

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 2002–17; Application No. D–10961]

Grant of Individual Exemption for State Farm Mutual Automobile Insurance Company and State Farm VP Management Corp.

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

ACTION: Notice of technical correction.

On March 22, 2002, the Department published, in the **Federal Register** (67 FR 13366), a notice of individual exemption for State Farm Mutual Automobile Insurance Company (State Farm) and for State Farm VP Management Corp. (SFVPMC) which permits the purchase or redemption of an institutional class of shares of State Farm mutual funds, as defined in the exemption, by certain pension plans, which are established by:

(a) Independent contractor agents (the Agents) of State Farm or its affiliates, who are also registered representatives of SFVPMC, for themselves and their employees, and

(b) The family members of such Agents, as defined in the exemption, provided that certain conditions are satisfied.

The Department wishes to correct certain typographical errors that appeared in the exemption. In this regard, in Section I captioned, “Transactions,” the citation, “406(a)(1)(A) through (d),” on page 13366, column 2, line 2 should be replaced by the citation, “406(a)(1)(A) through (D),” and, the citation, “4974 of the Code,” on page 13366, column 2, line 4 should be amended to read, “4975 of the Code.” In Section II captioned, “Conditions,” the following amendments should be made:

(1) in section II(g) the word, “prevention,” on page 13366, column 3, line 3 should be replaced by the word, “provision”;

(2) in section II(j)(1)(D), the word, “member,” on page 13367, column 1, line 2 should be capitalized;

(3) in section II(j)(2), the word, “asset,” on page 13367, column 1, line 6 should be plural; and

(4) in section II(o), the word, “plan,” on page 13368, column 1, line 1 should be capitalized.

Accordingly, the Department hereby corrects the typographical errors set forth above.

FOR FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc of the Department at (202) 693–8551. (This is not a toll-free number.)

Signed at Washington, DC, this 25th day of March, 2002.

Ivan L. Strasfeld,

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

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DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration**

[Exemption Application No. D–10976]

Prohibited Transaction Exemption 2002–20; Grant of Individual Exemptions; Union Bank of California (UBOC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption 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).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is 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 exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

**Union Bank of California (UBOC),
Located in San Francisco, California**

[Prohibited Transaction Exemption 2002–20; Application No. D–10976]

Exemption

*Section I—Retroactive and Prospective
Exemption for In-Kind Redemption of
Assets*

The restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, as of June 15, 2001, to certain in-kind redemptions (the Redemptions) by the Union Bank of California Retirement Plan or any other employee benefit plan sponsored by UBOC or an affiliate of UBOC (an In-house Plan) of shares (the Shares) of proprietary mutual funds (the Portfolios) offered by the HighMark Funds or other investment companies (the Funds) for which HighMark Capital Management, Inc. or an affiliate thereof (the Adviser) provides investment advisory and other services, provided that the following conditions are met:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than UBOC and affiliates of UBOC (UBOC Affiliates));

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, Transferable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the

Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures established by the Funds pursuant to Rule 2a-4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), (using sources independent of UBOC and UBOC Affiliates);

(D) UBOC, the Adviser, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, UBOC provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written approval for such Redemption to UBOC, such approval being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by UBOC of written or electronic notice regarding such termination (unless circumstances beyond the control of UBOC delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary and discussions with appropriate operational personnel of the In-house Plan, UBOC, and the Adviser as necessary to form a basis for making the following determinations, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties;

(H) Not later than thirty (30) business days after the completion of a Redemption, UBOC or the relevant Fund provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) the number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including any security valued in accordance with the Funds'

procedures for obtaining current prices from independent market-makers,

(iii) the current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing. For Redemptions occurring on June 15, 2001, the Independent Fiduciary's review included testing a limited sampling of certain material aspects of the Redemption deemed in its judgment to be representative;¹

(K) Each of the In-house Plan's dealings with: the Funds, the Adviser, the principal underwriter for the Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;

(L) UBOC maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UBOC, the records are lost or destroyed prior to the end of the six-year period, (ii) no party in interest with respect to the In-house Plan other than UBOC 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 such records are not maintained or are not available for examination as required by paragraph (M) below.

