

profitability when the economy recovers. The Applicant represents that preservation of liquidity is one of the keys to maintaining a strong financial position in light of the current economic uncertainty, and Northwest has maintained one of the strongest liquidity positions in the industry. Northwest already has taken many aggressive, proactive actions to reduce costs and preserve liquidity.

While the current environment creates significant challenges for Northwest and the other major airlines, the Applicant believes that these circumstances create opportunities for efficient regional carriers, including Pinnacle Airlines. Northwest represents that, although current market conditions are not favorable to an IPO of the Pinnacle Stock because valuations of commuter airlines have declined from their historical levels during the past six to eight months, Northwest anticipates that the Pinnacle Stock proposed to be contributed to the Plans will be sold through an IPO at a favorable price. The Applicant notes that market conditions are expected to improve within the next 30 months and that significant efforts have been undertaken by Northwest to prepare Pinnacle Airlines for public sale.

9. Northwest asserts that the relief requested in this Application offers significant potential benefits both to the Plans and to Northwest. The Plans will benefit by receiving the full value of the minimum funding contribution of Northwest, through the opportunity to invest in a strong regional airline, and through sharing in the anticipated premium that would attach to such stock in the event of an IPO. Furthermore, the Plans' investment in Pinnacle Stock will be subject to the protections of an independent fiduciary. The Plans will also benefit from Northwest's preservation of liquidity, ensuring that it remains in a strong financial position and maximizing its ability to contribute to the Plans in the future. Northwest represents that its decision to seek an exemption to contribute Pinnacle Stock creates no more risk to the Plans, and perhaps even less risk, than investing in publicly-traded NWAC stock, which constitutes qualifying employer securities within the meaning of ERISA section 407(d)(5) and would be exempt from the prohibitions of ERISA sections 406 and 407 by reason of the statutory exemption set forth in ERISA section 408(e). The Applicant concludes by noting that the exemption sought by Northwest is one part of Northwest's overall strategy to manage its financial liquidity during a time of extraordinary

financial challenges, while still meeting its long-term pension plan commitments. In this regard, Northwest notes that it is applying to the Internal Revenue Service for a waiver of its minimum funding contributions with respect to both the Contract Plan and the Salaried Plan for plan year 2003.

10. Northwest requests exemptive relief from certain of the prohibited transaction restrictions of sections 406 and 407 of the Act and section 4975 of the Code for the periodic contributions of Pinnacle Stock to the Plans in order to satisfy all or any portion of Northwest's minimum funding requirements for plan years 2002, 2003, or 2004 that are due in calendar years 2003 or 2004.

Northwest requests exemptive relief because of its belief that the contributions of Pinnacle Stock would not meet the requirements for the acquisition of "employer securities" under section 408(e) of the Act. In this regard, section 408(e) provides, in part, that sections 406 and 407 of the Act shall not apply to the acquisition or sale by a plan of "qualifying employer securities," as defined in section 407(d)(5) of the Act, if such acquisition or sale is for adequate consideration, no commission is charged, and, in the case of a plan other than an eligible individual account plan, such as a defined benefit plan, such acquisition does not exceed 10 percent (10%) of the fair market value of the assets of such plan. Under section 407(d)(5), stock is a "qualifying employer security," if such stock is issued by an employer of employees covered by the plan or by an affiliate of such employer. Section 407(d)(5) further provides that in the case of a plan other than an eligible individual account plan, such as a defined benefit plan, an employer security shall be considered a "qualifying employer security," only if such employer security satisfies the requirements of section 407(f)(1). Section 407(f)(1) provides that stock satisfies the requirements of this paragraph if no more than 25 percent (25%) of the aggregate issued and outstanding shares of stock of the same class is held by the plan and at least 50 percent (50%) of the aggregate amount of such shares is held by persons independent of the issuer.

In this regard, Northwest anticipates that, after all of the proposed in-kind contributions of Pinnacle Stock to the Plans, substantially more than 25 percent (25%) of all issued and outstanding shares of Pinnacle Stock would be held by the Plans. The Applicant expects that nearly 100 percent (100%) of the Pinnacle Stock

may ultimately be held by the Plans, with any remainder being held by Northwest. Thus, the requirement that 50 percent (50%) of the shares of Pinnacle Stock be held by persons independent of the issuer would not be met. Accordingly, the shares of Pinnacle Stock to be contributed to the Plans would not satisfy the requirements of sections 407(f)(1) of the Act and thus would not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act. If the shares of Pinnacle Stock do not constitute "qualifying employer securities," the exemptive relief under section 408(e) of the Act would not be available. For the same reasons, it is anticipated that section 408(e) would not exempt the Plans' acquisition and holding of the Put Option.

11. The Independent Fiduciary.⁷ Aon Fiduciary Counselors, Inc. (Fiduciary Counselors or Independent Fiduciary) has been retained as the Independent Fiduciary to represent the Plans' interests with respect to the proposed transactions. Fiduciary Counselors represents that it is qualified to serve as Independent Fiduciary on behalf of the Plans with respect to the proposed Exemption Transactions. Fiduciary Counselors acts primarily as an independent fiduciary for large pension plans. Prior to December 1999, Fiduciary Counselors operated as a business unit within Actuarial Sciences Associates, now Aon Consulting of New Jersey, Inc., a subsidiary of Aon Consulting, Inc. (Aon Consulting). In the past five years, Fiduciary Counselors has acted as independent fiduciary in transactions involving plan assets totaling more than \$4 billion.

In evaluating the proposed Exemption Transactions, Fiduciary Counselors notes that it will use the services of investment professionals at Aon

⁷ The Department notes that the Act's general standards of fiduciary conduct would apply to the transactions permitted by this proposed exemption, if granted. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent plan fiduciary must act prudently with respect to: (1) The decision to enter into the transactions described herein; and (2) the negotiation of the terms of such a transaction, including, among other things, the specific terms by which the Plans will (A) acquire, hold, and sell the Pinnacle Stock and (B) acquire, hold and exercise the Put Option. The Department further emphasizes that it expects the independent plan fiduciary, prior to authorizing each acquisition of the Pinnacle Stock and any sale of such Stock, and prior to exercising the Put Option, to fully understand the benefits and risks associated with such transactions. In addition, the Department notes that such plan fiduciary must periodically monitor, and have the ability to so monitor, the Pinnacle Stock and the Put Option.