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Morris L. Thigpen,
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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10721, et al.]

Proposed Exemptions: Metropolitan Life Insurance Company

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

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing 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.

ADDRESS: 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 Pension and Welfare Benefits Administration, U.S. Department of

Labor, Room N-5507, 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 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. 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) Located in New York, NY

[Application No. D-10721]

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).¹

Section I. Proposed Exemptions Involving the Demutualization of METLIFE and the Excess Holding of Consideration By Plans Sponsored By METLIFE and its Affiliates (the MetLife Plans)

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 to the receipt, by any eligible policyholder (the Eligible Policyholder) of MetLife that is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, including any Eligible Policyholder that is a Plan covering employees of MetLife or its affiliates, of an interest (the Interest) in a trust (the Trust), whose corpus consists of common stock (the Common Stock) issued by MetLife, Inc., (the Holding Company), the parent of MetLife; or (2) the receipt of cash or policy credits by such Plans,² in exchange for such Eligible Policyholder's membership interest in MetLife, pursuant to a plan of conversion (the Plan of Reorganization) adopted by MetLife and implemented in accordance with section 7312 of the New York Insurance Law.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by a MetLife Plan, of Trust Interests, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

The proposed exemptions that are described above are subject to the following conditions:

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under New York Insurance Law and is subject to review and approval by the New York Superintendent of Insurance (the Superintendent). The Superintendent reviews the terms of the options that are provided to Eligible Policyholders of MetLife as part of such Superintendent's review of the Plan of Reorganization, and the Superintendent only approves the Plan of Reorganization following a determination that the Plan is fair and equitable to all Eligible Policyholders and is not detrimental to the public.

(b) Each Eligible Policyholder has an opportunity to vote at a special meeting to approve the Plan of Reorganization after receiving full written disclosure from MetLife.

(c) One or more independent fiduciaries of a Plan (the Independent Fiduciary) that is an Eligible Policyholder receives Trust Interests, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither MetLife nor any of its affiliates

¹ 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.

² Unless otherwise noted, the terms "Plan" and "MetLife Plan" are referred to collectively as the "Plans."

exercises any discretion or provides "investment advice," within the meaning of 29 CFR 2510.3-21(c) with respect to such acquisition.

(d) In the case of a MetLife Plan, the Independent Fiduciary—

(1) Votes at the special meeting of Eligible Policyholders to approve the Plan of Reorganization;

(2) Makes any election, to the extent available under the Plan of Reorganization, to receive Trust Interests or cash on behalf of the MetLife Plan;

(3) Monitors, on behalf of the MetLife Plan, the acquisition and holding of any Trust Interests received;

(4) Makes determinations on behalf of the MetLife Plan with respect to the voting and the continued holding of Trust Interests by such Plan.

(5) Withdraws shares of Holding Company Common Stock that are held in Trust which are equivalent to Trust Interests allocated to a MetLife Plan and disposes of such Trust Interests.

(i) Not exceeding the limits of section 407(a) of the Act in a prudent manner.

(ii) Exceeding the limits of section 407(a) of the Act within six months of the initial public offering (the IPO); and

(6) Provides the Department with a complete and detailed final report as it relates to the MetLife Plans prior to the effective date of the demutualization.

(e) After each Eligible Policyholder entitled to receive Trust Interests is allocated at least ten shares of Holding Company Common Stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of MetLife, which formulas have been reviewed by the Superintendent.

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

(g) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of consideration.

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

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

Section II. Proposed Exemptions Involving Sales or Withdrawals Occurring in Connection With the Operation or Termination of the Trust

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 to the proposed (1) sale by a Plan to the Holding Company of Holding Company Common Stock, which is held in the Trust for the benefit of such participating Plan and is evidenced by Trust Interests, following the effective date of the demutualization or upon the termination of the Trust; and (2) the withdrawal by a Plan of Holding Company Common Stock, as evidenced by Trust Interests, beginning on the first anniversary of the effective date of the demutualization until the termination of the Trust.

The proposed exemptions are subject to the following conditions:

(a) The decision by a Plan to arrange for the sale of Holding Company Common Stock to the Holding Company or to withdraw Holding Company Common Stock is made by a Plan fiduciary which is independent of MetLife and its affiliates.

(b) No Plan pays any fees or commissions in connection with either transaction.

(c) The terms of the transactions are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(d) Any sale of shares of Holding Company Common Stock held in the Trust for the benefit of a Plan to the Holding Company is at a price reflecting the fair market value of the Common Stock as determined by averaging the high and low trading prices as reported on the New York Stock Exchange on the day of sale, except that if such sale is pursuant to the termination of the Trust, such fair market value is determined as the average of the closing price for a share of such Holding Company Common Stock for the twenty consecutive trading days ending on the third calendar day immediately prior to the date of the sale.

Section III. Definitions

For purposes of this proposed exemption:

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

(b) An "affiliate" of MetLife includes—

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

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

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "Eligible Policyholder" means a policyholder whose name appears on MetLife's records as the owner of a policy on the adoption date of MetLife's Plan of Reorganization by MetLife's Board of Directors and, which is in full force for its full basic benefits and has not matured by death or otherwise been surrendered or terminated and which remains in force on the effective date of MetLife's demutualization.

(d) The term "policy credit" means (1) a dividend deposit or dividend addition; (2) an increase in accumulation value (to which no sales or surrender or similar charges shall be applied); (3) additional coverage or benefits; (d) an extension of the expiry date; or (4) a reduction in premium payments.

Summary of Facts and Representations

1. MetLife is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent. It is the second largest insurance company in the United States. As of December 31, 1998, MetLife and its subsidiaries had total assets under management of approximately \$357.7 billion and approximately \$1.7 trillion of life insurance in force.

MetLife and its subsidiaries and affiliates provide funding, asset management and other services for approximately 59,700 employee pension and welfare benefit plans that are subject to the provisions of Title I of the Act as well as applicable provisions of the Code. In addition, MetLife maintains pooled and single plan separate accounts in which Title I pension, profit sharing and thrift plans invest, and MetLife or its affiliates manage assets in such separate accounts. Moreover, MetLife has a number of subsidiaries and affiliates that provide a variety of financial services, including investment management and brokerage services.

MetLife represents that it is not a "party in interest" with respect to any of its Plan policyholders merely because it has issued an insurance policy to the Plan. However, because of the variety of fiduciary and other services it and its affiliates provide to Plans that are also policyholders, MetLife believes that it is a party in interest with respect to such Plans under sections 3(14)(A) and (B) of

the Act or the other related "derivative" provisions of section 3(14) of the Act.

As a mutual life insurance company, MetLife has no stockholders. Instead, policyholders of MetLife are "members" of the company, and in that capacity, they are entitled to vote to elect

directors of MetLife. If MetLife is liquidated, the policyholders will be entitled to share in any assets of MetLife which remain after all claims against MetLife have been satisfied in full.