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L)

¹ The reason for this difference is to conform to the language used in the initial independent fiduciary agreement that U.S. Trust and UBOC entered into with respect to the June 15, 2001 transactions.

above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the In-house Plan or any duly authorized representative of such fiduciary, (iii) any participant or beneficiary of the In-house Plan or duly authorized representative of such participant or beneficiary, (iv) any employer with respect to the In-house Plan, and (v) any employee organization whose members are covered by such In-house Plan.

(2) None of the persons described in paragraphs (M)(1)(ii) through (v) shall be authorized to examine trade secrets of UBOC, the Funds, or the Adviser, or commercial or financial information which is privileged or confidential.

(3) Should UBOC, the Funds, or the Adviser refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (M)(2) above, UBOC, the Funds, or the Adviser shall, by the close of the 30th day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

For purposes of this proposed exemption,

(A) The term "affiliate" 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, relative, 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 "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Portfolio's prospectus and statement of additional information, and other assets belonging to the Portfolio, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(D) The term "Independent Fiduciary" means a fiduciary who is: (i) Independent of and unrelated to UBOC

and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to UBOC if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with UBOC; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; (except that an Independent Fiduciary may receive compensation from UBOC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision); and (iii) more than 1 percent (1%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by UBOC and its affiliates in the fiduciary's current tax year.

(E) The term *Transferable Securities* shall mean securities (1) for which market quotations are readily available as determined pursuant to procedures established by the Funds under Rule 2a-4 of the 1940 Act; and (2) which are not: (i) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and that of the high none was the package together for this; and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(F) The term "relative" means a "relative" as that term is defined in section 3(15) of ERISA (or a "member of the family," as that term is defined in

section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Written Comments

The Department received three written comments with respect to the proposed exemption. Two comments sought clarification as to the terms of the proposed exemption, the remaining comment was submitted by UBOC. In its letter, UBOC stated the following:

(1) Footnote 14 of the Summary of Facts and Representations states that certain HighMark portfolios were redeemed on Dec. 14, 2001. The correct date was Dec. 12, 2001.

(2) Footnote in 19 indicates that UBOC agreed to make a cash payment sufficient to make the Retirement Plan whole with respect to the in-kind redemption of shares from the HighMark International Fund. As indicated its post transaction report dated January 25, 2002, U.S. Trust concluded that, based on its analysis of data from the actual transaction, the in-kind redemption was more favorable to the Retirement Plan than a hypothetical redemption in cash. Therefore, UBOC was not requested to, and did not, make a cash contribution to the Retirement Plan in connection with this redemption.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption subject to the clarifications described above.

For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-10976) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N-1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea W. Selvaggio of the Department, telephone (202) 693-8547. (This is not a toll-free number.)

Pacific Investment Management Company LLC (PIMCO) Located in Newport Beach, CA

[Prohibited Transaction Exemption 2002-21; Exemption Application No. D-11005]

Exemption

Section I. Exemption for the Purchase of Fund Shares With Assets Transferred in Kind From a Plan Account

The restrictions of section 406(a) and section 406(b) 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 (F) of the Code,² shall not apply, effective February 5, 2002, to the purchase of shares of one or more open-end management investment companies (the PIMCO Mutual Funds) registered under the Investment Company Act of 1940 (the ICA), to which PIMCO or any affiliate of PIMCO (the PIMCO Affiliate)³ serves as investment adviser and may provide other services, by an employee benefit plan (the Plan or Plans), whose assets are held by PIMCO, as trustee, investment manager or discretionary fiduciary, in exchange for securities held by the Plan in an account (the Account) or sub-Account with PIMCO (the Purchase Transaction), provided that the following conditions are met:

(a) A fiduciary who is acting on behalf of each affected Plan and who is independent of and unrelated to PIMCO, as defined in paragraph (g) of Section III below (the Second Fiduciary), provides, prior to the first Purchase Transaction, the written approval described in paragraph (b) or (c) of this Section I, as applicable, following the disclosure of written information concerning the PIMCO Mutual Funds, which includes the following:

(1) A current prospectus or offering memorandum for each PIMCO Mutual Fund which has been approved by the Second Fiduciary for that Plan's Account;⁴

² For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

³ Unless otherwise noted, "PIMCO" refers to "PIMCO" and to any "PIMCO Affiliates" and the term "PIMCO Mutual Funds" refers to any registered investment funds that are managed or advised by PIMCO or a PIMCO Affiliate.

