

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.

Archer Daniels Midland Company (Archer), Located in Decatur, Illinois

[Prohibited Transaction Exemption 2003-07; Exemption Application No. D-11068]

Exemption

The restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Agrinational Insurance Company (Agrinational) in connection with insurance contracts sold by Minnesota Life Insurance Company (Minnesota Life), or any successor insurance company to Minnesota Life which is unrelated to Archer, to provide basic and supplemental life insurance benefits to participants in Archer's programs to provide such benefits to its employees (the Plans),¹ provided the following conditions are met:

(a) Agrinational—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Archer that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended; (4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of the State of Vermont within 5 years prior to the end of the year preceding the year in

which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving Agrinational, there will be an immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Minnesota Life or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plans only contract with insurers with a rating of A or better from A. M. Best Company (Best's). The reinsurance arrangement between the insurers and Agrinational will be indemnity insurance only, *i.e.*, the insurer will not be relieved of liability to the Plans should Agrinational be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) Agrinational retains an independent fiduciary (the Independent Fiduciary), at Archer's expense, to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been complied with. For purposes of this exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Archer or Agrinational (this relationship hereinafter referred to as an "Affiliate");

(2) Is not an officer, director, employee of, or partner in, Archer or Agrinational (or any Affiliate of either);

(3) Is not a corporation or partnership in which Archer or Agrinational has an ownership interest or is a partner;

(4) Does not have an ownership interest in Archer or Agrinational, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plans prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "Independent Fiduciary," no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Archer, Agrinational, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property 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.

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 March 3, 2003 at 68 FR 10043.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

G.D. Castillo, M.D., Ltd, Profit Sharing Plan (the Plan), Located in Savoy, Illinois

[Prohibited Transaction Exemption 2003-08; Exemption Application Number D-11107]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the

¹ Each Plan will be considered an "employee welfare benefit plan" as defined in section 3(1) of the Act.