2. MetLife and its affiliates sponsor several pension and welfare plans for

the benefit of their employees. The MetLife Plans, their asset and participant totals as of December 31, 1998, the decisionmakers with respect to MetLife Plan investments, and the employees covered by the MetLife Plans are set forth in the following tables:

Plan name	Assets \$1M 12/98	Participants or number of lives	Investment decision makers	Employees covered
MetLife Retirement Plan for U.S. Employees.	\$3,974	81,000	Investment Advisory Committee	Sal. and comm. employees.
• VRSA	86	3,900		
• 401(h)	24			
Savings & Investments Plan for Employees of MetLife and Part. Affils.	2,559	36,000	MetLife	Sal. and comm. employees.
MetLife Options and MetLife Choices Plan.	(¹)			
Welfare (Post-Ret.)		27,500	MetLife	Sal. and comm. employees.
• Life Ins. & Survivor	406	MetLife	Sal. and comm. employees.	
• Health (VEBA TOLI)	179	VEBA Trustees	Sal. and comm. employees.	
• Health (HIFA)	500	MetLife	Sal. and comm. employees.	
Welfare (Active)	388	29,400	MetLife	Sal. and comm. employees.
Welfare Plan for Employees of MetLife and Particip. Affils.	² 0	56,900	MetLife	Sal. and comm. employees.
Benefit Services Corp. Pre-Tax Premium Plan.	0	30	MetLife	Active.
Cross & Brown Co. Your Group Ins. Plan.	0	11	MetLife	Active and Retired.
Farmers National Company Ins. Programs.	0	135	MetLife	Active.
Farmers National Co. Travel Accident Ins. Plan.	0	135	MetLife	Active.
Hyatt Legal Benefit Plans	0	44	MetLife	Active.
SSR Realty Advisors, Inc. Life Benefits, Long-Term Dis.	0	532	MetLife	Active.
State Street Res. & Mgt. Co. Life, Dental & Long Term Dis. Plan.	0	465	MetLife	Active.

¹Reserves \$M.

²Benefits provided through insurance contracts.

3. On November 24, 1998, Metlife's Board of Directors authorized the company's management to develop a plan of demutualization pursuant to which MetLife would be converted from a mutual life insurance company to a stock life insurance company. The principal purpose of the Plan of Reorganization is to create a corporate structure that will allow MetLife to position itself for long-term growth and increased financial strength. MetLife believes that as a result of the flexibility offered by the stock company structure and the access to capital markets, it will be in a position to enhance its market leadership, financial strength and strategic position and aggressively pursue opportunities for growth, thereby providing greater protection to policyholders. In addition, MetLife believes that the change in business structure will enable it to remain a leader in helping people become financially secure.

4. As a result of the Plan of Reorganization, MetLife will become a

stock insurer that is a subsidiary of MetLife, Inc., a newly-formed holding company incorporated under the laws of the State of Delaware. Consequently, MetLife and the Holding Company will have greater ability to make acquisitions and the ability to raise investor capital in a more efficient manner. The reorganization will provide economic value to Eligible Policyholders in the form of shares of Holding Company Common Stock, cash or policy credits, in exchange for such Eligible Policyholders' respective membership interests in MetLife.

5. In addition to the formation of the Holding Company, MetLife will establish the Trust to hold shares of Holding Company Common Stock that are received by millions of policyholders under its Plan of Reorganization. It is not anticipated that the Trust will be a "plan assets" investment vehicle because 25 percent or more of the value of the Trust Interests will not be held by Plans. MetLife notes that the primary purpose

of the Trust is to assist the Holding Company in the administration of beneficiary accounts and the costs associated with managing such a large number of policyholders. In addition, MetLife states that a secondary purpose of the Trust is to promote a more orderly market for Holding Company Common Stock. It is anticipated that the trustee of the Trust (the Trustee) will be Wilmington Trust Company, an entity which is independent of MetLife and one of the nation's leading wealth management companies.

6. Thus, to resolve potential issues for Plans that may arise in connection with its Plan of Reorganization, MetLife requests an individual exemption from the Department that will cover the receipt of Trust Interests,³ cash or policy credits by Eligible Policyholders that are

³Although Holding Company Common Stock will not be issued directly to an Eligible Policyholder, MetLife represents that it wishes to ensure that the exemption will cover the indirect acquisition by a Plan of an interest in the Holding Company Common Stock owned by the Trust.

Plans, including the MetLife Plans identified above, in exchange for such Plans' existing membership interests in MetLife.

MetLife is also requesting an exemption for the receipt and holding of Trust Interests by the MetLife Plans for their own employees with respect to transactions that may violate sections 406(a)(1)(E), (a)(2), and 407(a)(2) of the Act. These sections of the Act prohibit the acquisition by a plan of any employer securities that are not qualifying employer securities if immediately after the acquisition, the aggregate fair market value of employer securities held by the plan exceeds 10 percent of the fair market value of the assets of the plan.⁴ MetLife represents that the Trust Interests may be considered "employer securities" for purposes of the foregoing restrictions. Because some of the MetLife Plans may receive a substantial number of Trust Interests exceeding 10 percent of the fair market value of the assets of such Plans, MetLife believes there will be a violation of section 407(a)(2) of the Act. To safeguard the interests of the MetLife Plans under these circumstances, MetLife and each of its affiliates have appointed State Street Bank and Trust Company (State Street), to serve as an Independent Fiduciary.

Finally, the proposed exemption is intended to cover transactions that will occur subsequent to the initial demutualization event, *i.e.*, during the operation or termination of the Trust described herein. These transactions include (a) the sale to the Holding Company by a Plan of Holding Company Common Stock that is held in

⁴ Specifically, 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.

In addition to the above, 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. MetLife notes, however, that the holding of Holding Company Common Stock by the MetLife Plans will not violate the provisions of section 407(f) of the Act.

the Trust for the benefit of such participating Plan and which is evidenced by Trust Interests; and (b) the withdrawal by a Plan of Holding Company Common Stock that is held in Trust and which is evidenced by Trust Interests.

The proposed exemption is conditioned on a number of requirements. Specifically, distributions that are made to Plans under the Plan of Reorganization must be on terms that are no less favorable to such Plans than an arm's length transaction between unrelated parties. In this regard, Plans to which MetLife is a party in interest will not by reason of that relationship be treated differently from policyholders as to which MetLife is not a party interest.

7. Section 7312 of the New York Insurance Law establishes an approval process for the demutualization of a life insurance company. Under Section 7312, the conversion of a mutual life insurance company to a stock company is initiated by the board of directors of the mutual company. A plan of demutualization may be approved by a vote of at least 75 percent of the entire board of directors. The approval process must include a finding that the plan is fair and equitable to policyholders.

After approval by the mutual insurance company's board of directors, a plan of demutualization is then required to be submitted to the Superintendent for his or her review.

