

adopting employers, upon a determination made by the fiduciary that the other conditions of this exemption, if granted, will be satisfied. The Independent Fiduciary will acknowledge, in writing, his or her plan fiduciary status under the Act for each transaction. A person will be independent of an employer, even though he or she was selected by an adopting employer (or by a person with an interest in such employer), if he or she has no other interest in the transaction for which an exemption is sought that might affect his or her best judgment as a fiduciary under the Act.

8. The Plan's continuing rights under the terms and conditions of the acquired customer notes, and under this proposed exemption, will be monitored and enforced on behalf of the Plan by the same or another Independent Fiduciary who is independent of any of the sponsoring or adopting employers and who has acknowledged his or her fiduciary status and liability as described herein. The Independent Fiduciary will be responsible for taking all appropriate actions necessary to protect the Plan's rights with regard to the safety and collection of the notes purchased by the Plan. These actions will include: (i) Ascertaining that payments are received timely; (ii) diligently pursuing the receipt of delinquent payments; and (iii) enforcing the employer's or affiliates' guarantees to repurchase delinquent notes, with accrued interest.

9. The acquisition of a customer note from a Plan sponsor, an adopting employer, or an affiliate, will not cause the Plan to hold, immediately following the acquisition, more than: (i) twenty-five percent (25%), in the aggregate, of the current value of the Plan's assets in customer notes of such Plan sponsor, adopting employers or affiliates, or (ii) five percent (5%) of the current value of the Plan's assets in the notes of any one customer who is the obligor under such notes.

The employer or affiliate from which the Plan acquires a customer note, as well as AMG (when the customer note was accepted and held by an employer other than AMG), will guarantee in writing the immediate repayment of the outstanding balance of the notes and accrued interest in the event that the note is more than 60 days in arrears or if other events occur that, in the opinion of the Independent Fiduciary, will impair the safety of the note as a Plan investment. The Independent Fiduciary may, at his or her discretion, grant an additional 30-day extension before repurchase of the note by an employer or affiliate is necessary upon a petition

by the employer or affiliate, if the fiduciary determines, after consultation with the employer or affiliate, that such an extension is in the best interests of the participants and beneficiaries of the Plan. Other events of impairment will include:

(a) The obligor on the note fails to comply with any terms or conditions of the note;

(b) The obligor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors or a liquidating agent, offers a composition or extension to creditors or makes a bulk sale;

(c) Any proceeding, suit or action at law, in equity, or under any of the provisions of the Bankruptcy Code, or amendments thereto, for reorganization, composition, extension, arrangements, receivership, liquidation or dissolution is begun by or against the obligor;

(d) A receiver of any property of the obligor is appointed under any jurisdiction at law or in equity; or

(e) The obligor fails to take proper care of or abandons the property being financed by the note.

The Plan will receive adequate security for each note. In this regard, the term "adequate security" will mean that each note will be secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security will be such that it may reasonably be anticipated that loss of principal or interest will not result. However, in no event will the term "adequate security" mean an interest in intangible personal property, such as accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

Insurance against loss or damage to the collateral from fire or other hazards will be procured and maintained by the obligor until the note is repaid or repurchased by the employer or affiliate which originally sold the note to the Plan, and the proceeds from such insurance will be assigned to the Plan.

Repayment will be provided for in the following manner:

(a) Where the note is secured by heavy equipment, the term of the note will not exceed 60 months. For purposes of this proposed exemption, heavy equipment will include machinery sold by equipment distributors such as earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications. However, heavy equipment will not include any

equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be resold in the ordinary course of the equipment distributor's business;

(b) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term of the note will not exceed 48 months. For purposes of this proposed exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation; and

(c) Where the note is secured by tangible personal property, other than heavy equipment or motor vehicles as described herein, the term of the note will not exceed 36 months.

10. In summary, the applicant represents that the proposed exemption will satisfy the statutory criteria under section 408(a) of the Act for the following reasons:

(a) Each transaction will be on terms that are at least as favorable to the Plan as an arm's-length transaction with an unrelated party;

(b) Prior to the consummation of any transaction described herein, the transaction will be approved on behalf of the Plan by an Independent Fiduciary, upon a determination made by such Independent Fiduciary that all of the conditions of this proposed exemption will be satisfied. The Independent Fiduciary will acknowledge, in writing, his or her fiduciary status for the Plan under the Act with respect to each transaction;

(c) The Plan's continuing rights under the terms and conditions of the acquired customer notes, and under this proposed exemption, will be monitored and enforced on behalf of the Plan by an Independent Fiduciary, as described herein;

(d) The acquisition of a customer note from either AMG, an adopting employer, or an affiliate, will not cause the Plan to hold, immediately following the acquisition, more than: (i) twenty-five percent (25%), in the aggregate, of the current value of the Plan's assets in customer notes of AMG, adopting employers or affiliates, or (ii) five percent (5%) of the current value of the Plan's assets in the notes of any one customer who is the obligor under such notes;

(e) The employer or affiliate from which the Plan acquires a customer note, as well as AMG, will guarantee in writing the immediate repayment of the outstanding balance of the notes, and accrued interest thereon, in the event