⁴ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Exchange Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit Second Fiduciaries to make informed investment decisions.

(2) A statement describing the fees to be charged to, or paid by, the Plan and the PIMCO Mutual Funds to PIMCO, including the nature and extent of any differential between the rates of the fees paid by the PIMCO Mutual Fund and the rates of the fees otherwise payable by the Plan to PIMCO;

(3) A statement of the reasons why PIMCO considers Purchase Transactions to be appropriate for the Plan;

(4) A statement on whether there are any limitations on PIMCO with respect to which Plan assets may be invested in the PIMCO Funds, and if so, the nature of such limitations;

(5) In the case of a Plan having total assets that are less than \$200 million, in connection with obtaining the advance written approval described in paragraph (c)(2) of this Section I, the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds; and

(6) Upon such Second Fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the final exemption.

(b) On the basis of the foregoing information, in paragraph (a) of this Section I, the Second Fiduciary of a Plan having total assets that are at least \$200 million, gives PIMCO a standing written approval (subject to unilateral revocation by the Second Fiduciary at any time) for—

(1) The Purchase Transactions, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(2) The investment guidelines for the Account (the Strategy) and the management, by PIMCO, of client Plan assets in separate Accounts in the implementation of the Strategy;

(3) The investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of the Strategy;

(4) The acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time; and

(5) The receipt of confirmation statements with respect to the Purchase Transactions in the form of written reports to the Second Fiduciary.

(c) On the basis of the foregoing information in paragraph (a) of this Section I, the Second Fiduciary of a Plan having total assets that are less than \$200 million, gives PIMCO—

(1) A standing written approval (subject to unilateral revocation by the Second Fiduciary at any time) for—

(i) The Strategy and the management, by PIMCO, of client Plan assets in

separate Accounts in the implementation of the Strategy;

(ii) The investment of a certain portion (or portions) of the Accounts in specified PIMCO Mutual Funds, as part of PIMCO's ongoing implementation of the Strategy; and

(iii) The acquisition of shares of PIMCO Mutual Funds in cash or in kind, from time to time.

(2) Advance written approval for—

(i) Each Purchase Transaction, consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act; and

(ii) The receipt of confirmation statements with respect to Purchase Transactions in the form of written reports to the Second Fiduciary.

(d) No sales commissions or other fees are paid by a Plan in connection with a Purchase Transaction.

(e) All transferred assets are securities for which market quotations are readily available.

(f) The transferred assets consist of assets transferred to the Plan's Account at the direction of the Second Fiduciary, and any securities which have been acquired through the investment and reinvestment of such securities in the implementation of the Strategy.

(g) With respect to assets transferred in kind, each Plan receives shares of a PIMCO Mutual Fund which have a total net asset value that is equal to the value of the assets of the Plan exchanged for such shares, based on the current market value of such assets at the close of the business day on which such Purchase Transaction occurs, using independent sources in accordance with the procedures set forth in Rule 17a-7b under the ICA (Rule 17a-7), as amended from time to time or any successor rule, regulation or similar pronouncement, and the procedures established by the PIMCO Mutual Funds pursuant to Rule 17a-7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the day of the Purchase Transaction determined on the basis of reasonable inquiry from at least two sources that are market makers or pricing services independent of PIMCO.

(h) PIMCO sends by regular mail, express mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary of each Plan that engages in a Purchase

Transaction, a report containing the following information about each Purchase Transaction:

(1) A list (or lists, if there are multiple Purchase Transactions) identifying each of the securities that has been valued for purposes of the Purchase Transaction in accordance with Rule 17a-7(b)(4) of the ICA;

(2) The current market price, as of the date of the Purchase Transaction, of each of the securities involved in the Purchase Transaction;

(3) The identity of each pricing service or market maker consulted in determining the value of such securities;

(4) The aggregate dollar value of the securities held in the Plan Account immediately before the Purchase Transaction; and

(5) The number of shares of the PIMCO Mutual Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received) immediately following the Purchase Transaction.