In order for a plan of demutualization to become effective, the Superintendent must determine that the plan of demutualization does not violate the requirements imposed by Section 7312, including the requirement that the plan is fair and equitable to the policyholders, that it is not detrimental to the public, and that, following the demutualization, the insurer will have an amount of capital and surplus which the Superintendent deems to be reasonably necessary for its future solvency.

In order to assist the Superintendent in discharging his or her duties, Section 7312 permits the Superintendent to appoint an actuary to review actuarial aspects of the plan. In addition, Section 7312 permits the Superintendent to appoint other qualified disinterested persons or institutions to act as consultants to the Superintendent. In the case of the MetLife demutualization, the Superintendent has hired the law firm of Fried, Frank, Harris, Shriver & Jacobson as legal adviser; the actuarial firm of Milliman & Robertson to conduct the required actuarial review; and The Blackstone Group as the investment banking consultant.

8. Section 7312 also requires the Superintendent to hold a public hearing on a plan of demutualization at which policyholders and other interested persons may express views on the plan. Notice of the public hearing must be provided to each policyholder of the insurance company whose policy or contract is in force on the date of adoption of the plan of demutualization, and must be published in three newspapers of general circulation. The purpose of the public hearing is to allow interested persons the right to comment on the fairness of the terms and conditions of the demutualization and the reasons and purposes for the demutualization of the insurer, and to consider whether the demutualization is in the interest of the insurer and its policyholders and is not detrimental to the public.

After the public hearing, the Superintendent must determine whether or not to approve the demutualization plan. Under Section 7312, the Superintendent approves the plan if he or she finds that it does not violate the insurance law, that it is fair and equitable to policyholders, that it is not detrimental to the public, and that, after giving effect to the demutualization, the insurer will have an amount of capital and surplus that the Superintendent deems to be reasonably necessary for MetLife's future solvency.

The Superintendent must also determine that the plan does not fail to meet the requirements of Section 7312(c). In other words, the plan must (a) demonstrate a purpose and specific reasons for the proposed demutualization; (b) be in the best interest of the mutual insurer and its policyholders; (c) be fair and equitable to the policyholders; (d) provide for the enhancement of the operations of the reorganized insurer; and (e) not substantially lessen competition in any line of insurance business.

The policyholders of the mutual insurance company must also be provided with notice of the plan and an opportunity to vote whether to approve the plan. Each policyholder (approximately 16 million in the case of MetLife) is entitled to one vote, regardless of the number of policies that are actually owned. In addition, the plan must be approved by a vote of at least two-thirds of all votes cast by policyholders entitled to vote.

A decision by the Superintendent to approve a demutualization plan pursuant to Section 7312 of the New York Insurance Law is subject to judicial review in the New York courts.

9. Although the Board of Directors of MetLife has not yet adopted the Plan of Reorganization,⁵ MetLife anticipates that the Plan will provide for the formation of the Holding Company under the laws of the State of Delaware and the creation of the Trust which will be governed by New York law. It is presently anticipated that, under the Plan of Reorganization, the following steps will occur on the effective date:

(a) *Issuance of MetLife Common Stock.* MetLife will issue 100 percent of its Common Stock to the Trust, on behalf of the Trust Eligible Policyholders, to be held for the benefit of the Trust Eligible Policyholders (who will be issued Trust Interests reflecting their ownership of the shares held in the Trust).

(b) *Exchange by Trust of MetLife Common Stock.* Immediately after receipt, the Trust will exchange its shares of MetLife Common Stock for shares of Holding Company Common Stock. The Holding Company Common Stock will be held in Trust for the exclusive benefit of the Trust Eligible Policyholders.

(c) *Surrender and Cancellation of Holding Company Common Stock.* MetLife will surrender to the Holding Company, and the Holding Company will cancel, all of the remaining shares of Holding Company Common Stock held by MetLife prior to the effective date.

(d) *Calculation of Policyholder Consideration.* MetLife will establish an amount reflecting the aggregate amount that the Board anticipates will be credited to policyholders who are required to receive Trust Interests, cash or policy credits as compensation under the terms of the Plan. In other words, for purposes of calculating the amount of consideration that will be received, an Eligible Policyholder will be allocated shares of MetLife Common Stock consisting of (1) a fixed component of consideration equal to ten shares of MetLife Common Stock, which may be subject to proportional adjustment, plus (2) a variable component of consideration reflecting the contributions to the surplus made by each such policyholder's in force participating policy.

10. Under the terms of MetLife's Plan of Reorganization, the Holding Company will sell shares of Holding

Company Common Stock to the public through an IPO on the same day as the effective date of the Plan of Reorganization. (Subsequent to the effective date, MetLife anticipates that the Holding Company Common Stock will be actively traded on the New York Stock Exchange.) The proceeds of the IPO will be used to fund cash payments and policy credits to policyholders which are required to receive cash or policy credits under the terms of the Plan.

In general, an Eligible Policyholder is entitled to receive consideration in the form of cash if (a) the policyholder's mailing address is located outside of the United States; or (b) the policyholder is the owner of a policy transferred to the Metropolitan Life Insurance Company of Canada, regardless of the mailing address; or (c) MetLife determines in good faith and to the satisfaction of the Superintendent that it is not reasonably feasible or appropriate to provide consideration in the form such Eligible Policyholder or class of Eligible Policyholders would otherwise receive. In addition, an Eligible Policyholder who holds an individual retirement annuity, an individual annuity contract, an individual life insurance policy or a long-term health care insurance product will be entitled to receive policy credits from MetLife.

The amount of cash that will be paid,⁶ or the value of the policy credits to each

⁶MetLife represents that there may be a limit on the amount of funds available to pay cash compensation to Eligible Policyholders that elect to receive cash. In this regard, the Plan of Reorganization provides that the IPO and any other capital raising transactions that are completed on the effective date must raise proceeds, net of underwriting commissions and related expenses, in an amount at least equal to the amount paid by MetLife to fund mandatory cash payments pursuant to the Plan of Reorganization and to pay fees and expenses incurred by MetLife related to the demutualization, as well as to reimburse MetLife for amounts to be paid by MetLife's Canadian branch to certain former Canadian policyholders. If the IPO and any other capital raising transactions are not sufficient to fund the payment of cash to all Eligible Policyholders entitled to receive cash, MetLife explains that although the Plan of Reorganization will become effective, the cash will not be paid to all Eligible Policyholders electing to receive cash. If this event occurs, MetLife states that cash will be paid as follows:

- Each individual Eligible Policyholder that elects to receive cash will receive compensation in the form of cash;
- Each group Eligible Policyholder that elects to receive cash and is allocated not more than 250,000 shares will receive compensation in the form of—
 - Cash, with respect to the first 25,000 shares allocated to the Eligible Policyholder, and
 - Either shares of Holding Company Common Stock (which is to be held in the Trust) or a combination of cash and shares of Holding Company Common Stock (which also will be held in the Trust), with respect to the remaining shares allocated to the Eligible Policyholder. Such cash will be allocated to each Eligible Policyholder pro

policyholder required to receive cash or policy credits will be determined at the time of the IPO and will be based (a) on the number of shares of Holding Company Common Stock that the policyholder would have received on the effective date if the policyholder had been entitled to receive compensation in the form of Holding Company Common Stock and (b) the IPO price per share.

