acquired, held and/or disposed of MetLife, Inc. Stock.

A Model-Driven Fund, as defined above, may be a separately-managed

account, an insurance company separate account, a collective trust or a collective investment fund, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of such securities. An example of a Model-Driven Fund would include a fund which "transforms" an index, making investments according to a computer model which uses such data as earnings, dividends and price earnings ratios for common stocks included in the index.

According to the Applicant, the process for the establishment and operation of all Funds, which are model-driven, is disciplined. Objective rules are established for each model. Such Funds operate pursuant to pre-specified computer programs, the rules and programs are changed only infrequently.

5. MetLife currently offers a number of separate account products that are invested according to the criteria of various third party indexes or are model-driven based on such indexes. These indexes are compiled by financial information agencies that are engaged in the provision of financial information or securities brokerage services to institutional investors and/or are publishers of financial information. For example, some Funds track the Russell 2000 Index,² while other funds track the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index).³ Most of the Funds track stock indexes, although some Funds track indexes of debt securities, such as the Lehman Brothers Bond Indexes.⁴ In each

² The Russell 2000 Index was established and is maintained by the Frank Russell Company, which is not an affiliate of MetLife. The Russell 2000 Index is a subset of the larger Russell 3000 Index. The Russell 3000 Index consists of the largest 3,000 publicly-traded stocks of U.S. domiciled corporations, identified by the Frank Russell Company, and includes large, medium and small stocks.

³ The S&P 500 Index is composed of 500 stocks that are traded on the New York Stock Exchange and the NASDAQ National Market System. The S&P 500 Index is a market-weighted index (i.e., shares outstanding times the stock price) in which each company's influence on the Index's performance is directly proportional to its market value.

⁴ The indexes of debt securities used for the Funds, such as the Lehman Brothers Bond Index, consist primarily of high quality fixed-income securities representing the U.S. Government, corporate, and mortgage-backed securities sectors of the bond market in the U.S. In this regard, MetLife's

instance, the indexes are compiled by organizations that are independent of MetLife and are generally-accepted standardized indexes of securities that are not tailored for the use of MetLife.

6. In addition to Funds that are separate accounts or collective investment funds, MetLife may have investment responsibility for individual investment funds which are separate portfolios for various client accounts, including employee benefit plans, where the portfolio is invested in accordance with a third party index or a model based on that index. The Applicant represents that the ability of all Funds to invest in MetLife Stock when the stock is included in an index would improve the tracking of such indexes.

7. Accordingly, the Applicant requests an administrative exemption from the Department. If granted, the exemption will permit the Applicant and its current or future affiliates to maintain separate accounts, collective funds or trusts that hold securities issued by MetLife, Inc. and/or the affiliated entities, provided certain conditions enumerated in the operative language of the exemption are met. For purposes of the exemption, the Applicant and its affiliates are collectively referred to as "MetLife."

Specifically, the exemption will allow Index and Model-Driven Funds which are managed by the Applicant or its affiliates, in which client plans of MetLife participate, to invest in MetLife Stock if such stock is included among the securities listed in the index utilized by the Fund. The Applicant is not requesting, nor is the Department providing, administrative exemptive relief herein for plans sponsored by MetLife. MetLife believes that investments on behalf of its in house plans in Index and Model-Driven Funds have been made (and will be made) in accordance with the statutory exemption provided under section 408(e) of the Act.⁵ Therefore, the subject exemption will apply to client plans of MetLife only. With respect to its client plans, the Applicant states that plan fiduciaries which are independent of MetLife have authorized or will authorize the investment of a plan's assets in an Index or Model-Driven

fixed income Index Fund portfolios are currently managed against the Lehman Aggregate Bond Index and the Lehman Government/Credit Index. However, MetLife is not represented in either Lehman Brothers Bond Index nor does MetLife hold any of its debt securities in its separate accounts.

⁵ The Department is not providing an opinion in this proposed exemption on whether the conditions of section 408(e) of the Act have been or will be met for such transactions.

Fund which purchases and/or holds MetLife Stock pursuant to procedures described herein.

The Applicant requests that the proposed exemption be made effective as of December 7, 2000 with respect to investments in MetLife, Inc. Stock by the subject Funds. The Applicant is not requesting retroactive relief for investments by the Funds in MetLife Affiliate Stock inasmuch as these Funds have not held such stock.⁶ Further, the Applicant states that any exemptive relief for cross-trades of securities, including MetLife, Inc. Stock, by Index and Model-Driven Funds maintained by it should be considered separately.⁷

8. The Applicant states that the proposed exemption is necessary to allow Funds holding "plan assets" to purchase and hold MetLife Stock in order to replicate the capitalization-weighted or other specified composition of MetLife Stock in an independently-maintained, third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.

In addition, the Applicant represents that when MetLife Stock is added to an index on which a Fund is based, or when MetLife Stock is added to the portfolio of a Fund which tracks an index that includes MetLife Stock, all acquisitions necessary, as an initial matter, to bring the Fund's holdings of MetLife Stock to its capitalization or other specified weighting in the applicable index,⁸ will comply with conditions (see Section I(b)(1)-(7) above) that are designed to prevent possible market price manipulation and which are based, in part, on the restrictions of SEC Rule 10b-18.⁹

The conditions required for a "Buy-up" of MetLife Stock are as follows:

⁶ See 29 CFR 2510.3-101; Definition of "plan assets"—plan investments.

⁷ In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (the Cross-Trading Proposal) which was published in the **Federal Register** on December 15, 1999 (64 FR 70057).

⁸ These instances are referred to herein as a "Buy-up." The Applicant anticipates that acquisitions of MetLife Stock by an Index or Model-Driven Fund in a "Buy-up" will occur within 10 business days from the date of the event which causes the particular Fund to acquire MetLife Stock. MetLife does not anticipate that the amounts of MetLife Stock acquired by a Fund in a "Buy-up" will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any "Buy-up" of MetLife Stock.

⁹ SEC Rule 10b-18 provides a "safe harbor" for issuers of securities from section 9(a)(2) of the 1934 Act and SEC Rule 10b-5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

- Purchases will be from, or through, only one broker or dealer on a single trading day;

- Based on the best available information, purchases will not be the opening transaction for the trading day;

- Purchases will not be effected in the last half hour before the scheduled close of the trading day;

- Purchases will be 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;

- Aggregate daily purchases will not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

- All purchases and sales of MetLife Stock will occur either (i) on a recognized U.S. securities exchange [as defined in Section IV(j)], (ii) through an automated trading system [as defined in Section IV(i)] operated by a broker-dealer independent of MetLife that is registered under the 1934 Act, and thereby subject to regulation by 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 [as defined in Section IV(i)] that is operated by a recognized U.S. securities exchange [as defined in Section IV(j)], 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

- If the necessary number of shares of MetLife Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require MetLife Stock, MetLife will appoint an independent fiduciary to design acquisition procedures and monitor compliance with such procedures.

9. MetLife states that the independent fiduciary and its principals must be completely unrelated to MetLife. The independent fiduciary must also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third party indexes. Furthermore, the independent fiduciary

must not act as the broker for any purchases or sales of MetLife Stock and will not receive any consideration as a result of the initial acquisition program.

As its primary goal, the independent fiduciary will develop trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the particular Fund. Thus, the Applicant expects 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 further expects that such a program will allow it to acquire the necessary shares of MetLife Stock for the 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 such Funds.

The independent fiduciary will also be required to monitor compliance with the trading program and procedures developed for the initial acquisition of MetLife Stock. 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 MetLife should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with MetLife and must approve in advance any alteration of the trading procedures.

10. Subsequent to the initial acquisitions necessary to bring a Fund's holdings of MetLife Stock to their specified weightings in the index or model pursuant to the restrictions described above, all aggregate daily purchases of MetLife Stock by the Funds will not exceed on any particular day the greater of—

- 15 percent of the average daily trading volume for MetLife Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or

- 15 percent of the trading volume for MetLife 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 such date.

11. MetLife represents that as of December 7, 2000 until the date this proposed exemption is granted, all purchases and sales of MetLife, Inc. Stock by the Funds, other than

acquisition of such stock in a Buy-up have occurred or will continue to occur in one of the following ways: (a) On a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC; (b) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of MetLife that is subject to regulation by the SEC or another applicable regulatory agency or on an automated trading system operated by a recognized U.S. securities exchange (as defined in Section IV(j)) 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) through a recognized U.S. securities exchange (as defined in Section IV(j)), so long as the broker is acting on an agency basis.¹⁰

In addition, MetLife represents that as of the date this proposed exemption is granted, all future transactions by the Funds involving MetLife Stock which do not occur in connection with a Buy-up of such stock by a Fund, as described above, will be either (a) 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 such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC; (b) effected on an automated trading system (as defined in Section IV(j) above) operated by a broker-dealer independent of MetLife that is either registered under the 1934 Act, and thereby subject to regulation by the SEC, or an automated trading system operated by a recognized U.S. securities exchange (as defined above) which, in either case, provides a mechanism for customer order to be matched on an anonymous basis without the participation of a broker-dealer; or (c) effected through a recognized U.S.

¹⁰The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer acting as principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, Prohibited Transaction Class Exemption 84-14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a "qualified professional asset manager" (i.e., a QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

securities exchange (as defined in Section IV(j) above) so long as the broker is acting on an agency basis.

12. With respect to all acquisitions and dispositions of MetLife Stock by the Funds since December 7, 2000, the Applicant states that no such transactions have involved purchases from or sales to MetLife (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest assets into the Fund. The Applicant represents that all future acquisitions and dispositions of MetLife Stock by any Index or Model-Driven Funds maintained by MetLife will also not involve any purchases from or sales to MetLife (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).¹¹

13. The Applicant represents that no more than 5 percent of the total outstanding shares of MetLife Stock will be held in the aggregate by the Index or Model-Driven Funds managed by MetLife. In addition, the Applicant states that MetLife Stock will not constitute more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based.