(Such report is disseminated by PIMCO to the Second Fiduciary by regular mail, express mail or personal delivery, or if applicable, by facsimile or electronic mail, no later than 30 business days after the Purchase Transaction.)

(i) With respect to each of the PIMCO Mutual Funds in which a Plan continues to hold shares acquired in connection with a Purchase Transaction, PIMCO provides the Second Fiduciary with—

(1) A copy of an updated prospectus or offering memorandum for such PIMCO Mutual Fund, at least annually; and

(2) Upon request of the Second Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information, or some other statement) containing a description of all fees paid by the PIMCO Mutual Fund to PIMCO.

(j) As to each Plan, the combined total of all fees received by PIMCO for the provision of services to the Plan, and in connection with the provision of services to a PIMCO Mutual Fund in which the Plan holds shares acquired in connection with a Purchase Transaction, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(k) All dealings in connection with a Purchase Transaction between a Plan and a PIMCO Mutual Fund are on a basis no less favorable to the Plan than dealings between the PIMCO Mutual Fund and other shareholders.

(l) No Plan may enter into Purchase Transaction with the PIMCO Mutual Funds prior to the date the proposed exemption is published in the **Federal Register**.

(m) PIMCO maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, as described in paragraph (n) of this Section I, to determine whether the conditions of this proposed exemption have been met, except that—

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

(2) No party in interest, other than PIMCO, 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 (m) of this Section I.

(n)(1) Except as provided in paragraph (n)(2) of this Section I and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (m) of Section I above 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 Securities and Exchange Commission;

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the PIMCO Mutual Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (n)(1)(B) or (C) of this Section I shall be authorized to examine the trade secrets of PIMCO or commercial or financial information which is privileged or confidential.

*Section II. Availability of Prohibited Transaction Exemption (PTE) 77-4*⁵

Any purchase of PIMCO Mutual Fund shares by a Plan that complies with the

conditions of Section I of this proposed exemption shall be treated as a “purchase or sale” of shares of an open-end investment company for purposes of PTE 77-4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of Section II of PTE 77-4.

Section III. Definitions

For purposes of this exemption,

(a) The term “PIMCO” means Pacific Investment Management Company LLC, any successors thereto, and affiliates of PIMCO (as defined in paragraph (b) of this Section III), including Nicholas-Applegate Capital Management, PIMCO Equity Advisers, Cadence Capital Management, NFJ Investment Group, Value Advisors LLC, Allianz of America, Inc., Pacific Specialty Markets LLC, PIMCO/Allianz International Advisors LLC, OpCap Advisors and Oppenheimer Capital, and their existing and future affiliates.

(b) An “affiliate” of a person includes:

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

(2) Any officer, director, employee, relative, or partner in any such person; and

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

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

(d) The term “PIMCO Mutual Fund” or “PIMCO Mutual Funds” means any open-end investment company or companies registered under the ICA for which PIMCO serves as investment adviser, administrator, or investment manager. The term is also meant to include a PIMCO Affiliate Mutual Fund in which a PIMCO Affiliate serves as an investment adviser or investment manager.

(e) The term “net asset value” means the amount for purposes of pricing all purchases and redemptions calculated by dividing the value of all securities, determined by a method as set forth in a PIMCO Mutual Fund’s prospectus and statement of additional information, and other assets belonging to each of the

commission in connection with such purchase or sale. Section II(d) describes the disclosures that are to be received by an independent plan fiduciary. For example, the plan fiduciary must receive a current prospectus for the mutual fund as well as full and detailed written disclosure of the investment advisory and other fees that are charged to or paid by the plan and the investment company. Section II(e) requires that the independent plan fiduciary approve purchases and sales of mutual fund shares on the basis of the disclosures given.