In addition, prior to the effective date, policyholders who are entitled to receive compensation in the form of Holding Company Common Stock will be asked to elect whether they would like their allocable portion of the shares held in Trust to be purchased by the Holding Company, at the IPO price. Based on these elections, the Holding Company will purchase shares of Holding Company Common Stock from the Trust at the IPO offering price, and the cash will be distributed to the Trust beneficiaries who have elected to be cashed out, in cancellation of their interests.

In the case of an Eligible Policyholder that is a Plan, the decision to receive consideration in the form of Trust Interests, cash or policy credits will be made by one or more fiduciaries of such Plan which is independent of MetLife. In addition, neither MetLife nor any of its affiliates will exercise any discretion or provide "investment advice," within the meaning of 29 CFR 2510.3-21(c), with respect to each such acquisition.⁷

ratio basis in the proportion that the total number of shares in excess of 25,000 shares allocated to such Eligible Policyholder bears to the total number of shares in excess of 25,000 shares allocated to all such Eligible Policyholders allocated more than 25,000 shares that have elected to receive cash.

⁷Consistent with sections 7312(a)(2), 7312(e) and 4210 of New York Insurance Law, the Plan of Reorganization generally provides that the policyholder eligible to participate in the distribution of Trust Interests, cash or policy credits resulting from the Plan of Reorganization is "the person whose name appears * * * on the insurer's records as owner" of the policy. MetLife further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, MetLife represents that it is normally required under the foregoing provisions of New York Law and the Plan of Reorganization to make distributions resulting from such Plan to the employer or trustee as owner of the policy, except as provided in a plan of reorganization approved by the Superintendent.

Notwithstanding the foregoing, MetLife's Plan of Reorganization provides a special rule applicable to an insurance policy issued to a trust established by MetLife. This rule applies whether or not the trust, or any arrangement established by any employer participating in the trust, constitutes an employee benefit plan subject to the Act. Under this special rule, the holder of each individual "certificate" issued in connection with the insurance policy is treated as the policyholder and owner for all

Continued

⁵On September 28, 1999, MetLife's Board of Directors approved the Plan of Reorganization whose effective date is projected for early February 2000. In early January 2000, MetLife anticipates that the hearing will be convened. Moreover, at sometime before the end of the first quarter of 2000, MetLife expects that the Superintendent will approve the Plan of Reorganization.

Further, no Eligible Policyholder will pay any brokerage commissions or fees in connection with their receipt of any form of consideration. Finally, all of MetLife's insurance policies will remain in force, and all policyholders will be entitled to receive all benefits under their policies and contracts to which they would have been entitled if the Plan of Reorganization had not been adopted.

11. As noted above, all of the shares of MetLife Common Stock will be issued to the Trust on the effective date and immediately exchanged by the Trust for Holding Company Stock to be held for the benefit of a policyholder that is a beneficiary of the Trust (the Trust Beneficiary). Each Trust Beneficiary will be issued a number of Trust Interests equal to the number of shares of Holding Company Common Stock initially allocated to such Trust Beneficiary under the terms of the Plan.

All Trust Interests will be held in the name of ChaseMellon Shareholder Services, L.L.C. (ChaseMellon), the custodian, which has been appointed by the Trustee under the Trust Agreement and which is unrelated to MetLife and its affiliates. ChaseMellon will keep records of all beneficiaries' Trust Interests. The Trust Beneficiaries will be permitted to assign, pledge or dispose of their Trust Interests only in certain limited circumstances.⁸ Even if the policy of a Trust Beneficiary lapses, terminates or matures after the effective date, shares allocated to the Trust Beneficiary will continue to be held in the Trust until such Trust Beneficiary

purposes under the Plan of Reorganization, including voting rights and the distribution of consideration. The trustee of any such trust established by MetLife for the benefit of Eligible Policyholders that are Plans will be ignored, and the Plan will be considered a policyholder or owner and will be eligible to vote or receive consideration.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3-3) at the time when MetLife incurs the obligation to distribute Trust Interests, cash or policy credits, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

⁸ For example, Section 3.4(b) of the Trust Agreement provides that a Trust Beneficiary may transfer Trust Interests (a) from the estate of a deceased beneficiary to one or more heirs; (b) to the spouse, children or grandchildren of the beneficiary; (c) in the event the beneficiary is not a natural person, to the surviving entity upon a merger or consolidation of such beneficiary into another entity; (d) as a consequence of the bankruptcy of the beneficiary; or (e) from a trust holding a policy on behalf of the insured person under such policy.

decides to withdraw allocable shares of Holding Company Common Stock for sale. All Trust-related fees and expenses will be paid by the Holding Company.

12. Trust Beneficiaries will be able to sell shares of Holding Company Common Stock, as evidenced by Trust Interests, at prevailing market prices through a purchase and sale program (the Purchase and Sale Program) which will be established by the Holding Company following the completion of the IPO. The Purchase and Sale Program will continue for the term of the Trust and will be effected through an independent agent selected by the Holding Company. The Purchase and Sale Program will be subject to certain volume and timing limitations on Trust Beneficiaries. For example,

- If a Trust Beneficiary holds 199 or fewer Trust Interests, all of such Trust Beneficiary's Trust Interests must be withdrawn for sale. The Trust Beneficiary will not be permitted to make a partial withdrawal for sale.
- If a Trust Beneficiary holds more than 199 Trust Interests, such Trust Beneficiary may make a full or partial withdrawal for sale. However, partial withdrawals for sale may only be in 100 share increments. (In this regard, the Trust Beneficiary may have 200 shares withdrawn for sale but not 250.) Following any partial withdrawal for sale, the Trust Beneficiary may still hold at least 100 Trust Interests. If the Trust Beneficiary holds fewer than 100 Trust Interests after the partial withdrawal for sale, such Trust Beneficiary must make a full withdrawal for sale.

• For the first 300 days following the effective date of the Plan of Reorganization, if a Trust Beneficiary holds more than 25,000 Trust Interests, such Trust Beneficiary may make a full or partial withdrawal for sale, subject to the volume limitations set forth in the Purchase and Sale Program procedures. These volume restrictions are designed to limit daily sales to a number of shares which is the lesser of (a) $\frac{1}{20}$ of 1 percent of the number of shares outstanding or (b) 25 percent of the average daily trading volume for the 20 trading days preceding the trade date. Sales in excess of those amounts will either be made on the same day, in a block trade or through an investment bank acting as agent, or deferred to the next trading day. After the first 300 days, these limitations will no longer apply and withdrawals for sale may be made as otherwise permitted by these rules.

