

**DEPARTMENT OF LABOR****Employee Benefits Security Administration****Prohibited Transaction Exemption 2003-09; [Exemption Application No. D-11042] et al. Grant of Individual Exemptions; Metropolitan Life Insurance Company (MetLife)**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**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.

**Metropolitan Life Insurance Company (MetLife) Located in New York, NY [Prohibited Transaction Exemption 2003-09; Exemption Application No. D-11042]****Exemption**

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,<sup>1</sup> shall not apply, effective April 6, 2001, to the cash sale (the Sale) to MetLife of a note (the Note), issued by the Pacific Gas & Electric Company (PG&E), by MetLife's Liquidity Plus Account (the Account) for which MetLife acts as investment manager and is a party in interest with respect to employee benefit plans (the Plans) invested in such Account.

This exemption is subject to the following conditions:

(a) The Sale was a one-time transaction for cash.

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

(d) As manager of the Account, MetLife determined, at the time of the transaction, that the Sale was appropriate for, and in the best interests of, the Account, the Plans investing therein, and their participants and beneficiaries.

(e) MetLife took all appropriate actions necessary to safeguard the interests of the Account and the Plans in connection with the Sale.

(f) If the exercise of any of MetLife's rights, claims or causes of action in connection with its ownership of the Note results in MetLife recovering from PG&E an aggregate amount that is greater than the sales price for such Note, MetLife will refund such excess amount to the Account.

**Effective Date:** This exemption is effective as of April 6, 2001.

For a more complete statement of the facts and representations supporting the

<sup>1</sup> For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 3, 2003 at 68 FR 10041.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna M.N. Mpras of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

**The JPMorgan Chase Bank (Located in New York, New York)**

[Prohibited Transaction Exemption 2003-10; Application No. D-11062]

**Exemption****Section I—Transactions**

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A)–(E) of the Code, shall not apply as of December 31, 2000, to:

(A) the continuation of a lease (the Lease), by the Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank (the Fund) with respect to which JPMorgan Chase Bank (JPMCB) is the trustee (the Trustee), of office space in a certain commercial office building (the Property) to Chase Global Funds Service Company (CGF), a party in interest with respect to employee benefit plans whose assets are invested in the Fund (Plans) and an affiliate of JPMCB; and

(B) the continued and future provision by JPMCB or its affiliates of letters of credit (Letter(s) of Credit) to guarantee the obligations of unrelated third-party tenants to pay rent to the Fund under commercial real estate leases.

This exemption is subject to the conditions set forth in Section II.

**Section II—Conditions**

(A) The Fund is represented by a fiduciary independent of JPMCB and its affiliates (the independent fiduciary) with respect to the Lease to perform the following functions:

(1) Confirm that when the Lease originally was entered into, and as modified to date, all the terms and conditions of the Lease, including those relating to renewal options and rights of first refusal, were commercially reasonable and at least as favorable to the Plans as those terms and conditions which could have been obtained at arm's length with an unrelated third party;

(2) determine, based upon a written appraisal report by a qualified appraiser independent of JPMCB and its affiliates, that the leasing renewal rate the Fund will charge CGF if CGF elects to exercise