For purposes of the acquisition and holding of MetLife, Inc. Stock by all of the Funds since December 7, 2000 until the date this proposed exemption is granted, the Applicant states that such stock will constitute no more than 5 percent of any independent third party index on which the investments in Index or Model-Driven Funds are based. For example, the Applicant notes that the current weighting of MetLife, Inc. Stock in the S&P 500 Index is 0.213 percent and its weighting in the Barra Value Index is 0.41 percent. Although some indexes include MetLife, Inc. Stock in percentages that exceed 3 percent of the index, MetLife does not currently utilize such indexes for its Index and Model-Driven Funds with "plan assets" subject to the Act.

For purposes of future acquisitions and holdings of MetLife Stock by the Funds once this proposed exemption is granted, neither MetLife, Inc. Stock nor MetLife Affiliate Stock will constitute more than 5 percent of any independent third party index on which the investments of an Index or Model-

Driven Fund are based. In this regard, the Applicant has identified 5 indexes which include MetLife, Inc. Stock where the current approximate capitalization weight of the index represented by MetLife, Inc. Stock exceeds 3 percent. Therefore, the Applicant requests that the proposed exemption allow MetLife to design a passive investment strategy for an Index or Model-Driven Fund which seeks to track an index that contains MetLife Stock, or which transforms such an index into a model-prescribed way, as long as the MetLife Stock does not constitute more than 5 percent of the index.

With respect to an index's specified composition of particular stocks in its portfolio, the Applicant states that future Funds may track an index where the weighting for stocks listed in the index is not capitalization-weighted. However, the Applicant notes that Funds maintained by it or 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 such stock. Therefore, since an independent organization may choose to create an index where there are other index weightings for stocks composing the index, the Applicant requests that the proposed exemption allow for MetLife Stock to be acquired by a Fund in the amounts which are specified by the particular index, subject to the other restrictions imposed under this proposed exemption. In addition, the Applicant represents that, in all instances, acquisitions or dispositions of MetLife Stock by a Fund will be for the sole purpose of maintaining quantitative conformity with the relevant index upon which the Fund is based, or in the case of a Model-Driven Fund, a modified version of such an index as created by a computer model based on prescribed objective criteria and third party data.

14. The Applicant will appoint an independent fiduciary to direct the voting of any MetLife Stock held by the Funds. The independent fiduciary will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of public and private pension funds. The independent fiduciary will be required to develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries.

The Applicant will provide the independent fiduciary with all necessary information regarding the Funds that hold MetLife Stock on the record date for MetLife's shareholder

meetings, and all proxy and consent materials with respect to MetLife Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of shares of MetLife Stock voted, the manner in which such shares were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply MetLife with the 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 which invest in the Funds which own MetLife Stock, when voting such stock.¹²

15. In summary, with respect to all acquisitions, holdings and dispositions of MetLife Stock by the Funds since December 7, 2000, it is represented that the subject transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Each Index or Model-Driven Fund involved is based on an index, as defined in Section IV(c) above;

(b) The acquisition, holding and disposition of MetLife, Inc. Stock by the Index or Model-Driven Fund is for the sole purpose of maintaining strict conformity with the relevant index upon which an Index or Model-Driven Fund is based, and will not involve an agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife, Inc. Stock which is intended to benefit MetLife or any party in which MetLife may have an interest;

(c) All aggregate daily purchases of MetLife, Inc. Stock by the Funds do not exceed, on any particular day, the greater of (i) 15 percent of the average daily trading volume for the MetLife, Inc. Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or (ii) 15 percent of the trading volume for MetLife, Inc. 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 such date;

(d) All purchases and sales of MetLife, Inc. Stock, other than acquisitions of such stock in a Buy-up described above,

¹¹ In this regard, the Department is providing no opinion herein on whether such principal transactions would be covered by any existing exemption.

¹² Currently, the Applicant is utilizing the Investor Responsibility Research Center to vote proxies related to MetLife, Inc. Stock. However, any independent fiduciary duly appointed by the Applicant has satisfied or will satisfy, in the case of a successor independent fiduciary, the criteria described above.

occur either (i) on a recognized securities exchange, as defined herein, (ii) through an automated trading system (as defined herein) operated by a broker-dealer independent of MetLife that is subject to regulation by either 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) in a direct, arm's length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC.

(e) No transactions by a Fund involve purchases from or sales to MetLife (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 such party in interest would otherwise be subject to an exemption);

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

(g) MetLife, Inc. Stock constitutes no more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based;

(h) A plan fiduciary independent of MetLife will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife, Inc. Stock; and

(i) A fiduciary independent of MetLife directs the voting of MetLife, Inc. Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife, Inc. Stock are required or permitted to vote.

With respect to all acquisitions, holdings and dispositions of MetLife Stock by the Funds after this proposed exemption is granted, MetLife represents that such transactions will meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Each Index or Model-Driven Fund involved will be based on an index, as defined in Section IV(c) above;

(b) The acquisition, holding and disposition of MetLife Stock by the Index or Model-Driven Fund will be for the sole purpose of maintaining strict conformity with the relevant index upon which an Index or Model-Driven Fund is based, and will not involve an agreement, arrangement or understanding regarding the design or operation of the Fund acquiring MetLife

Stock which is intended to benefit MetLife or any party in which MetLife may have an interest;

(c) Whenever MetLife Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (i.e., a Buy-up), all acquisitions of MetLife Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or its correct weighting as determined by the computer model which has been used to transform the index, will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of MetLife Stock to its specified weighting in the index or model, pursuant to the restrictions above, all aggregate daily purchases of MetLife Stock by the Funds will not exceed the greater of (i) 15 percent of the average daily trading volume for the MetLife Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or (ii) 15 percent of the trading volume for MetLife 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 such date;

(e) All transactions in MetLife Stock, other than acquisitions of such stock in a Buy-up described above, will be either (i) entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of MetLife and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system operated by a broker-dealer independent of MetLife that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system 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 (iii) effected through a recognized U.S. securities exchange (as described herein) so long as the broker is acting on an agency basis;

(f) No transactions by a Fund will involve purchases from or sales to MetLife (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 such party in interest would otherwise be subject to an exemption);

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

(h) MetLife Stock will constitute no more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of MetLife will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds MetLife Stock, pursuant to the procedures described herein; and

(j) A fiduciary independent of MetLife will direct the voting of MetLife Stock held by an Index or Model-Driven Fund on any matter in which shareholders of MetLife Stock are required or permitted to vote.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first-class mail to interested persons, including the appropriate fiduciaries of employee benefit plans currently invested in the Index and/or Model-Driven Funds that acquire and hold MetLife Stock. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required under 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. All notices will be sent to interested persons within 30 days of the publication of the proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing are due within 60 days after the date of publication of the pendency notice in the **Federal Register**.

In addition, MetLife will provide, upon request, a copy of the proposed exemption and, if granted, a copy of the final exemption to all ERISA-covered plans which invest in any Index or Model-Driven Fund containing MetLife Stock in their respective portfolios after the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

The Prudential Insurance Company of America; (Prudential Insurance), Located in Newark, NJ

[Application No. D-10984]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).¹³

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 27, 2001, to (1) the receipt of shares of common stock (Common Stock) issued by Prudential Financial, Inc. (Prudential Financial or the Holding Company) or (2) the receipt of cash (Cash) or policy credits (Policy Credits) by any eligible policyholder (the Eligible Policyholder) of Prudential Insurance, which is an employee benefit plan (the Plan), including Plans sponsored by Prudential Insurance and/or its affiliates for the benefit of their own employees (collectively, the Prudential Insurance Plans),¹⁴ in exchange for such Eligible Policyholder's mutual membership interest in Prudential Insurance, pursuant to a plan of conversion (the Plan of Reorganization) adopted by Prudential Insurance and implemented in accordance with section 17:17C-2 of the New Jersey Insurance Law.

In addition, if the exemption is granted, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply, effective September 27, 2001, to the receipt and holding, by the Prudential Welfare Benefits Plan (the Prudential Welfare Plan), of Common Stock, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

The proposed exemption is subject to the general conditions set forth below in Section II.

¹³ For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

¹⁴ Unless otherwise noted, references to the term "Plan" are meant to include "outside" Plan policyholders of Prudential Insurance as well as the Prudential Welfare Plan.

Section II. General Conditions

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under New Jersey Insurance Law and is subject to review and supervision by the New Jersey Commissioner of Banking and Insurance (the Commissioner).

(b) The Commissioner reviews the terms of any options that are provided to Eligible Policyholders of Prudential Insurance as part of such Commissioner's review of the Plan of Reorganization, and the Commissioner only approves the Plan of Reorganization following a determination that the Plan of Reorganization is fair and equitable to all Eligible Policyholders.

(c) Except as provided below, each Eligible Policyholder has an opportunity to comment on and vote to approve the Plan of Reorganization after full written disclosure of the terms of the Plan of Reorganization is given to such policyholder by Prudential Insurance. As provided under the Plan of Reorganization and approved by the Commissioner,

(1) Eligible Policyholders of policies issued by designated subsidiaries (the Designated Subsidiaries) of Prudential Insurance will not have the opportunity to comment and vote on the Plan of Reorganization, and

(2) Prudential Insurance will be precluded from voting on the Plan of Reorganization where a group policy is issued to Prudential Insurance as trustee for a multiple employer, or similar, trust (the MET) which is not a plan described in section 3(3) of the Act or section 4975(e)(1) of the Code.

