

from, sell any property to, or borrow funds from Archer, Agrinational, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

Preamble

On August 7, 1979, the Department published a class exemption (Prohibited Transaction Exemption 79-41 (PTE 79-41), 44, FR 46365) which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales or life insurance, health insurance or annuity contracts with fund such plans if certain conditions are satisfied.

In PTE 79-41, the Department states its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction under the Act.

The Department further stated that as of the date of publication of PTE 79-41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Archer is engaged in the business of procuring, transporting, storing, processing and merchandising agricultural commodities and products. It is one of the world's largest producers of oilseeds, corn and wheat. Archer also processes cocoa beans, milo, oats, barley and peanuts. Other operations include

transporting, merchandising and storing agricultural commodities and products. These operations and processes produce products which have primarily two end uses: Food or feed ingredients. Each commodity processed is itself a feed ingredient as are the by-products produced during the processing of each commodity. Archer complements its own resources with a world-wide network of affiliates engaged in processing, transportation, storage and sales. Archer was incorporated under the laws of the State of Delaware in 1923 as successor to the Daniels Linseed Co., which was founded in 1902.

2. Agrinational is a wholly-owned subsidiary of Archer. Agrinational was incorporated in Vermont on September 10, 1987, and on September 21, 1987, the Commissioner of Banking and Insurance for the State of Vermont granted it a Certificate of Authority to transact the business of a captive insurance company in the State of Vermont. The only restrictions placed by the State of Vermont on the type of insurance that Agrinational may write pertain to personal motor vehicle or homeowner's insurance and to excess workers' compensation insurance under certain circumstances, and thus are not relevant to the exemption proposed herein.

3. At year end 2000, Agrinational had capital in the amount of \$10,000,000, retained earnings in the amount of \$22,731,920 and earned premium in the amount of \$17,176,878. Agrinational presently provides insurance and reinsurance coverage for property, casualty and marine risks of Archer and its subsidiaries world-wide. In addition, Agrinational participates as a quota share reinsurer of various insurance company treaties that contain risks unrelated to Archer and its subsidiaries. The independent certified public accounting firm of Ernst & Young, LLP (EY), which prepared Agrinational's most recent audited financial statement, has served as Agrinational's auditor since its incorporation. EY will examine Agrinational's reserves on an annual basis in connection with the employee benefit business to be reinsured by Agrinational to ensure that appropriate reserve levels are maintained.

4. Archer maintains the ADM Omnibus Health and Welfare Plan for Salaried Employees and the ADM Omnibus Health and Welfare Plan for Hourly Employees (*i.e.*, the Plans) for substantially all of its salaried and hourly employees. The Plans provide both basic (the Basic Program) and supplemental (the Supplemental Program) life insurance programs. The Plans have been historically insured

with Connecticut General Life Insurance Company, and, most recently, with Minnesota Life. However, Archer recently formulated a plan to utilize Agrinational for the reinsurance of benefits and has made or will make substantial improvements to the Plans in anticipation of that transaction.

5. Specifically, the new benefits are as follows:

(i) With respect to the life insurance program for salaried employees, the maximum benefit under the Basic Program has been increased from one-times base salary up to \$100,000 to one-times base salary up to \$1,000,000. In addition, the Basic Program will add an accelerated death benefit feature (which would provide benefits to the terminally ill) to the policy covering all participants. Finally, a non-contributory Accidental Death and Dismemberment benefit will be added to the Basic Program covering up to three times the basic life insurance benefit, subject to a schedule of amounts. All premiums under the Basic Program are fully paid by Archer. In addition, the maximum benefit under the Supplemental Program, which is employee paid, has been increased from up to four times salary with a cap of \$1,000,000 to up to five times salary with a cap of \$2,000,000. Dependent life insurance for the employee's spouse and children has been added on a voluntary basis. Portability of coverage has been added to all policies, so that coverage may continue at the group rates if a covered employee leaves employment. Finally, a waiver of premium provision has been added to the Supplemental and dependent coverage so in the event of the disability of the employee, coverage will continue without the payment of the premium. The new and/or enhanced benefits in the Supplemental Program are voluntary and the premiums are fully paid by the participants who elect them.

(ii) With respect to the life insurance program for hourly employees who are not covered by a collective bargaining agreement, the new non-contributory Accidental Death and Dismemberment benefit will be added to the Basic Program covering up to three times the basic life insurance benefit, subject to a schedule of amounts. All premiums under the Basic Program are fully paid by Archer. In addition, the Basic Program will add the accelerated death benefit feature (which would provide benefits to the terminally ill) to the policy covering all hourly employees who are not covered by a collective bargaining agreement. With respect to these employees, the Supplemental Program, which is employee paid, has