- Until the second year after the effective date of the Plan of Reorganization, if there is an underwritten public offering of Holding Company Common Stock, the Holding

Company will offer each Trust Beneficiary holding at the time more than 25,000 Trust Interests and whose cash election has not been fully satisfied, the opportunity to include a number of Trust Shares equal to all of the Trust Beneficiary's Trust Interests in the offering.

Holding Company Common Stock that is held in Trust will be sold through the Purchase and Sale Program on the open market or it may be purchased for cash directly from the Trust at market prices as of the date of the sale. If sold to the Holding Company, the fair market value of Holding Company Common Stock allocated to the Trust Beneficiary will be determined by averaging the high and low trading prices of the shares of Holding Company Common Stock as reported on the New York Stock Exchange on the date of the sale. (Accordingly, the Trust Beneficiary will receive the same consideration for its shares whether they are purchased by the Holding Company or by an unrelated party on the open market.) However, if the sale is being made pursuant to the termination of the Trust, the fair market value will be determined as the average of the closing price for a share of Holding Company Common Stock for the twenty consecutive trading days ending on the third calendar day immediately prior to the sale.⁹

The Holding Company will pay the commissions and related charges of all beneficiaries, including Plans, which sell shares of allocable Holding Company Common Stock through the Purchase and Sale Program. Further, if the Trust Beneficiary is a Plan, a Plan fiduciary which is independent of MetLife and its affiliates will determine whether it is appropriate to sell shares of allocable Holding Company Common Stock to MetLife or on the open market through the Purchase and Sale Program.

13. The Purchase and Sale Program will also include a "round-up" feature. In general, each Trust Beneficiary holding less than 1,000 Trust Interests, which are not equal to a multiple of 100, may instruct the Trustee to arrange for the purchase of additional shares of Holding Company Common Stock. Such Stock will be deposited in the Trust and allocated to the Trust Beneficiary so that the Trust Beneficiary's Trust Interests will be increased to the next nearest multiple of 100. Further, each Trust Beneficiary which is allocated a number of Trust Interests that is equal to a multiple of 100 and less than 1,000 may

⁹ MetLife represents that the twenty day average formula has been designed to eliminate any possibility of manipulation and to prevent single day trading anomalies that might influence a Trust Beneficiary's proceeds.

instruct the Trustee to arrange for the purchase of additional shares of Holding Company Common Stock in lots of 100. The Stock will be deposited in the Trust and allocated to the Trust Beneficiary so that the Trust Beneficiary's Trust Interests will be increased to any multiple of 100 that is less than or equal to 1,000.

A Trust Beneficiary desiring to utilize the round-up feature of the Purchase and Sale Program, will acquire additional shares of Holding Company Common Stock for the fair market value of such Stock as determined on the open market on the date of the acquisition.

14. In addition to the Purchase and Sale Program, beginning on the first anniversary of the effective date of the demutualization and lasting until the termination of the Trust, each Trust Beneficiary will have the right to withdraw shares of Holding Company Common Stock being held for such Trust Beneficiary under the Trust.¹⁰ A Trust Beneficiary will not pay any fees or commissions in connection with the withdrawal of shares of allocable Holding Company Common Stock. In the case of a Trust Beneficiary that is a Plan, the decision to withdraw shares of Holding Company Common Stock from the Trust will be made by a Plan fiduciary which is independent of MetLife.

15. Under the Plan of Reorganization, regular cash dividends that are received by the Trust on shares of Holding Company Common Stock during any six month period ending on June 30 or December 31 will be distributed to Trust Beneficiaries, in proportion to their Trust Interests, on the following June 30 or July 31, respectively. The Holding Company will set a payment date for the dividends so that they are distributed to the Trust Beneficiaries within 90 days after the Trustee has received them. Pending these semiannual distributions, dividends received by the Trust will be invested by the Trustee in short-term obligations of, or guaranteed by, the United States or any agency or instrumentality thereof, and in certificates of deposit of any bank or trust company having a combined capital and surplus of at least \$500 million. If there is a distribution of

shares of Holding Company Stock (*i.e.*, a stock dividend), the additional shares will be deposited in the Trust and held under the terms of the Trust Agreement.

Similarly, if the Holding Company Common Stock is exchanged for common stock of another entity in connection with the merger or consolidation of the Holding Company with another entity, the new common stock will continue to be held in the Trust in accordance with the Trust Agreement. In all other cases, if shares of Holding Company Common Stock are exchanged for securities or other property of an entity other than MetLife, the Trust will distribute the property received to the Trust Beneficiaries based on their respective Trust Interests.

16. Trust Beneficiaries will be able to instruct the Trustee how to vote shares of Holding Company Common Stock that are held in Trust for elections of Holding Company directors with competing candidates, any merger, consolidation or recapitalization of the Holding Company, or any other event that could result in an exchange of Holding Company Common Stock for other property which would require a vote under applicable Delaware law, exchange or NASDAQ rules. The Trustee will generally vote all shares of Holding Company Common Stock that is held in Trust in proportion to the instructions received from Trust Beneficiaries which give such instructions. However, there is one exception. If the issue is a choice of competing candidates for director positions, and Trust Beneficiaries representing 20 percent or fewer of the Trust Interests provide instructions, the Trustee will vote only the shares of Holding Company Common Stock that are held in Trust that are equal in number to the number of Trust Interests held by Trust Beneficiaries which provide instructions. On all routine matters other than those described above, the Trustee will vote shares of Holding Company Common Stock that are held in Trust as recommended or directed by the Holding Company's Board of Directors.

The Holding Company's Board of Directors may terminate the Trust if the number of shares of Holding Company Common Stock held in Trust falls below 25 percent of all outstanding shares of Holding Company Common Stock. In any event, the Trust will be terminated when all shares of Holding Company Common Stock held in Trust are withdrawn from such Trust or the number of such shares is less than 10 percent of the outstanding Holding Company Common Stock. The Trust can also be terminated sooner by the

Holding Company's Board of Directors because of changes in the law or changes in facts or circumstances relating to the Trust.

Upon termination of the Trust, a Trust Beneficiary will have the option of receiving shares of allocable Holding Company Common Stock in-kind or receiving cash as the result of the sale of such Stock to the Holding Company, using the twenty day average formula described above.

To ensure that the assets of the Trust will not be characterized as "plan assets" under the Act, the Holding Company may require certain Trust Beneficiaries that are Plans to be cashed out during the term of the Trust. If a Plan investor is "cashed out" by MetLife, such Trust Beneficiary will receive the fair market value of allocable shares of Holding Company Common Stock at the time of such termination. Alternatively, MetLife will give the Trust Beneficiary the option of receiving an in-kind distribution of allocable Holding Company Common Stock.