(d) Any election by an Eligible Policyholder which is a Plan to receive Common Stock pursuant to the terms of the Plan of Reorganization, or any decision by such Eligible Policyholder to participate in the commission-free purchase and sale program (the Program), is made by one or more fiduciaries of such Plan that are independent of Prudential Insurance and neither Prudential Insurance nor any of its affiliates exercises any discretion or provides "investment advice," within the meaning of 29 CFR 2510.3-21(c) with respect to such election or decision-making.

(e) In the case of the Prudential Insurance Plans, the independent fiduciary—

(1) Conducts a due diligence review of the subject transactions; and

(2) Votes whether to approve or disapprove the Plan of Reorganization, on behalf of such Plan.

(f) In the case of the Prudential Welfare Plan, the independent fiduciary—

(1) Votes shares of Common Stock that are held by such Plan, which exceed the limitation of section 407(a) of the Act;

(2) Disposes of Common Stock in excess of the limitation set forth under section 407(a)(2) of the Act as soon as reasonably practicable, but in no event later than six months after the effective date of the Plan of Reorganization;

(3) Provides the Department with a complete and detailed final report as it relates to such Plan prior to the effective date of the Plan of Reorganization; and

(4) Takes all actions that are necessary and appropriate to safeguard the interests of such Plan.

(g) After each Eligible Policyholder entitled to receive Common Stock is allocated at least 8 shares (or the equivalent value of 10 shares of Common Stock for Eligible Policyholders receiving Cash or Policy Credits), additional consideration is allocated to Eligible Policyholders who own eligible policies based on a methodology that takes into account each eligible policy's contribution to Prudential Insurance's surplus, which methodology has been reviewed by the Commissioner.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of Common Stock or in connection with the implementation of the Program.

(j) All of Prudential Insurance's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

(k) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term "Prudential Insurance" means The Prudential Insurance Company of America and any affiliate of Prudential Insurance as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Prudential Insurance includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Prudential Insurance. (For purposes of this paragraph, the term "control" means the

power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term "Eligible Policyholder" means a policyholder who is eligible to receive compensation under Prudential Insurance's Plan of Reorganization. Eligible Policyholders are policyholders of Prudential Insurance on the day the Plan of Reorganization is adopted by the Board of Directors of Prudential Insurance.

(d) The term "Designated Subsidiary" means stock life insurance company subsidiaries of Prudential Insurance whose policyholders, pursuant to section 17:17C-1 of New Jersey Insurance Law, have been deemed eligible under the Plan of Reorganization to receive compensation, but which are not qualified to vote on the Plan of Reorganization.

(e) The term "Holding Company" refers to a New Jersey stock business corporation which will be named "Prudential Financial, Inc." Under the Plan of Reorganization, Prudential Insurance will become an indirect, wholly owned stock life insurance company subsidiary of the Holding Company.

(f) The term "Policy Credit" means a dividend accumulation, an additional dividend, an increase in the policy's account value, an extension of the policy's expiration date, or an additional payment under an annuity contract.

(g) The term "Plan" refers to employee benefit plans covered by ERISA or section 4975(e) of the Code.

(h) The term "demutualization" refers to the process of an insurance company's reorganizing or converting from a mutual life insurance company to a stock life insurance company." As used herein, "reorganization" and "conversion" also refer to a demutualization.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of September 27, 2001.

Summary of Facts and Representations

Description of the Parties

1. Prudential Insurance is a mutual life insurance company organized under the laws of the state of New Jersey. Its principal place of business is located at Prudential Plaza, Newark, New Jersey. The company is licensed to conduct insurance business in all 50 states and the District of Columbia. As of December 31, 1999, Prudential Insurance and its subsidiaries had total

assets of about \$285 billion, total liabilities of about \$266 billion, and equity of about \$19 billion. Also as of December 31, 1999, Prudential Insurance had approximately 1 million individual and group insurance contracts in force which were issued to, or on behalf of, employee benefit plans. Currently, Prudential Insurance's financial strength ratings are as follows: "A-1," Moody's; "A+," Standard & Poor's; and "A," A.M. Best.

Prudential Insurance's principal products include individual and group life insurance contracts, endowment contracts, insurance contracts, annuities, including tax deferred annuities described in section 403(b) of the Code (TDAs), and individual retirement annuities described in section 408(b) of the Code (IRAs), and a variety of pension contracts. Additionally, Prudential Insurance has a number of affiliates and subsidiaries that provide financial services and products, including investment management, brokerage, and mutual funds, as well as real estate services.

As a mutual life insurance company, Prudential Insurance has no authorized, issued, or outstanding stock. Instead, its policyholders are both customers and owners of the company. In this regard, the life insurance, endowment, annuity, and certain other insurance and pension plan contracts issued by Prudential Insurance combine both insurance coverage with proprietary rights, which are referred to as "membership interests." These membership interests entitle Prudential Insurance policyholders to vote for the Board of Directors and on other matters at annual and special meetings, as well as on the conversion of the company from a mutual life insurance company to a stock life insurance company. Further, the membership interests accord most policyholders of Prudential Insurance the right to share in the annual, divisible surplus of the company that is distributed in the form of policyholder dividends. A membership interest cannot be sold separately from the underlying insurance policy and it is extinguished automatically when the policy ends.

2. Prudential Insurance and its affiliates provide fiduciary and other services to Plans described in section 3(3) of ERISA and to other plans described in section 4975(e)(1) of the Code, many of which are Prudential Insurance policyholders. As a result, Prudential Insurance may be considered a party in interest or a disqualified person with respect to such Plans under section 3(14)(A) and (B) of the Act as well as the related derivative provisions

of section 3(14) of the Act. At present, approximately 800,000 policyholders of Prudential Insurance are Plans.

3. Although Prudential and its affiliates sponsor a number of in-house Plans (i.e., the Prudential Insurance Plans) for the benefit of their employees, the only Plan that will be covered by the subject exemption is the Prudential Welfare Plan.¹⁵ This Plan provides medical, dental and insurance benefits to its employees. Benefits under the Plan are paid either through a combination of employer and employee contributions, or they consist entirely of employee contributions. As of December 31, 1999, the Prudential Welfare Plan had total assets of \$1.97 billion and approximately 63,170 participants.

Benefits under the Prudential Welfare Plan are funded through group insurance policies issued by Prudential Insurance, through insurance contracts issued by unaffiliated insurers, or on a self-insured basis. In addition, Prudential Insurance has established a number of voluntary employee beneficiary associations (VEBAs) to hold assets of the Prudential Welfare Plan, including Prudential Insurance group and individual policies and individual securities, such as equities or bonds. Prudential Insurance or its affiliates generally manage assets held by the VEBAs that are not insurance contracts.

Reasons for the Reorganization

4. Prudential Insurance represents that it has grown from a company primarily focused on selling life insurance to a financial services institution that provides a wide range of insurance, asset management, securities and other financial products and services. Although the mutual company structure has worked well in the past, Prudential Insurance explains that its Board of Directors has had to reexamine retaining this structure in light of changes occurring in the global financial services market, such as increased competition from companies outside the United States and from non-insurance companies, changes in distribution channels for financial services products, and the reorganization into stock companies (through demutualization) of

¹⁵ As discussed later in this proposed exemption, Prudential Insurance states that exemptive relief under section 408(e) of the Act is available with respect to distributions of Common Stock to its in-house, ERISA-covered plans, namely, the Prudential Merged Retirement Plan, the Prudential Employee Savings Plan, the PSI Long Term Care Plan, the PSI Life/Disability Plan and the PSI Dental Plan. Nevertheless, the Department has decided to extend the exemption to cover all Prudential Insurance Plans in order to mitigate inadvertent prohibited transactions that may arise in connection with the demutualization.

many of Prudential Insurance's competitors.

After considering these changes and evaluating other possible courses of action, Prudential Insurance states that its Board of Directors concluded that a stock company structure would have many business and organizational advantages. Accordingly, on February 10, 1998, Prudential Insurance's Board of Directors initiated the process of reorganizing into a stock company by authorizing the officers of Prudential Insurance to study the feasibility of a reorganization and to prepare a Plan of Reorganization for the Board's consideration. On December 15, 2000, the Board of Directors unanimously approved and adopted the Plan of Reorganization (which was subsequently amended and restated as of the December 15, 2000 date) to effect the change in Prudential Insurance's business structure through demutualization. The Board's reasons were as follows:

- First, it was believed that a publicly-traded stock company could compete more effectively in the global financial services industry. Access to capital through sales of Common Stock would facilitate the funding of new products, services and sales channels that are consistent with Prudential Insurance's overall business strategy. Also, in lieu of using cash, Common Stock would be available to acquire other companies for future growth.
- Second, the demutualization would enable Prudential Insurance to distribute the total value of the company to Eligible Policyholders pursuant to the Plan of Reorganization, thereby affording Eligible Policyholders the opportunity to realize economic value, in the form of Common Stock, Cash or Policy Credits, in exchange for such policyholders' illiquid membership interests. Eligible Policyholders receiving Common Stock would be able to retain their shares of Common Stock or sell it for cash at market value.
- Third, the Holding Company would be able to use stock-based compensation programs to recruit and retain high-quality employees and to align their long-term interests with shareholders' interests.
- Fourth, having publicly-traded Common Stock would require that Prudential Insurance report its financial performance to the financial markets periodically and be compared with similar institutions by financial analysts.

5. Accordingly, Prudential Insurance requests an administrative exemption from the Department that will permit certain of its Plan policyholders to

engage in transactions related to the implementation of the Plan of Reorganization.¹⁶ Specifically, Prudential Insurance requests a prospective exemption that will cover the receipt of Common Stock issued by the Holding Company, Cash or Policy Credits by Eligible Policyholders that are Plans, including the Prudential Welfare Plan, in exchange for such Eligible Member's membership interest in Prudential Insurance.¹⁷ Prudential Insurance represents that the receipt of Common Stock, Cash, or Policy Credits by the Plan can be viewed as a prohibited sale or exchange of property between it and a Plan, or as a transfer or use of the Plan's assets by or for the benefit of Prudential Insurance in violation of section 406(a)(1)(A) and (D) of the Act.

In addition, Prudential Insurance has requested that the exemption apply to

¹⁶ In connection with its demutualization, it should be noted that Prudential Insurance has received advisory opinions from the Department regarding (a) whether it would be deemed to be a fiduciary when implementing policyholder decisions to allocate compensation among plan participants or among plans where the policy funds more than one plan (ERISA Advisory Opinion 2001-02A (Feb. 15, 2001)); and (b) whether the exercise of certain, limited policyholder duties in connection with the receipt of compensation by TDA and IRA policyholders would affect the availability of the Department's "safe harbor" regulations for TDAs and IRAs (ERISA Advisory Opinion 2001-03A (Feb. 15, 2001)). In addition, in a letter dated February 15, 2001, which responded to a request for guidance on behalf of Prudential Insurance, the Department noted that it would not assert a violation of the Act in any enforcement proceeding solely because of a failure to hold demutualization proceeds in trust, provided that the plan fiduciary took specific steps to safeguard that asset. In this regard, (a) such assets would consist solely of proceeds received by the policyholder in connection with the demutualization; (b) such assets, and any earnings thereon would be placed in the name of the plan in an interest-bearing account, in the case of cash, or a custodial account, in the case of stock, as soon as reasonably possible following receipt, and such proceeds would be applied for the payment of participant premiums or applied to plan benefit enhancements or distributed to plan participants as soon as reasonably possible but no later than twelve months following receipt; (c) such assets would be subject to the control of a designated plan fiduciary; (d) the plan would not otherwise be required to maintain a trust under section 403 of the Act; and (e) the designated fiduciary would be required to maintain such documents and records as deemed necessary under the Act with respect to the foregoing.

¹⁷ Prudential Insurance represents that the shares of Common Stock that will be issued to the Prudential Insurance Plans, other than the Prudential Welfare Plan, will constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act and that section 408(e) of the Act will apply to such distributions. As such, Prudential Insurance explains that there will be no violation of section 407(a) of the Act with respect to the acquisition of Common Stock by these Plans. The Department however, expresses no opinion herein, on whether the Common Stock will constitute qualifying employer securities and whether such distributions will satisfy the terms and conditions of section 408(e) of the Act.

distributions of Common Stock to the Prudential Welfare Plan. Prudential Insurance recognizes that there may be an "excess" holding problem with respect to employer stock that is received and held by this Plan which would be in violation of section 406(a)(1)(E) and (a)(2) of the Act and section 407(a)(2) of the Act, in addition to section 406(a)(1)(A) and (D) of the Act.¹⁸ Prudential Insurance states that, if the Prudential Welfare Plan were to accept Common Stock as demutualization consideration, the fair market value of such stock would cause the aforementioned violations of the Act. To avoid this problem, Prudential Insurance represents that U.S. Trust Company, N.A. (U.S. Trust) will serve on behalf of the Prudential Welfare Plan as the independent fiduciary and it will represent the interests of such Plan with respect to the Plan's acquisition, holding and disposition of shares of Common Stock.¹⁹ Finally, Prudential Insurance has confirmed that the shares of Common Stock that are issued to the Prudential Welfare Plan will not violate the provisions of section 407(f) of the Act.²⁰ Therefore, no further exemptive relief is required.

Procedural Requirements for Demutualization

6. Prudential Insurance proposes to reorganize under section 17:17C-2 of New Jersey Insurance Law. In this

¹⁸ Section 406(a)(1)(E) of the Act prohibits the acquisition by a plan of any employer security which would be in violation section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or discretion to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the Act. Section 407(a)(1) of the Act prohibits the acquisition by a plan of any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act provides that a plan may not acquire any qualifying employer security, if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

¹⁹ As noted in Representation 18, U.S. Trust has also agreed to serve, in a limited capacity, as independent fiduciary for the Prudential Merged Retirement Plan, the Prudential Employee Savings Plan, the PSI Long Term Care Plan, the PSI Life/Disability Plan and the PSI Dental Plan, which are also Prudential Insurance Plans. In this regard, U.S. Trust is required to conduct a due diligence review of the demutualization and vote whether to approve or disapprove the Plan of Reorganization on behalf of such Plans, including the Prudential Welfare Plan.

²⁰ Section 407(f) of the Act, which is applicable to the holding of a qualifying employer security by a plan other than an eligible individual account plan, requires that (a) immediately following its acquisition by a plan, no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan; and (b) at least 50 percent of the stock be held by persons who are independent of the issuer.

regard, Prudential Insurance's Board of Directors adopted the Plan of Reorganization on December 15, 2000 under which Prudential Insurance will, subject to the approval of its policyholders and the Commissioner (who was provided with a copy of the Plan of Reorganization on March 14, 2001), and after satisfying certain other conditions set forth in the Plan of Reorganization, be reorganized as a stock life insurance company. Simultaneously with this corporate reorganization, the shares of Prudential Insurance will be issued to the Holding Company, in exchange for Holding Company Common Stock, thereby making Prudential Insurance an indirect, wholly owned subsidiary of the Holding Company. The Common Stock will be distributed to Eligible Policyholders of Prudential Insurance and such stock will be offered to the public through a concurrent Initial Public Offering (IPO). The Common Stock will also be listed on the New York Stock Exchange (the NYSE).

New Jersey Insurance Law establishes an approval process for the conversion of a mutual life insurance company to a stock life insurance company. Such conversion must be initiated by the board of directors of the mutual company, which must adopt a plan of reorganization by a vote of at least three-fourths of the members of the insurer's entire board of directors upon an express finding that the plan is fair and equitable to policyholders. Once adopted by the company's board of directors, the plan of reorganization must be submitted to the Commissioner for review and approval. In reviewing the plan of reorganization, the Commissioner is required to appoint one or more qualified and independent actuaries to provide a certification regarding the reasonableness of the allocation methodology. The Commissioner is also permitted to engage the services of other advisors to advise him or her on matters relating to the reorganization. In the Prudential Insurance demutualization, the Commissioner has retained the law firm of Saul Ewing LLP to provide legal services; Fox-Pitt, Kelton, Inc. and Townsend & Shupp Co. to provide investment banking services; and Ernst & Young and Arthur Andersen to provide actuarial and accounting services.

7. Under New Jersey Insurance Law, the Commissioner is required to hold a public hearing on a plan of reorganization no later than 90 days after the Commissioner determines the application for reorganization is complete. Notice of the public hearing

must be provided to each policyholder of the insurance company within 45 days of the hearing. The notice must be in the form, and provided in the manner, that was submitted in the company's application materials and approved by the Commissioner. The purpose of a public hearing is to allow interested persons to comment on the fairness of the terms of the plan of reorganization, and to consider whether the reorganization is in the best interest of the insurer and its policyholders.

The policyholders of the mutual life insurance company generally must also approve the plan of reorganization. New Jersey Insurance Law provides that the policyholders who may qualify to vote on the plan are the "qualified voters" of the mutual life insurance company.²¹ Each qualified voter is entitled to one vote and the plan must be approved by a vote of not less than two-thirds of all the votes cast by the mutual insurer's qualified voters. The qualified voters of the mutual life insurance company must be provided with notice of their opportunity to vote on the plan of reorganization, which notice must be approved by the Commissioner and accompanied by a copy of the plan of reorganization or a summary thereof. Such notice may also be combined with a notice of the hearing.

8. Once a plan of reorganization has been adopted by the company's board of directors, and after any public hearing and policyholder vote on the plan of reorganization, the Commissioner is required to approve the plan if he or she finds that: (a) the plan is fair and equitable to policyholders; (b) the plan promotes the best interest of the mutual insurer and its policyholders; (c) the plan provides for the enhancement of the operations of the reorganized insurer; (d) the plan is not contrary to law; (e) the plan is not detrimental to the public; and (f) after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the Commissioner deems to be reasonably necessary for its future solvency. A decision by the Commissioner to approve a

²¹ As further described herein, New Jersey Insurance Law provides that certain policyholders who otherwise may not be eligible to receive compensation in connection with Prudential Insurance's reorganization may be "deemed" eligible to receive such compensation. However, the New Jersey demutualization statute does not grant Prudential Insurance or the Commissioner similar authority to "deem" certain policyholders qualified to vote on the Plan of Reorganization. As such, "deemed" eligible policyholders will be eligible to receive compensation but will not be qualified to vote on the Plan of Reorganization. The "deemed" eligible policyholders represent a small percentage of all eligible policyholders.

reorganization plan is subject to judicial review in the New Jersey courts.

The Reorganization

9. Prudential Insurance anticipates that the Plan of Reorganization will be approved or disapproved by the Commissioner and Prudential Insurance's policyholders by the end of 2001. However, the main features of the Plan of Reorganization require the formation of the Holding Company, i.e., Prudential Financial, which has been organized initially as a subsidiary of Prudential Insurance with Prudential Insurance owning all of the formation shares of the Holding Company. On the effective date of the reorganization, Prudential Insurance will become a stock life insurance company, and issue common stock to the Holding Company in exchange for the Common Stock, which will be distributed by Prudential Insurance in accordance with the Plan of Reorganization. At that time, Prudential Insurance will surrender to the Holding Company, which will cancel, all of the formation shares of the Holding Company initially held by Prudential Insurance. A second holding company, Prudential Holdings, LLC (Prudential Holdings), has been formed as a subsidiary of the Holding Company. As part of the reorganization, the Holding Company will contribute shares of Prudential Insurance to Prudential Holdings and Prudential Insurance will become an indirect wholly owned subsidiary of the Holding Company.

As a result of the reorganization, Prudential Insurance will, by operation of New Jersey Insurance Law, become a stock life insurance company. Prudential Insurance's charter and by-laws will be amended and restated, and all membership interests in Prudential Insurance will be extinguished in accordance with New Jersey Insurance Law. Following the reorganization, none of Prudential Insurance's insurance policies will be terminated. All policies then in force will remain in force, and all policyholders will be entitled to receive all of the benefits under their policies and contracts to which they would have been entitled if the Plan of Reorganization had not been adopted. In this regard, no actual exchange of contracts will take place as a result of the reorganization. The contractual terms and benefits of Prudential Insurance's life insurance, endowment, annuity, pension plan, and other insurance contracts, including the face values, insurance in force, borrowing terms, amount or pattern of death benefit, premium pattern, dividend eligibility, interest rate or rates guaranteed on issuance of the contract,

and guaranteed mortality and expense charges, will be unchanged by the reorganization.

Allocation and Distribution of Consideration to Eligible Policyholders

10. Prudential Insurance's Plan of Reorganization provides for "Eligible Policyholders" to receive compensation in exchange for the surrender of membership interests in the mutual life insurance company. Under the Plan of Reorganization, Eligible Policyholders are those policyholders whose Prudential Insurance policies were in force on the date of adoption of the Plan of Reorganization by Prudential Insurance's Board of Directors, i.e., December 15, 2000.²² Prudential Insurance's Plan of Reorganization generally provides that the Eligible Policyholder is the person whose name is on the insurer's record as owner of the policy.²³

Prudential Insurance anticipates that it will distribute compensation to Eligible Policyholders within 45 days after the effective date of the reorganization (or within 45 days after the expiration of the top-up period for Eligible Policyholders receiving cash or policy credits). (The effective date is the date of the closing of the planned IPO, which will occur after the Plan of Reorganization is approved by the Commissioner and Prudential Insurance's policyholders, and the other conditions set forth in the Plan of Reorganization are satisfied.)

11. Under the Plan of Reorganization, the total value of Prudential Insurance (currently estimated to be between \$18 and \$20 billion) will be allocated among Eligible Policyholders as follows:

- First, each Eligible Policyholder that holds one or more policies in the

same legal capacity will receive one basic fixed component of compensation that is equal to 8 shares of Common Stock (or the equivalent of 10 shares of Common Stock to Eligible Policyholders receiving Cash or Policy Credits). Each Eligible Policyholder will be allocated this basic fixed component, and only one basic fixed component, regardless of the number of eligible policies the Eligible Policyholder owns (in the same legal capacity) or their value.

- Second, each Eligible Policyholder may receive a basic variable component of compensation that will be allocated to Eligible Policyholders to reflect their policy's or policies' contribution to Prudential Insurance's surplus, in the past, compared to all other eligible policies, and how much their policy or policies are expected to contribute to Prudential Insurance's surplus in the future, compared to all other eligible policies. (If the policy or policies have made, and are expected to make, no contribution to Prudential Insurance's surplus, then the basic variable component will be zero).

As noted above, the allocation methodology developed by Prudential Insurance's actuaries must be fair and equitable, a finding that the Commissioner is also required to make before approving the Plan of Reorganization. To assist in making this finding, the Commissioner has retained Ernst & Young to evaluate and provide an opinion on the fairness of the allocation methodology developed by Prudential Insurance. In addition, Prudential Insurance has retained the actuarial firm of Milliman & Robertson, Inc. to assist it in developing an equitable allocation methodology.

12. Under the Plan of Reorganization, Eligible Policyholders, except for certain Eligible Policyholders, who may elect, or are required to receive Cash or Policy Credits, will receive Common Stock as compensation for their membership interests in the mutual life insurance company, which interests will be extinguished.²⁴ Any election by a plan

policyholder to choose stock pursuant to the terms of the Plan of Reorganization will be made by one or more independent fiduciaries of the plan policyholder, and neither Prudential Insurance nor any of its affiliates will exercise any discretion with respect to a plan policyholder's election or provide "investment advice," as that term is defined in 29 CFR 2510.3-21(c), with respect to the election.

In addition to shares issued to Eligible Policyholders, the Holding Company will offer to the public its Common Stock in an IPO. At such time that the Holding Company sells shares in the IPO, the Common Stock will be listed on the NYSE. Under the Plan of Reorganization, Eligible Policyholders will not pay any brokerage commissions or similar fees in connection with their receipt of Common Stock.

13. Under the Plan of Reorganization, certain policyholders who are otherwise Eligible Policyholders, will receive Cash or Policy credits in lieu of Common Stock. Eligible Policyholders who may or must receive Cash or Policy Credits typically are policyholders who have been allocated 50 or fewer²⁵ shares of Common Stock, whose mailing address is outside the United States or unknown, whose policies are subject to a judgment lien, creditor lien (other than a policy loan made by Prudential Insurance) or bankruptcy proceedings; or who hold TDA or IRA contracts.

Eligible Policyholders who hold TDA or IRA contracts will receive Policy Credits in exchange for their mutual membership interests because such policyholders usually are not able to hold Common Stock under the applicable tax laws. In addition, certain individual life insurance or annuity contracts held in connection with qualified plans (*i.e.*, section 401(a) or 403(a) of the Code) will receive Policy Credits.

Eligible Policyholders who are allocated 50 or fewer shares of Common Stock (the specific number of which will be determined by Prudential Insurance's Board of Directors on or

determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets." See ERISA Advisory Opinion 2001-02A, Feb. 15, 2001.

²⁵ Prudential Insurance represents that its Board of Directors may adjust this number downward on or before the effective date.

²² Certain policyholders are "deemed" eligible under the Plan of Reorganization as provided under New Jersey Insurance Law.

²³ Under the Plan of Reorganization and New Jersey Insurance Law, the general rule is that the group contract holder or group insurance policy owner of an Eligible Policy, and not the individuals or entities covered under the eligible contract or policy, is entitled to vote on the Plan of Reorganization and to receive any demutualization compensation payable with respect to that contract or policy. However, there are special rules under the Plan of Reorganization concerning Prudential Insurance's ability to vote on the Plan of Reorganization and to receive demutualization compensation on contracts or policies that it, or an affiliate, may hold. In this regard, where Prudential Insurance or an affiliate is the trustee of a MET, it is precluded under New Jersey Insurance Law from actually voting on the Plan of Reorganization. Similarly, New Jersey Insurance Law precludes voting on the Plan of Reorganization by employers and individuals participating in the MET. However, the statute requires that the demutualization consideration received on behalf of the MET by Prudential Insurance be passed through to such participating employers and individuals.

²⁴ "The proceeds of the demutualization will belong to the plan if they would be deemed to be owned by the plan under ordinary notions of property rights. See ERISA Advisory Opinion 92-02A, Jan. 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the

prior to the effective date) will receive Cash unless the policyholder elects to receive Common Stock. Such election must be indicated on a form provided by Prudential Insurance to the policyholder and returned to Prudential Insurance prior to a date established by the Board of Directors and approved by the Commissioner. The election can also be made by telephonically or over the Internet.

14. Eligible Policyholders who receive all of their compensation with respect to one or more policies held in the same legal capacity in the form of Cash and/or Policy Credits will receive one additional fixed component that is equal to two shares of Common Stock and an additional variable component if the sum of their basic fixed and basic variable components is equal to 26 or more shares of Common Stock. The amount of the additional variable component is based on the sum of the policyholder's basic fixed and basic variable component. As a result, Eligible Policyholders receiving the additional fixed and additional variable component will be provided approximately a 10 percent increase in the number of shares of Common Stock allocated to them. The purpose of the additional components is to distribute to Eligible Policyholders that do not receive Common Stock the value that Prudential Insurance anticipates will result from additional savings inherent in having a smaller shareholder base.

15. The Plan of Reorganization also includes a "top-up" provision. The top-up is designed to provide Eligible Policyholders who will receive any portion of their compensation in the form of Cash and/or Policy Credits with a possible upward adjustment to their compensation depending on the performance of Common Stock during the top-up period. If the average of the closing prices of the Common Stock during the first 20 trading days that the stock is traded on the NYSE exceeds 110 percent of the IPO price, the excess, up to 120 percent of the IPO share price, will be added to the IPO price and reflected in the Cash and/or Policy Credits provided to Eligible Policyholders. The top-up feature provides Eligible Policyholders who are receiving any portion of their demutualization compensation in Cash or Policy Credits with their full share of the aggregate value that is being distributed to all Eligible Policyholders.

16. In addition to the owners of mutual insurance policies it has issued, Prudential Insurance has determined that persons who owned in force policies on December 15, 2000 that have been issued by certain of its stock life

insurance company subsidiaries (*i.e.*, the Designated Subsidiaries), namely, Pruco Life Insurance Company, Pruco Life Insurance Company of New Jersey and Prudential Select Life Insurance Company of America, will be "deemed" Eligible Policyholders under the Plan of Reorganization for purposes of receiving compensation in the reorganization.²⁶ Prudential Insurance has concluded that "special circumstances" exist with respect to these policyholders and has determined that it would be fair and equitable to its policyholders and in the best interest of Prudential Insurance and its policyholders to include these policyholders as Eligible Policyholders.

As required under New Jersey Insurance Law, the Commissioner will have to find that inclusion of the Designated Subsidiary policyholders is fair and equitable to all Prudential Insurance policyholders as a whole. Moreover, all of the Eligible Policyholders of the Designated Subsidiaries which are Plans will be treated in the same manner as any other Eligible Policyholder that is not a Plan under the Plan of Reorganization.

Although the policyholders of the Designated Subsidiaries will receive compensation in connection with Prudential Insurance's reorganization, none will be permitted to vote on the Plan of Reorganization.²⁷ Nevertheless, Prudential Insurance believes the interests of the policyholders of the Designated Subsidiaries will be protected because the Commissioner, with the assistance of outside consultants, is required to find that the Plan of Reorganization is fair and equitable. Any Plan policyholder of a Designated Subsidiary will be treated

²⁶ New Jersey Insurance Law provides, in pertinent part, that an "eligible policyholder" is a "policyholder who owns, or is deemed by the plan of reorganization to own, a policy that is, or that is deemed by the plan of reorganization to be, in force on the adoption date, or a policyholder who is deemed eligible by the plan of reorganization, including as a result of reinstatement in accordance with the terms of the policy or the plan of reorganization, or otherwise." (emphasis added)

²⁷ Although New Jersey Insurance Law permits these policyholders to be "deemed" eligible for compensation pursuant to the Plan of Reorganization, there is no similar flexibility to "deem" such policyholders to be qualified to vote on the Plan of Reorganization. In this regard, the New Jersey demutualization statute provides that only "qualified voters" may vote on a plan of reorganization, and makes no provision for "deemed" qualified voters. A "qualified voter" is defined as "every policyholder who is 18 years of age or more and whose policy has been in force for at least 1 year." Because the owners of policies issued by Designated Subsidiaries do not qualify as "policyholders" of Prudential Insurance, they do not meet the statutory definition of "qualified voter" and are not, therefore, entitled to vote on the Plan of Reorganization, according to Prudential Insurance.

the same under the Plan of Reorganization as any other Designated Subsidiary policyholder. Moreover, as a condition of the reorganization, a qualified and independent actuary appointed by Prudential Insurance must certify that the methodology and underlying assumptions used to allocate compensation among Eligible Policyholders are fair and equitable to all policyholders.

17. The Plan of Reorganization also provides for the establishment of a commission-free sales and purchase program under which Eligible Policyholders who receive 99 or fewer shares of Common Stock will be permitted to sell, on a commission-free basis, all of the stock they have received pursuant to the Plan of Reorganization, or purchase the additional amount of shares necessary to increase their holdings to 100 shares. The Program will commence prior to the second anniversary of the effective date of the Plan of Reorganization. Neither Prudential Insurance nor its affiliates will provide "investment advice," as described in 29 CFR 2510.3-21(c), or exercise investment discretion with respect to those policyholders eligible to participate in the Program.

Role of the Independent Fiduciary

18. Pursuant to an agreement dated January 22, 2001 (the Agreement), Prudential Insurance appointed U.S. Trust to conduct a due diligence review of the proposed demutualization of Prudential Insurance and to vote on whether to approve or disapprove of the Plan of Reorganization on behalf of all of the Prudential Insurance Plans. Under the Agreement, U.S. Trust has acknowledged and accepted the duties, responsibilities and liabilities of an independent fiduciary and has agreed to act on behalf of such Prudential Insurance Plans. In return for services rendered, Prudential Insurance will compensate U.S. Trust. The Agreement further provides that if Prudential Insurance requests U.S. Trust to manage the compensation received by the Prudential Insurance Plans, such responsibilities will be the subject of a separate engagement letter (the Supplemental Agreement).

Under the Supplemental Agreement dated July 30, 2001, Prudential Insurance has engaged U.S. Trust as an independent fiduciary specifically for the Prudential Welfare Plan, to take all actions that are necessary and appropriate to safeguard the interests of this Plan, including the management and disposition of Common Stock to be received by the Plan as demutualization consideration, to the extent such

securities exceed the 10 percent limitation of section 407(a)(2) of the Act.²⁸ In addition to its previous commitments set forth under the Agreement, U.S. Trust agrees: (a) To serve as an independent fiduciary for the Prudential Welfare Plan (including, but not limited to, being custodian of the compensation received on behalf of such Plan and/or serving as investment manager of any one of the VEBAs holding Common Stock on behalf of the Prudential Welfare Plan); and (b) to be represented as such under any prohibited transaction filing made by Prudential Insurance with respect to the Prudential Welfare Plan. As independent fiduciary for the Prudential Welfare Plan, U.S. Trust will also be required to dispose of any shares of Common Stock that are in excess of the 10 percent limitation set forth under section 407(a)(2) of the Act as soon as reasonably practicable, but in no event later than 6 months from the effective date of the Plan of the Reorganization. Further, U.S. Trust will be required to prepare reports and documentation for the Department that may be required for purposes of the examination process, including, but not limited to, reports evaluating the Plan of Reorganization as it relates to the Prudential Welfare Plan's holding and disposition of Common Stock in a timely fashion. Finally, U.S. Trust will be required to vote on shares of Common Stock that are held by the Prudential Welfare Plan which exceed the limitation of section 407(a)(2) of the Act.

U.S. Trust represents that it is qualified to act as an independent fiduciary for the Prudential Welfare Plan in connection with the Plan of Reorganization. Its parent, U.S. Trust Corporation, was founded in 1853 and is subject to regulation as a trust company by the State of New York. U.S. Trust is the principal subsidiary of U.S. Trust Corporation, a member of the Federal Reserve System and the Federal Deposit Insurance Corporation, and an entity having approximately \$5 billion in assets as December 31, 1999. In addition, U.S. Trust Corporation is a wholly-owned subsidiary of the Charles

Schwab Corporation and has over \$73 billion in assets under management, a significant percentage of which consists of ERISA retirement plan assets. U.S. Trust has served as an independent fiduciary for numerous employee benefit plans that acquire or hold employer securities and has managed, at various times, over \$18 billion in employer securities held by various such plans. In managing such investments, U.S. Trust has exercised discretionary authority over many transactions involving the acquisition, retention and disposition of employer securities.

U.S. Trust represents that it is independent of Prudential Insurance and its affiliates and has no business ownership or control relationship, nor is it otherwise affiliated with Prudential Insurance. U.S. Trust further represents that it derives less than one percent of its annual income from Prudential Insurance or its affiliates.

U.S. Trust has conducted a preliminary review of the Plan and has determined that nothing in the Plan of Reorganization should preclude the Department from proposing the requested exemption. As noted above, U.S. Trust will provide the Department with a final report evaluating the Plan of Reorganization prior to its effective date.

19. In summary, it is represented that the transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Reorganization will be implemented pursuant to stringent procedural and substantive safeguards imposed under New Jersey Insurance Law and supervised by the Commissioner.

(b) The Commissioner will only approve the Plan of Reorganization following a determination that, among other things, such Plan is fair and equitable to all Eligible Policyholders.

(c) One or more independent fiduciaries of each Plan, including the Prudential Insurance Plans, will have an opportunity to determine whether to vote to approve and comment on the terms of the Plan of Reorganization, and will also be solely responsible for any decisions that may be permitted under the Plan of Reorganization regarding the form of consideration to be received in return for their respective membership interests.

(d) Because of all of the protections afforded to Plans under New Jersey law, no ongoing involvement by the Department will be required in order to safeguard the interests of Plan policyholders.

(e) The Plan of Reorganization will enable Plans to convert their illiquid membership interests in Prudential Insurance into shares of Common Stock, Cash, or Policy Credits.

(f) The insurance and annuity contracts affected by the Plan of Reorganization will remain in force and there will be no changing of premiums or compromising any of the benefits, values, guarantees, or other policy obligations of Prudential Insurance to its policyholders and contractholders.

Notice to Interested Persons

Pursuant to the requirements of New Jersey Insurance Law, during May 2001, Prudential Insurance provided policyholders, including Plan policyholders, with an advance disclosure document relating to its conversion to a stock company. The document, known as "The Policyholder Information Booklet" (or PIB) included, among other things, (a) a notice of the date, time, and place for voting on the Plan of Reorganization; (b) a notice of the time, place, and purpose of a public hearing on the Plan of Reorganization, at which policyholders could express their views on the Plan of Reorganization; and (c) general information regarding Prudential Insurance's Plan of Reorganization. The PIB was provided in a form and manner approved by the Commissioner and was sent to over 11 million Prudential Insurance policyholders, of which approximately 800,000 policyholders were Plans. Prudential Insurance has deemed these Plan policyholders to be "interested persons" for purposes of this exemption.

In connection with the exemption request, Prudential Insurance wishes to provide notice of the proposed exemption in a manner which takes into account (a) the costs and administrative burden of providing copies of the proposed exemption to 800,000 Plan policyholders; (b) the notices required, and policyholder protections accorded, under state law, and (c) the limited scope of exemptive relief that it has requested. In this regard, Prudential Insurance has incorporated the Department's required supplemental statement describing the exemption proceeding (see 29 CFR 2570.43) in a slightly modified form in the PIB under the special heading "Notice of Application by The Prudential Insurance Company of America for Prohibited Transaction Exemption" (hereinafter, the "PIB Notice"). The PIB Notice is intended to inform Plan policyholders of the anticipated publication of the proposed exemption in the **Federal Register** and their right to

²⁸ It is anticipated that the Prudential Welfare Plan will receive between 6.4 million to 7.2 million shares of Common Stock, having an initial value of ranging from \$22 and \$38 per share. It is expected that such consideration will be passed on to eligible participants in the Prudential Welfare Plan, except for a small portion that will be used by the Plan to defray expenses attributable to distributing compensation to participants. Prudential Insurance states that the price at which the shares of Common Stock will actually trade, or for that matter, whether the Prudential Welfare Plan has exceeded the 10 percent limitation of section 407(a) of the Act will be known at the time of the IPO.

comment on the proposal. The PIB Notice states that a Plan policyholder may call a toll-free number maintained by Prudential Insurance (1-877-264-1163) or write to Prudential Insurance if such policyholder wishes to be provided with a copy of the proposed exemption when it is published in the **Federal Register**. In addition, the PIB Notice indicates that the proposed exemption will be posted on Prudential Insurance's Web site (www.prudential.com) after publication.

Any Plan policyholder requesting that Prudential Insurance provide a copy of the proposed exemption will be sent such copy within 30 days of its publication in the **Federal Register**. The copy of the proposed exemption will be accompanied by another version of the supplemental statement, as required under the Department's regulations. In addition, the proposed exemption, together with a copy of the supplemental statement, will be posted on Prudential Insurance's website within 15 days of publication.

Prudential Insurance will give Plan policyholders 90 days to file comments with the Department. The 90 day comment period will commence on the date the proposed exemption is published in the **Federal Register**. During the comment period, Prudential Insurance will send copies of the proposed exemption to interested persons who have requested receiving such copies, no later than 30 days after the publication date of the proposal in the **Federal Register**. Interested persons will then have no less than 60 days from the proposal's dissemination date in which to file comments with the Department.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Ford Motor Company (Ford), Located in Dearborn, Michigan

[Application No. L-10937]

Proposed Exemption

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) shall not apply, effective August 4, 2000, to: (1) The receipt by the Ford-UAW Benefits Trust (the VEBA) of approximately \$2.9 billion of certain securities (the Partnership Securities) pursuant to the redemption (the Redemption) by the VEBA of its interest in the Ford Enhanced Investment Partnership and the Ford Super-Enhanced Investment Partnership (collectively, the

Partnerships); and (2) the transfer of the Partnership Securities by the VEBA to Ford in exchange for the transfer of approximately \$2.9 billion of certain securities (the Ford-Owned Securities) to the VEBA (the Exchange), provided that the following conditions were met:

(a) The terms of the Redemption and the terms of the Exchange were at least as favorable to the VEBA as the terms that would have been available in arm's-length transactions between unrelated parties;

(b) The total value of the Partnership Securities received by the VEBA pursuant to the Redemption equaled the value of the VEBA's pro rata interest in the Partnerships on the date of the Redemption;

(c) The net asset value of the VEBA's interest in the Partnerships and each Partnership Security received by the VEBA pursuant to the Redemption were valued in the same manner using August 4, 2000 close-of-market bid prices as determined by an independent, recognized pricing service;

(d) In the case of the Exchange, the VEBA received Ford-Owned Securities equal in value to the Partnership Securities transferred to Ford;

(e) Each Partnership Security transferred to Ford by the VEBA pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service;

(f) Each Ford-Owned Security transferred to the VEBA by Ford pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service, or to the extent that a price could not be obtained in this manner, such security was priced according to the average of three (or a minimum of two) August 4, 2000 close-of-market bid prices obtained from independent market-makers;

(g) The Ford-Owned Securities transferred to the VEBA pursuant to the Exchange were not issued by Ford and were comprised solely of cash and marketable short-term debt securities under the management of unrelated, independent investment managers;

(h) The Partnership Securities transferred to Ford pursuant to the Exchange were comprised solely of cash and marketable short-term debt securities;

(i) Upon the completion of the Exchange, no single issue of Ford-Owned Securities accounted for more than 25% of the assets of the VEBA;

(j) State Street Bank and Trust Company (SSBT), acting as an independent fiduciary on behalf the VEBA, monitored the Redemption and the Exchange; and

(k) SSBT, as independent fiduciary, approved the Redemption and the Exchange upon determining that the Redemption and the Exchange were in the best interests of the VEBA and its participants.

Effective Date: The exemption is effective August 4, 2000.

Summary of Facts and Representations

1. Ford is the named fiduciary and the plan administrator of the Ford-UAW Health Care Plan (the Health Care Plan). The Health Care Plan had approximately 265,562 participants and beneficiaries as of January 1, 2000, and is funded through the VEBA, a voluntary employees' beneficiary association described in section 501(c)(9) the Internal Revenue Code of 1986 (the Code). The VEBA was established by Ford in June of 1997 and, as of August 1, 2000, had assets totaling approximately \$3.1 billion.²⁹

2. The applicant states that Ford customarily administers cash investments on behalf of the employee benefit plans it maintains. Such administration, the applicant represents, is typically accomplished in one of two ways: (1) through the use of Ford investment managers (the Ford Managers);³⁰ or (2) through the use of certain external investment managers (the External Managers).³¹ Prior to August 4, 2000, the applicant states, the assets of the VEBA were managed by the Ford Managers. At the direction of the Ford Managers, the assets of the VEBA were invested through the Partnerships. The Partnerships are two short-term investment vehicles maintained on

²⁹ The applicant states that, prior to the Redemption and Exchange, the assets of the VEBA included approximately \$800 million in cash. This was the result, the applicant represents, of an investment strategy implemented by the Ford Managers (*see* Footnote 2) in the second half of 2000 aimed at shortening the duration of the VEBA's investments. As part of this strategy, the VEBA invested in the Partnerships, whose assets included large holdings of cash invested on a daily basis in euro time deposits, commercial paper, agency discount notes, or repurchase agreements all of which earned interest at approximately the federal funds rate.

³⁰ The applicant states that, pursuant to the terms of the VEBA trust, Ford may direct the trustee to establish investment accounts, and Ford may also direct the trustee to segregate all or a portion of the VEBA trust into an account with respect to which Ford has investment discretion.

³¹ Specifically, the External Managers are State Street Research, Blackrock Financial Management, Inc., and Pacific Investment Management Company. The applicant represents that the External Managers are each independent of, and unrelated to, SSBT.

behalf of the Health Care Plan and certain other investors. At the time of the Redemption and Exchange, the other investors were Ford, Ford Global Technologies, Ford Fund and Ford Holdings. The applicant states that the Health Care Plan was the only employee benefit plan participating in the Partnerships at the time of the Redemption and Exchange. In addition, the applicant represents that, during the period in which the Health Care Plan invested in the Partnerships, the Partnerships were managed in accordance with ERISA.

3. The applicant states that, in addition to administering investments on behalf of the employee benefit plans it maintains, Ford also administers investments on its own behalf. In this regard, the applicant represents that Ford maintains an investment portfolio (the Ford Portfolio) to meet the needs of its automobile manufacturing business. Prior to August 4, 2000, the Ford Portfolio was managed by the External Managers. At the direction of the External Managers, the Ford Portfolio held the Ford-Owned Securities, which were marketable short-term debt securities (none of which were issued by Ford) and cash.³²

4. The applicant represents that by July of 2000, Ford decided to shift certain investment management responsibilities with respect to approximately \$2.9 billion of the VEBA's assets. The shift involved reassigning investment management duties from the Ford Managers to the External Managers and was based, in part, on certain characteristics of the VEBA. In this regard, Ford believed that given certain liquidity characteristics historically exhibited by the VEBA, the investment strategy implemented by the External Managers would likely provide a greater rate of return to the VEBA than the rate of return achieved by the Ford Managers. Specifically, Ford estimated that, to the extent the External Managers managed \$2.9 billion of the VEBA's assets, the VEBA would receive, over time, an increased return on such assets amounting to an incremental 30 to 50 basis points.³³

5. The applicant represents that, contemporaneous with Ford's decision

³² The applicant represents that although certain Ford-Owned Securities have nominal terms of up to 30 years, Ford views such securities as being "short-term" since the weighted average life of such securities is much shorter than their nominal term. In this regard, Ford represents that the weighted average duration of these types of securities is approximately one year or less.

³³ SSBT, the independent fiduciary, has represented that from April, 1998 until February 13, 2001, the Ford Portfolio outperformed the VEBA portfolio by eight basis points annually.

to have the External Managers manage the assets of the VEBA, Ford decided to reduce the amount of Ford Portfolio assets managed by the External Managers. This decision was based, the applicant states, on Ford's determination that the high-yield investment strategy implemented by the External Managers was inappropriate as applied to the Ford Portfolio. In this regard, Ford determined that given the unpredictable nature of its automobile business, the investment strategy implemented by the Ford Managers was better suited for the Ford Portfolio's liquidity needs than the investment strategy implemented by the External Managers. According to the applicant, Ford thus decided to shift investment management responsibilities with respect to the assets of the Ford Portfolio from the External Managers to the Ford Managers.³⁴

6. The applicant represents that, upon deciding to shift investment responsibilities with respect to the assets of the VEBA from the Ford Managers to the External Managers, Ford considered the costs associated with reallocating the assets of the VEBA. In this regard, the applicant represents that, typically, transferring the assets of a portfolio to a different investment manager involves: (1) The liquidation of certain assets in a portfolio's asset selection; and (2) the acquisition of new assets which are consistent with the investment strategies of the new investment manager. The External Managers and SSBT, therefore, investigated the cost of: (1) Liquidating the Partnership Securities on the open market; and (2) acquiring securities similar to the Ford-Owned Securities on the open market. Upon doing so, the applicant represents, the External Managers determined that reallocating the VEBA's assets to the External Managers through open-market transactions would result in approximately \$3.5 million in aggregate transaction costs. Of this amount, the applicant represents, \$1.75 million would have been incurred by the VEBA and \$1.75 million would have been incurred by Ford. SSBT, meanwhile, determined that such transaction costs approximated \$2.5 million. Of this amount, the applicant represents, \$1.25 million would have been incurred by the VEBA and \$1.25 million would have been incurred by Ford.

