

as investment manager of the Account. MetLife represents that the investment was consistent with the Account's investment policies and objectives.²³ At the time the Account acquired the Commercial Paper, it was rated "A-1" by Standard & Poor's Corporation and "P-1" by Moody's Investor Services, Inc.

5. Due to its inability to pay the principal amount of the Commercial Paper as a result of the energy crisis (the Energy Crisis),²⁴ PG&E unilaterally converted, dollar-for-dollar, the Commercial Paper into an interest-bearing floating rate note (*i.e.*, the Note)

²³ The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Note by the Account violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion on whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a-1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

²⁴ In this regard, PG&E, along with other California utilities, was hit by soaring wholesale power costs and the state's 1996 deregulation law. Energy deregulation caused blackouts throughout California. Soaring utility rates were the subject of debate as the wholesale prices of electricity skyrocketed, jumping to an average of \$30 per megawatt hour. California was the first state to deregulate its electricity market in 1996. The move was supposed to lower the bills of consumers by preventing most utilities from passing rising costs on to their customers. Under deregulation, the state's investor-owned utilities sold most of their power plants and were forced to repurchase them at higher market prices. PG&E was faced with \$9 billion in debt and debt payments of \$500 million in February 2001 and \$1.6 billion in March 2001. PG&E, having only \$500 million in cash reserves and little to no ability to borrow following rating downgrades, filed for bankruptcy on April 6, 2001.

(also in book-entry form) in order to credit the holders of the Commercial Paper until it could resolve its difficulties. The conversion occurred on February 12, 2001. Everyone who held the Commercial Paper received Notes in the conversion, including the Account. The Note earned interest at the London Interbank Offered Rate (LIBOR), a floating rate with no fixed floor. According to the applicant, the LIBOR rate was presumably selected because it is a published rate that matches up with commercial paper rates. Although the Note had no specific maturity date, PG&E announced during a teleconference with all of its debt holders and in a subsequent news release that its plan was to pay the Note down as soon as possible. The Note is currently traded by independent brokers and is not listed on an exchange. As described below in Representation 6, no interest has been paid on the Note since PG&E's declaration of bankruptcy.

6. On April 6, 2001, PG&E declared bankruptcy and filed a voluntary petition under Chapter 11 of the Bankruptcy Code. As a result of PG&E's bankruptcy filing, the market value of the Note decreased according to verbal quotes obtained by MetLife's money traders from two independent brokers. Since the market values for all PG&E securities were trading below par and would continue to trade in that way until the bankruptcy was settled, MetLife determined that if the Account retained the Note, the value of the Account would be required to be reported below a value of \$1.00 per share resulting in a loss to the Account investors. Therefore, MetLife sought permission from the NYSID to acquire the Note from the Account.

7. The transaction was subsequently approved by the NYSID on April 6, 2001, and it became effective on that date. MetLife purchased the Note from the Account for a cash payment of \$16,041,857.11. This sum was the same as the par value of the Note, plus the accrued interest. The Account paid no commissions or other expenses in connection with the Sale. MetLife represents that the Sale allowed the Account to continue operation in the manner customers expected. Specifically, additions and withdrawals from the Account could continue to be made at \$1.00 per share. Accordingly, MetLife requests an administrative exemption from the Department with respect to the Sale. If granted, the exemption will be effective on April 6, 2001.

8. MetLife represents that because PG&E had declared bankruptcy and purchasers would not pay face value for

the Note, the purchase price was set above the market price. In this regard, MetLife has provided a letter from Gian Solomon, of the New York Money Desk of Goldman Sachs & Co. (Goldman Sachs) dated August 9, 2002 regarding the price at which the Commercial Paper would have traded on April 6, 2001. According to Mr. Solomon, Goldman Sachs did not effect any trades in the Commercial Paper on April 6, 2001. However, on April 3, 2001, Goldman Sachs effected trades in PG&E commercial paper having a scheduled maturity date of January 19, 2002, at dollar prices between \$72-\$74 of the par amount. Mr. Solomon notes that these dollar prices were below the face amount of such securities.

Mr. Solomon also states that Goldman Sachs has no interest in the Commercial Paper that is subject of the exemption request. Further, he represents that Goldman Sachs has no personal interest or bias with respect to the subject matter of the exemption application or the parties involved, and that Goldman Sachs has received no compensation for providing the pricing information.²⁵

9. MetLife represents that the Sale resulted in an assignment of all of the Account's rights, claims and causes of action against PG&E. Accordingly, MetLife states that if the exercise of any of the foregoing rights, claims or causes of action results in its recovering from PG&E an aggregate amount that is greater than the sales price for the Note, such excess amount will be refunded to the Account (after deducting all reasonable expenses incurred in connection with the recovery).

10. In summary, it is represented that the transaction has satisfied the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Sale was a one-time transaction for cash.

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

²⁵ In addition to the above, MetLife represents that its money market traders obtained verbal bids for the Note on an indicative basis from three independent brokers at around the time of the Sale. According to MetLife, bids received from Goldman Sachs ranged from \$57-\$62 of the par value of the Note. Bids received from the Bank of America ranged from \$56-\$60 of the par value of the Note. Bids received from Merrill Lynch ranged from \$55-\$60 of the par value of the Note. MetLife further states that all of these bids were below the price that it paid for the Note.