17. As stated above, State Street has agreed to serve as the Independent Fiduciary and investment manager for the MetLife Plans in connection with certain aspects of the MetLife demutualization, particularly with respect to the vote and potential receipt of consideration by such Plans. State Street represents that it is qualified to serve as the Independent Fiduciary and investment manager for the MetLife Plans. In support of this representation, State Street asserts that it is one of the largest trust companies in the United States with over \$525 billion in assets under management, a significant portion of which consists of the assets of plans covered under the provisions of the Act. State Street also represents that it served as the Independent Fiduciary for the State Mutual Life Assurance Company of America during its demutualization. Further, State Street represents that it has served as a trustee or an independent fiduciary for numerous retirement plans that acquire or hold employer securities. Currently, State Street states that it manages over \$72 billion in employer securities held by various retirement plans. In managing such investments, State Street explains that it has supervised numerous transactions involving the acquisition, retention and disposition of employer securities. On a continuing basis, State Street indicates that it monitors the performance of the employer securities.

State Street represents that it is independent of MetLife and has no business relationships with MetLife other than—

¹⁰MetLife projects that the initial number of shareholders of the Holding Company may exceed 10 million. Because of this factor, MetLife has restricted withdrawals of Holding Company Stock by Trust Beneficiaries during the first year of the Trust's existence in order to facilitate the efficient and orderly conduct of shareholder accounts and costs associated with serving a large number of shareholders. If Trust Beneficiaries were permitted to withdraw their shares during the first year of the Trust's existence, MetLife does not believe that these goals would be achieved.

- Providing various products and services to MetLife, including (a) custodial services for all of MetLife's and State Street Research's (a subsidiary of MetLife) mutual funds; (b) participating in State Street's securities lending program; (c) global cash management; (d) managing a sweep account; (e) providing credit facilities for MetLife's Retained Asset Program; and (e) providing foreign exchange securities to State Street Research. State Street represents that all revenues and fees associated with MetLife represents less than one percent of State Street's total revenues.

- Offering MetLife's auto, homeowners and umbrella liability coverage to employees of State Street.

- Providing services as an investment manager for defined contribution fixed income funds. Currently, State Street states that it manages approximately \$9 billion in fixed income securities. Approximately \$650 million of this amount is invested on behalf of various clients in guaranteed investment contracts issued by MetLife. However, State Street explains that it derives no revenue from MetLife for investment in these contracts.

- Providing master trust and custody services to various pension plans, some of which may invest in MetLife guaranteed investment contracts. State Street explains that it serves only as a directed trustee/custodian to these plans and has no discretion related to plan investments. State Street again asserts that it receives no revenue from investment in these contracts. However, irrespective of the investment, State Street receives a trust/custody fee based on the total value of the plan.

State Street also states that MetLife holds, on behalf certain MetLife customers, approximately 96,000 shares of State Street stock in various separate accounts. These shares are currently worth approximately \$7 million and represent approximately .005962 of the total outstanding shares of State Street stock.

Further, State Street asserts that no officer or director or State Street is an officer or director of MetLife or vice versa and that MetLife does not have an ownership interest in State Street nor does State Street have an ownership interest in MetLife.

18. State Street represents that it understands and acknowledges its ERISA duties, responsibilities and liabilities as a fiduciary with respect to the MetLife Plans and agrees to undertake such duties. Specifically, State Street will (a) vote at the special meeting of Eligible Policyholders to approve the Plan of Reorganization; (b)

make any election, to the extent available under the Plan of Reorganization, to receive Trust Interests or cash on behalf of the MetLife Plan; (c) monitor, on behalf of the MetLife Plan, the acquisition and holding of any Trust Interests received; (d) make determinations on behalf of the MetLife Plan with respect to the voting and the continued holding of Trust Interests by such Plan; (e) withdraw shares of Holding Company Common Stock that is held in Trust which are equivalent to Trust Interests allocated to a MetLife Plan and disposes of such Trust Interests (i) not exceeding the limits of section 407(a) of the Act in a prudent manner; (ii) exceeding the limits of section 407(a) of the Act within six months of the IPO; and (f) provide the Department with a complete and detailed final report as it relates to the MetLife Plans prior to the effective date of the demutualization. Further, MetLife represents that it has conducted a preliminary review of the Plan of Reorganization and it sees nothing in the Plan that would preclude the Department of Labor from proposing the requested exemption.

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

(a) The Plan of Reorganization, which is being implemented pursuant to stringent procedural and substantive safeguards imposed under New York law and supervised by the Superintendent, will not require any ongoing involvement by the Department.

(b) One or more independent fiduciaries of Plans that are MetLife policyholders will have an opportunity to determine whether to vote to approve the Plan of Reorganization and will be solely responsible for all such decisions after receiving full and complete disclosure of the terms of such reorganization.

(c) The exemption will allow Eligible Policyholders that are Plans to acquire Trust Interests, cash or policy credits in exchange for their membership interests in MetLife and neither MetLife nor its affiliates will exercise any discretion or provide investment advice with respect to such acquisition.

(d) No Eligible Policyholder will pay any brokerage commissions or fees in connection with such Eligible Policyholder's receipt of consideration from MetLife or with respect to the operation of the Purchase and Sale Program.

(e) The Superintendent will make an independent determination that the Plan of Reorganization is in the best

interest of all MetLife policyholders, including Plans.

(f) All of MetLife's policyholder obligations will remain in force and will not be affected by the Plan of Reorganization.

(g) In the case of the MetLife Plans, an Independent Fiduciary will (1) vote at the special meeting of Eligible Policyholders to approve the Plan of Reorganization; (2) make any election, to the extent available under the Plan of Reorganization, to receive Trust Interests or cash on behalf of the MetLife Plan; (3) monitor, on behalf of the MetLife Plan, the acquisition and holding of any Trust Interests received; (4) make determinations on behalf of the MetLife Plan with respect to the voting and the continued holding of Trust Interests by such Plan; and (5) dispose, in a prudent manner, allocable shares of Holding Company Common Stock in respect of Trust Interests which exceed the limits of section 407(a) of the Act within six months of the IPO.

Notice to Interested Persons

MetLife will give notice of the proposed exemption to Eligible Policyholders that are Plans within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the proposed exemption. Therefore, comments with respect to the proposed exemption will be due 60 days after the date of publication of the proposed exemption 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.)