The applicant represents that Ford, in consideration of these estimated

³⁴ The applicant represents that the Redemption and Exchange were unrelated to Ford's decision to replace certain Firestone tires on Ford-manufactured vehicles.

transaction costs, determined that transferring investment management responsibilities with respect to the assets of the VEBA from the Ford Managers to the External Managers through the Exchange would benefit the VEBA. In this regard, the applicant represents that the Exchange would enable the VEBA to avoid the substantial transaction costs associated with such a transfer of responsibilities. The applicant represents further that although certain transfer costs and legal fees did arise with respect to the Redemption and Exchange, such costs and fees were paid for solely by Ford.

7. Prior to effectuating the Exchange, Ford initiated the Redemption. In this regard, after August 4, 2000, the VEBA received the Partnership Securities and cash in return for the redemption by the VEBA of a proportional interest in the Partnerships. The applicant represents that the Partnership Securities received by the VEBA pursuant to the Redemption were comprised solely of readily marketable short-term debt securities.

The applicant represents that SSBT, acting on behalf of the VEBA, monitored the pricing of the Partnership Securities for purposes of the Redemption. The applicant represents that SSBT received less than 1% of its annual revenue from any of the relevant parties to the transactions described herein. SSBT, in turn, represents that it manages over \$220 billion in fixed income assets, primarily for ERISA plans, and has acted as an independent fiduciary in a wide variety of transactions including those which are the subject of this proposal.

For purposes of the Redemption, the Partnership Securities were priced as follows: (1) Wherever possible, a preselected recognized, independent pricing service³⁵ provided the August 4, 2000 close-of-market bid price for each Partnership Security; (2) to the extent the bid price could not be determined by the initial pricing service, a second preselected recognized, independent pricing service provided the August 4, 2000 close-of-market bid price for each such Partnership Security. SSBT represents that this pricing methodology was fair to the participants of the VEBA. In this regard, SSBT represents that the assets received by the VEBA pursuant to the Redemption were equal in value to the proportional interest the VEBA had

³⁵ For purposes of both the Redemption and Exchange, the services that provided the relevant prices for the Partnership Securities and the Ford-Owned Securities were chosen by SSBT.

in the net asset value of the Partnerships.

8. The applicant represents that upon the completion of the Redemption, Ford initiated the Exchange. In so doing, on August 7, 2000, Ford caused the VEBA to transfer to Ford the cash and Partnership Securities the VEBA received from the Redemption. The applicant represents that each such Partnership Security was transferred at a price equal to its respective Redemption price.

In return for the receipt by Ford of the cash and Partnership Securities provided pursuant to the Exchange, Ford transferred approximately \$2.9 billion in Ford-Owned Securities to the VEBA.³⁶ The applicant represents that SSBT, acting on behalf of the VEBA, monitored the pricing of the Partnership Securities for purposes of the Exchange. The applicant represents that, with respect to the Ford-Owned Securities transferred to the VEBA by Ford, each of the Ford-Owned Securities was priced as follows: (1) Wherever possible, an initial preselected independent, recognized pricing service provided the August 4, 2000 close-of-market bid price for each Ford-Owned Security; (2) to the extent that the bid price could not be determined by the initial pricing service, a second preselected recognized, independent pricing service provided the August 4, 2000 close-of-market bid price with respect to each such security; (3) to the extent a Ford-Owned Security could not be priced according to the initial or secondary pricing services, such security was priced according to the average of three August 4, 2000 close-of-market bid prices (if available, but in any event not less than two such prices were used) as provided by independent market-makers (to the extent such securities were under their respective management).³⁷

9. In a letter dated October 3, 2000, SSBT stated that, prior to the Redemption and Exchange, certain SSBT analysis regarding the Redemption and Exchange was presented to a SSBT fiduciary committee (the Committee). This analysis included the following findings: (1) The management style of the External Managers was likely to add value to the VEBA in terms of enhanced performance and that the Ford Portfolio

holdings were suitable for the VEBA; (2) the bid side pricing convention used by all parties to the Exchange was fair to the participants in the VEBA; and (3) the off-market nature of the Exchange would result in significant cost savings to the VEBA relative to a similar open market exchange. Based on such analysis and findings, the Committee determined that: (1) The in-kind exchange was consistent with the VEBA's investment guidelines; (2) the VEBA's investment guidelines were reasonable; (3) the pricing mechanisms used with respect to the Redemption and Exchange were appropriate for establishing the fair market value of the Ford-Owned Securities and the Partnership Securities; and (4) the Exchange was in the best interests of the participants and beneficiaries of the VEBA.

Additionally, in a letter dated February 13, 2001, SSBT stated that, at the time of the Redemption and Exchange, the investment guidelines for the VEBA portfolio (the VEBA Portfolio) and the Ford portfolio were essentially the same. In this letter, SSBT also stated that the VEBA Portfolio and the Ford Portfolio: (1) Were comprised of fixed income investments; (2) overlapped in many Treasury and higher rated issues; and (3) were both subject to a loss provision which mandated that no more than one percent (1%) of asset value may be reduced in any one quarter.³⁸ SSBT stated that the securities acquired by the VEBA pursuant to the Exchange were high quality assets comprised primarily of government and government agency bonds, along with investment grade corporate bonds, and would serve to position the VEBA favorably in relation to its investment objectives.

10. SSBT represents that since the Exchange was to be executed at the bid side price for both the VEBA Portfolio and the Ford Portfolio, SSBT determined that the pricing mechanism implemented with respect to the Exchange was fair and represented the fair market value of the affected securities. In addition, SSBT represents that the terms of the Redemption and Exchange were no less favorable to the

VEBA than the terms of similar arm's-length transactions between unrelated parties. SSBT represents that, prior to the Exchange, SSBT approved the Exchange, and determined that the Exchange was in the best interests of the participants of the VEBA.

11. In summary, the applicant contends that the transaction met the statutory criteria set forth in section 408(a) of ERISA since:

(a) The terms of the Redemption and the terms of the Exchange were at least as favorable to the VEBA as the terms that would have been available in arm's-length transactions between unrelated parties;

(b) The total value of the Partnership Securities received by the VEBA pursuant to the Redemption equaled the value of the VEBA's pro rata interest in the net asset value of the Partnerships on the date of the Redemption;

(c) The net asset value of the VEBA's interest in the Partnerships and each Partnership Security received by the VEBA pursuant to the Redemption were valued in the same manner using August 4, 2000 close-of-market bid prices as determined by an independent, recognized pricing service;

(d) In the case of the Exchange, the VEBA received Ford-Owned Securities equal in value to the Partnership Securities transferred to Ford;

(e) Each Partnership Security transferred to Ford by the VEBA pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service;

(f) Each Ford-Owned Security transferred to the VEBA by Ford pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service, or to the extent that a price could not be obtained in this manner, such security was priced according to the average of three (or a minimum of two) August 4, 2000 close-of-market bid prices obtained from independent market-makers;

(g) The Ford-Owned Securities transferred to the VEBA pursuant to the Exchange were not issued by Ford and were comprised solely of cash and marketable short-term debt securities under the management of unrelated, independent investment managers;

(h) The Partnership Securities transferred to Ford pursuant to the Exchange were comprised solely of cash and marketable short-term debt securities;

³⁶ Immediately thereafter, the applicant states, the assets of the VEBA were managed by the External Managers and the assets of the Ford Portfolio were managed by the Ford Managers.

³⁷ The applicant represents that approximately three percent (3%) of the Ford-owned Securities were provided according to bid prices provided by independent market-makers.

³⁸ The applicant represents that the investment guideline for portfolio managers is based on a level of risk tolerance rather than managing the total return to a specific benchmark. This risk tolerance, the applicant states, is defined as one percent of the portfolio value per quarter. Capital losses (including net realized and unrealized mark-to-market losses) during any rolling three-month period, the applicant states further, should therefore not exceed one percent of the portfolio market value. The applicant represents that risk tolerance is used to ensure that portfolios are being managed consistent with their guidelines and objectives.

(i) Upon the completion of the Exchange, no single issue of Ford-Owned Securities accounted for more than 25% of the assets of the VEBA;

(j) SSBT, acting as an independent fiduciary on behalf of the VEBA, monitored the Redemption and the Exchange; and

(k) SSBT, as independent fiduciary, approved the Redemption and the Exchange upon determining that the Redemption and the Exchange were in the best interests of the VEBA and its participants.

Notice to Interested Persons

The applicant represents that notice to interested persons will be made within twenty (20) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than sixty (60) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Motta of the Department, telephone (202) 219-8881. (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 24th day of September, 2001.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

[FR Doc. 01-24151 Filed 9-26-01; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2001-34; Exemption Application No. D-10911, et al.]

Grant of Individual Exemptions; Deferred Profit Sharing Plan of the Penske Corporation (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

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

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be

held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

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

Statutory Findings

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

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Deferred Profit Sharing Plan of the Penske Corporation (the Plan) Located in Charlotte, North Carolina

[Prohibited Transaction Exemption No. 2001-34; Exemption Application No. D-10911]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, (1) effective June 15, 2000, to the acquisition and holding by the Plan of interests (the Interests) in the Penske Company, LLC (the LLC), a wholly owned subsidiary of the Plan sponsor, the Penske Corporation (Penske), which were distributed (the Distribution) as dividends to the Plan as a shareholder of Penske common stock (Penske Stock); and (2) the proposed redemption, by the LLC, of the Interests held by the Plan for the greater of \$3.37 per-unit or their fair market value at the date of the redemption, provided that the following conditions were or will be met:

(a) The Interests were acquired by the Plan pursuant to Plan provisions for individually-directed investment of participant accounts;