portfolios in such PIMCO Mutual Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

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

(g) The term “Second Fiduciary” means a fiduciary of a plan who is independent of and unrelated to PIMCO. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to PIMCO if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with PIMCO;

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

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

If an officer, director, partner, or employee of PIMCO (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan’s investment manager/adviser; (B) the written authorization provided to PIMCO for the Purchase Transactions; (C) the Plan’s decision to continue to hold or to redeem shares of the PIMCO Mutual Funds held by such Plan; and (D) the approval of any change of fees charged to or paid by the Plan, in connection with the transactions described above in Section I, then paragraph (g)(2) of this Section III, shall not apply.

(h) The term “Strategy” refers to the set of investment guidelines that have been established in advance to govern the Account. The Strategy is created by PIMCO in collaboration with the Second Fiduciary of a client Plan and may be mutually amended, from time to time.

EFFECTIVE DATE: This exemption is effective as of February 5, 2002.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on February 5, 2002 at 67 FR 5307.

Written Comments

During the comment period, the Department received one written

⁵ In relevant part, PTE 77-4 (42 FR 18732 (April 8, 1977)) permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to such plan is also the investment adviser for the mutual fund. Section II(a) of PTE 77-4 requires that a plan does not pay a sales

comment with respect to the proposed exemption and no requests for a public hearing. The comment letter was submitted by PIMCO and it requests that certain clarifications be made to the proposal.

Discussed below are the revisions suggested by PIMCO and the changes made by the Department to the final exemption in response to the concerns expressed by PIMCO in its comment letter.

1. *Name of Applicant.* On page 5307 of the proposed exemption there is a comma in the caption identifying PIMCO by its full name as the applicant in this exemption request. Because PIMCO explains that there is no comma in its full name, the Department has revised the caption in the final exemption to read "Pacific Investment Management Company LLC (PIMCO)."

2. *Timing of Disclosure Regarding Transferrable Securities.* On page 5308 of the proposal, Section I(a)(5) requires that PIMCO disclose, to a Second Fiduciary of a Plan having total assets that are less than \$200 million, all securities PIMCO deems suitable for transfer to the PIMCO Mutual Funds. However, PIMCO wishes to clarify the timing of this disclosure by adding the following italicized language to Section I(a)(5):

In the case of a Plan having total assets that are less than \$200 million, *in connection with obtaining the advance written approval described in paragraph (c)(2) of this Section I*, the identity of all securities that are deemed suitable by PIMCO for transfer to the PIMCO Mutual Funds.

In response to this comment, the Department has revised Section I(a)(5) of the final exemption to reflect the change suggested by PIMCO.

3. *Transferred Assets and Ongoing Purchase Transactions.* On page 5308 of the proposed exemption, Section I(f) states that the transferred assets will consist of assets transferred to a Plan's Account at the direction of the Second Fiduciary. Because the Purchase Transactions under the exemption will be permitted on a recurring basis, PIMCO wishes to clarify that securities that are transferred to an Account by a Second Fiduciary, including those acquired through the investment and reinvestment of such securities, may be used to purchase additional shares, in-kind. Therefore, PIMCO suggests that the following italicized language be added to Section I(f) of the final exemption:

The transferred assets consist of securities transferred to the Plan's Account at the direction of the Second Fiduciary, *and any securities which have been acquired through the investment and reinvestment of such*

securities in the implementation of the Strategy.

The Department has revised Section I(f) of the final exemption, accordingly, in response to this comment.

4. *No Minimum Plan Size.* On page 5310 of the proposed exemption, the last sentence in Representation 2 of the Summary states, in part, that each Plan proposing to engage in Purchase Transactions must have total assets of at least \$100 million. PIMCO notes that although there are different rules regarding disclosure and consent based on whether a Plan has at least \$200 million in assets, there is no minimum asset size requirement for investing Plans. Therefore, PIMCO requests that this sentence be stricken from Representation 2 and the Department notes this revision in the final exemption.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption subject to the clarifications described above. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11005) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N-1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693-8556. (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 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) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of March, 2002.

Ivan Strasfeld,

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

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THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended,