

the reinsurance transaction. He has concluded that there is an immediate benefit to the Plans' participants from the reinsurance transaction. Generally all participants in the Supplemental Program receive increased benefits and options. For the Basic Program, generally all participants have received an accelerated death benefit coverage and will receive Accidental Death and Dismemberment Insurance up to three times the basic life insurance benefit. Finally, there are increased basic life insurance benefits for salaried employees with annual salaries exceeding specified amounts (e.g., \$100,000).

12. Mr. Waldron makes the following representations concerning the determination of the initial premium to the Plans under the proposed arrangement. The Plans contacted Minnesota Life and were quoted a rate based on Minnesota Life's evaluation of the risk. Archer received quotes from three different companies to provide insurance coverage for the group life, supplemental life and dependent life insurance programs. From these three companies, Archer selected Minnesota Life, which was the middle one in terms of premium. Minnesota Life was 3% above the lowest cost and 7.5% below the highest cost provider. The premium paid to Agrinational is based on a reinsurance agreement where Agrinational receives a portion of the premium charged equal to the proportion of the risk that Agrinational covers. This is a typical reinsurance arrangement for life insurance products. Mr. Waldron further represents that, based upon his review, the premiums charged by Minnesota Life are similar to premiums charged by other insurers providing group life, supplemental life, and dependent life insurance under similar plans. The applicant represents that the Independent Fiduciary (i.e., either Milliman or another qualified fiduciary acting as a successor, as noted below) will confirm on an annual basis that each Plan is paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plan with comparable claims experience.

13. Milliman will represent the interests of the Plans as the Independent Fiduciary at all times.²⁸ Milliman will

²⁸ In this regard, the applicant makes a representation regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace Milliman and Mr. Waldron, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will

monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

14. The applicant represents that the proposed reinsurance transaction will meet the following conditions of PTE 79-41 covering direct insurance transactions:

(a) Agrinational is a party in interest with respect to the Plans (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with Archer, which maintains the Plans;

(b) Agrinational is licensed to conduct reinsurance transactions by the State of Vermont. The law under which Agrinational is licensed requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(c) Agrinational has undergone an examination by the independent certified public accountant firm of EY for its last completed taxable year;

(d) Agrinational has received a Certificate of Authority from its domiciliary state, Vermont, which has not been revoked nor suspended;

(e) The Plans will pay no more than adequate consideration for the insurance. In addition, in the initial year of the proposed reinsurance transaction, there will be an immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits; and

(f) No commissions will be paid by the Plans with respect to the reinsurance arrangement with Agrinational, as described herein. In addition, the Plans' interests will be represented by a qualified, independent fiduciary (i.e., Milliman or its Successor), who has initially determined that the proposed reinsurance transactions will be in the best interests, and protective, of the Plans and their participants and beneficiaries. The Independent Fiduciary will also confirm on an annual basis that the Plans are paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plans with comparable claims experience.

15. In summary, the applicant represents that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act

have the responsibilities, experience and independence similar to those of Milliman and Mr. Waldron.

because: (a) The Plans' participants and beneficiaries are afforded insurance protection by Minnesota Life, a carrier rated A++ by Best's, at competitive market rates arrived at through arm's-length negotiations; (b) Agrinational, which will enter into the reinsurance agreements with Minnesota Life, is a sound, viable insurance company which has been in business since 1987; (c) the protections described in representation 14, above, provided to the Plans and their participants and beneficiaries under the proposed reinsurance transactions are based on those required for direct insurance by a "captive" insurer, under the conditions of PTE 79-41 (notwithstanding certain other requirements related to, among other things, the amount of gross premiums or annuity considerations received from customers who are not related to, or affiliated with the insurer); ²⁹ (d) Mr. Waldron, acting on behalf of Milliman as the Plans' Independent Fiduciary, has reviewed the proposed reinsurance transaction and has determined that the transaction is appropriate for, and in the best interests of, the Plans and that there will be an immediate benefit to the Plans' participants as a result thereof by reason of an improvement in benefits under the terms of the Plans; and (e) Milliman will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

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²⁹ The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act apply to the fiduciary's decision to engage in the reinsurance arrangement.

Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary 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 the plan. In this regard, the Department is not providing any opinion as to whether a particular insurance or investment product, strategy or arrangement 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 product or arrangement 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 product or arrangement involved, including the plan's potential exposure to losses and the role a particular insurance or investment product plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a-1).