Les Olson Company, Inc. Money Purchase Plan (M/P Plan) and Les Olson Company, Inc. Profit Sharing Plan (P/S Plan, Collectively; the Plans Located in Salt Lake City, Utah

[Application Nos. D-10810 and D-10811]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (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)(A) through (E) of the Code, shall not apply to the proposed series of loans (the Loans), originated within a five-year period, by the Plans to Les Olson Company, Inc. (the Employer), a party in interest with respect to the Plans, provided that the following conditions are met:

(1) The total amount of the outstanding Loans does not exceed 20 percent (20%) of the Plans' total assets at any time during the transactions and each of the Plan's allocable portion of such Loans does not exceed 20 percent (20%) of such Plan's total assets;

(2) Each Loan entered into by the Plans is made pursuant to the terms and conditions of the Loan Agreement (the Loan Agreement) executed by the parties and signed on behalf of the Plans by the Plans' duly appointed independent, qualified fiduciary (the Independent Fiduciary);

(3) All terms and conditions of the Loans are at least as favorable to the Plans as those the Plans could obtain in an arms-length transaction with an unrelated third party;

(4) Each Loan is: (i) For a maximum term of five years pursuant to terms and conditions of the Loan Agreement; (ii) fully amortized and payable in equal monthly installments of principal and interest; (iii) used exclusively by the Employer to purchase office equipment (the Equipment) which will be leased by the Employer in the ordinary course of its business to unrelated parties; and (iv) secured by duly perfected security interests in the new and used Equipment, and by certain leases of Equipment (Equipment Leases) where such Equipment Leases are assigned and pledged as collateral for the Loans, which is at all times equal to 200% of the outstanding principal balance of such Loan;

(5) New Equipment is valued for collateralization purposes at 80 percent (80%) of the invoice price paid by the Employer to purchase such Equipment less taxes and transportation expenses. Used Equipment and any Equipment Lease pledged as collateral for the Loans is valued by an independent qualified appraiser;

(6) Prior to the approval of each Loan, the Independent Fiduciary determines, on behalf of the Plans, that each Loan is prudent and in the best interests of the Plans, and protective of the Plans and its participants and beneficiaries;

(7) The Independent Fiduciary conducts a review of all terms and conditions of the exemption, if granted, and the Loans, including the applicable interest rate, the sufficiency of the

collateral pledged for each Loan; the financial condition of the Employer; and the compliance with the 20% limitation for the Plans (and each Plan's) maximum total Loan amount prior to approving each disbursement under the Loan Agreement; and

(8) The Independent Fiduciary is authorized to take whatever action is necessary to protect the Plans' interests throughout the duration of the exemption, if granted, and throughout the duration of any Loan entered into under this exemption, if granted.

Temporary Nature of Exemption, if Granted

The exemption, if granted, will be temporary and will expire five (5) years from the date of publication in the **Federal Register** of the final grant of this proposed exemption. Subsequent to the expiration of the exemption, if granted, the Plans may hold any Loans originating during this five-year period until the Loans are repaid or otherwise terminated.

Summary of Facts and Representations

1. The Plans are the M/P Plan and the P/S Plan, which were established in 1978 and 1979, respectively. As of December 31, 1998, the Plans had 97 participants and total combined assets of \$7,147,199. The Plans are trustee by R. Scott Olson, Thomas P. Olson, James R. Olson and L. Ray Olson, all of whom are owners and officers of the Employer, which is the Plan sponsor. The Employer is a closely-held corporation organized under the laws of the State of Utah. The Employer is engaged in the sale, leasing and maintenance of copiers, fax machines and digital and analog dictation equipment. The shareholders of the Employer are all members of the Olson family.

The Employer has facilities in the major metropolitan areas of Utah, which are Salt Lake City, Ogden, Provo and St. George. The Employer is in the business of purchasing office equipment and leasing such equipment to its customers. The Employer generally has not used outside financing in its operations and has supported itself from the revenues it generates.

2. The applicant desires that the Plans make a series of Loans to the Employer over a period of 5 years. The proceeds from the Loans will be used by the Employer to purchase new office equipment (*i.e.*, Equipment). Each Loan will be collateralized by a promissory note and a security agreement, duly perfected and properly recorded under applicable state law, which will provide that the Plans have a first lien on the Equipment. In addition, the Loan may

be collateralized by leases of used Equipment (*i.e.*, Equipment Leases) of the Employer if necessary to adequately secure such Loans. At all times the collateral for the Loans will be at least equal to 200% of the outstanding balance of such Loans. New Equipment will be valued at 80% of the invoice price paid by the Employer upon purchasing the Equipment, less taxes and transportation expenses. Used Equipment and Equipment Leases pledged as collateral for the Loans will be valued in each case by an independent qualified appraiser.

3. Mr. Jack S. Emery (Mr. Emery) will serve as the independent qualified appraiser for the Loan transactions described herein.

Mr. Emery is a qualified appraiser of office equipment who is currently a businessman and an investor in various business ventures. Mr. Emery has over 25 years of experience in the business of leasing office equipment. In this regard, Mr. Emery was one of the founders of the Matrix Funding Corporation (Matrix). Matrix was a major office equipment leasing business from 1978 until 1998. In 1998, Matrix was sold and consolidated with 12 other leasing companies to form Unicapital, an office equipment leasing company whose stock is publicly-traded on the New York Stock Exchange.

Mr. Emery states that he will appraise all of the collateral used for the Loans on an annual basis. Mr. Emery states further that during his 25 year career in the office equipment leasing business he has valued numerous pieces of office equipment of the same type as the Equipment which will be used as collateral for the Loans. Mr. Emery further represents that in his career he has used office equipment for sale, leasing and financing. Mr. Emery states that he is very familiar with the useful life of this type of equipment, the rate at which it depreciates, and the market factors that may affect its value. In conducting appraisals of the Equipment, Mr. Emery will take into consideration all the relevant factors relating to the valuation of the Equipment and the market-place for such Equipment.

4. The maximum length of any Loan will be 5 years under the terms and conditions of the Loan Agreement. The interest rate on the Loans will be equal to the prime rate as of the date of closing, as quoted under "Money Rates" in the Wall Street Journal (WSJ Prime) plus two percentage points, and will be adjusted quarterly. Additionally, the interest rate of any Loan will be set at a higher rate if such higher rate represents the prevailing market rate for similar loans as determined by the

Independent Fiduciary, as discussed further below. In no event will any Loan bear an interest rate lower than the WSJ Prime plus two percentage points.

The outstanding balance of the Loans will never exceed 20% of the fair market value of the Plans' aggregate assets (or fair market value of each of the Plan's assets).

5. Mr. Emery will also serve as the Independent Fiduciary for the Plans with respect to the proposed Loans pursuant to the terms and conditions of a written independent fiduciary agreement (the I/F Agreement). Mr. Emery represents that he is qualified to act as an independent qualified fiduciary with respect to the Loans, and that he understands his duties and responsibilities under the Act. In this regard, Mr. Emery states that he has not previously served as an independent fiduciary for a pension plan. However, Mr. Emery states that he has been, and will continue to be, advised by a qualified ERISA attorney regarding his duties and responsibilities as an independent fiduciary for the Plans. The income received by Mr. Emery from the Plans, for functioning as the Independent Fiduciary, will not exceed 1% of his gross annual income. In addition, Mr. Emery represents that he has no pre-existing relationship with the Employer or with any of the shareholders of the Employer.

6. Mr. Emery, as the Independent Fiduciary, represents that he will determine the appropriateness and suitability of each Loan for the Plan(s) prior to the consummation of the Loan transaction. Mr. Emery will review the value of the Equipment and the assets pledged to secure the Loans and confirm the sufficiency of the value of the collateral for each Loan.

