

(b) The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transaction to which the above restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a plan as a result of providing services to a plan (or as a result of a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act or section 4975(e)(2)(F), (G), (H), or (I) of the Code) solely because of the plan's ownership of certificates issued by a trust that satisfies the requirements described in section III(a) above.

Section IV—General Conditions. (a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of the insurance company, the terms of the transaction are at least as favorable to the insurance company general account as the terms generally available in arm's-length transactions between unrelated parties.

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

(c) The party in interest is not the insurance company, any pooled separate account of the insurance company, or an affiliate of the insurance company.

Section V—Definitions. For the purpose of this exemption:

(a) An "affiliate" of a person means—

(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 (including, in the case of an insurance company, an insurance agent thereof, whether or not the agent is a common law employee of the insurance company), or relative of, or partner in, any such person; and

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

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

(c) The term "employer securities" means "employer securities" as that term is defined in Act section 407(d)(1), and the term "employer real property" means "employer real property" as defined in Act section 407(d)(2).

(d) The term "insurance company" means an insurance company

authorized to do business under the laws of one or more states.

(e) The term "insurance company general account" means all of the assets of an insurance company that are not legally segregated and allocated to separate accounts under applicable state law.

(f) The term "party in interest" means a person described in Act section 3(14) and includes a "disqualified person" as defined in Code section 4975(e)(2).

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

(h) The term "Underwriter Exemption" refers to the following individual Prohibited Transaction Exemptions (PTEs)—

PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–39, 56 FR 33473 (July 22, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–6, 58 FR 07255 (February 5, 1993); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); and any other exemption providing similar relief to the extent that the Department expressly determines, as part of the proceeding to grant such exemption, to include the exemption within this definition.

(i) For purposes of this exemption, the time as of which any transaction, acquisition, or holding occurs is the date upon which the transaction is entered into, the acquisition is made, or

the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or acquisition made, on or after January 1, 1975, or any renewal that requires the consent of the insurance company occurs on or after January 1, 1975, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition, and the exemption shall apply thereafter to the continued holding of the securities or property so acquired. This exemption also applies to any transaction or acquisition entered into or renewed, or holding commencing prior to January 1, 1975, if either the requirements of this exemption would have been satisfied on the date the transaction was entered into or acquisition was made (or on which the holding commenced), or the requirements would have been satisfied on January 1, 1975, if the transaction had been entered into, the acquisition was made, or the holding had commenced, on January 1, 1975. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction or holding exempt by virtue of section I(a) or section I(b) at such time as the interest of the plan in the insurance company general account exceeds the percentage interest limitation contained in section I(a), unless no portion of such excess results from an increase in the assets allocated to the insurance company general account by the plan. For this purpose, assets allocated do not include the reinvestment of general account earnings. Nothing in this paragraph shall be construed as exempting a transaction entered into by an insurance company general account that becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

VI. Effective date. The effective date of this exemption is January 1, 1975.

Signed at Washington, DC this 7th day of July, 1995.

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