Mr. Emery represents that he will ensure that the Loans are appropriate investments for the Plans and are in the best interests of the Plans' participants and beneficiaries, and protective of their interests. Mr. Emery states further that the terms of the Loans will be at least as favorable to the Plans as the terms obtainable by the Plans in an arm's-length transaction with an unrelated party. Mr. Emery also states that he will enforce the terms of each Loan including, but not limited to, making demand for timely payments from the Employer, bringing suit or other appropriate action against the Employer in the event of default, and monitoring the performance of each Loan and taking whatever actions are necessary to protect the interests of the Plans.

7. Mr. Emery, as the Independent Fiduciary, also reserves the right under the I/F Agreement to hire independent

advisors, as necessary to perform his duties as the Plans' Independent Fiduciary. For example, Mr. Emery states that it could become necessary in the event of a foreclosure on the Equipment, for him to require advice from an independent, experienced and qualified legal counsel on the mechanics of such foreclosure.

8. With respect to the terms and conditions of the Loans, Wells Fargo Bank in Salt Lake City, Utah (the Bank), in a letter dated October 4, 1999, has stated that it would enter into similar loan transactions with the Employer, provided it determined at the time of transaction that the Employer would be a creditworthy borrower. The Bank has examined the terms of the Loans and concluded that such terms are at least as favorable to the Plans as those terms which would be obtainable in an arm's-length transaction with an unrelated party.

9. In summary, the applicant represents that the transactions will meet the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The interest rates paid to the Plans on the Loans will be at least as favorable to the Plans as the current market rate of interest for similar loans;

(b) The Plans' interests with respect to the Loans will be represented by Mr. Emery, as the Independent Fiduciary, who will monitor the Loans and the terms and conditions of the exemption, if granted, and will take all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries;

(c) Mr. Emery will determine that each Loan is in the best interests of the Plans' participants and beneficiaries at the time of the transaction;

(d) Mr. Emery will review and approve each Loan prior to making any disbursements of the Loan amount to the Employer;

(e) The Loans will be secured at all times by the Equipment or Equipment Leases, which will be valued at not less than 200% of the outstanding principal balance of each Loan; and (f) the aggregate balance of the outstanding Loans will not exceed 20% of the aggregate value of the Plans' assets, or 20% of each of the Plan's total assets.

FOR FURTHER INFORMATION CONTACT:
Ekaterina A. Uzlyan of the Department at (202) 219-8883 (This is not a toll-free number).

TMI Systems Design Corporation 401(k) Profit Sharing Plan (the Plan) Located in Dickinson, North Dakota

[Application No. D-10821]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (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)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain limited partnership interests (the Interests) to Northern Capital Trust Company (Northern), the Plan's trustee and a party in interest with respect to the Plan, for \$185,316 in cash, provided the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) no commissions are charged in connection with the transaction; (c) the Plan receives not less than the fair market value of the Interests at the time of the transaction; and (d) the fair market value of the Interests is determined by a qualified entity independent of the Plan and of Northern.

Summary of Facts and Representations

1. The Plan is a 401(k) profit sharing plan which is sponsored by TMI Systems Design Corporation (the Employer) of Dickinson, North Dakota. The Plan currently has 292 participants and had assets of \$5,109,439 as of August 31, 1999. The trustee of the Plan is Northern, a trust company located at 203 10th Street North, Fargo, North Dakota. Northern has investment discretion for the Plan's assets.

2. In August 1993, the Plan purchased the Interests as an investment from an unrelated party (as discussed below). The Interests consist of an 8.4674% interest in the Courtyard Limited Partnership (the Partnership). The Partnership's sole asset is an apartment building known as "Courtyard Apartments" in St. Louis Park, Minnesota. The Plan paid \$108,467.40 for the Interests in the Partnership. The investment was presented to Northern, as Plan trustee, by Regan Wieland Investment Co., whose name was later changed to Goldmark Investment Company (Goldmark), on behalf of the Partnership. Goldmark and the Partnership are independent of, and

unrelated to, the Employer and Northern.

3. The Employer would like to permit employee directed investments and the use of a 24-hour telephone service to accommodate daily transfers by Plan participants of assets held in their individual accounts in the Plan. In order to be able to participate in the new daily valuation and transfer system, the Plan needs to divest itself of the Interests to ensure proper liquidity for all of the Plan's assets. In this regard, the applicant represents that it is necessary to transfer the Interests out of the Plan because the Interests cannot be valued on a daily basis.

4. Northern as Plan trustee has contacted Goldmark, the Managing Partner of the Partnership, to inform them that the Plan wishes to sell its Interests. Mr. Kenneth P. Regan of Goldmark has represented that the fair market value of the Plan's Interests would be approximately \$177,815, if all of the partners were to sell their Partnership interests at the present time. However, in the event only one partner, such as the Plan, were to dispose its Interests, there would be discounts from the \$177,815 value to reflect the lack of marketability and minority ownership in addition to sales costs. Goldmark estimates that these expenses would be approximately \$8,000. Thus, Goldmark states that the value of the Plan's Interests, if it were to sell such Interests alone, would be approximately \$170,000. Goldmark based its valuation of the Partnership on a September 4, 1998 appraisal of the Courtyard Apartments that was conducted by Everett D. Strand, MAI, (Strand) of Kramer, Geisler, Strand & Goff, Inc., an independent real estate appraiser in Minneapolis, Minnesota.

5. The applicant has requested an exemption that would permit the Plan to sell the Interests to Northern for cash. No commissions or other fees would be charged in connection with the sale. Northern has represented that they are willing to pay the Plan \$185,316 for the Interests, an amount which reflects the book value of the Interests carried by Northern on the Plan's balance sheet as of August 31, 1999 (based upon the net asset value of the Courtyard Apartments as the Partnership's only asset). This amount is more than the current fair market value of the Interests (*i.e.*, \$170,000) as determined by Goldmark.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) no commissions or other fees will be charged in connection with the

transaction; (c) the sales price for the Interests will be an amount, based on the book value of the Interests, which reflects more than the fair market value of the Interests as determined by Goldmark, the Managing Partner for the Partnership; and (d) Goldmark based its valuation of the Partnership on an appraisal of the Courtyard Apartments performed by Strand, an independent qualified real estate appraiser.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz 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 of 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 accurately describe all material terms of the transaction which is the subject of

the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 18th day of November, 1999.

Ivan Strasfeld,

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

[FR Doc. 99-30560 Filed 11-23-99; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

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

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Date and Time: December 2, 1999, 8:45 a.m.-5:00 p.m.; December 3, 1999, 8:45 a.m.-3:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 306-1400.

Minutes: May be obtained from the contract person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: GPRA Performance Evaluation and Planning Discussion.

Dated: November 19, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99-30618 Filed 11-23-99; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences (66); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science