

purchased on December 29, 1999, on behalf of the Plans, certain corporate debt securities issued by Conoco (*i.e.*, the Bonds). The decision to purchase the Bonds was made by employees of DCMC who specialize in purchases of corporate debt securities. The principal amount of the Bonds purchased by the Plans was \$820,000. The Bonds were purchased in a principal transaction by the Plans from Prudential Bache, an entity unrelated to the Plans. The Bonds were sold in a subsequent principal transaction by the Plans to ABN AMRO, an entity unrelated to the Plans. The Bonds were purchased by the Plans on December 29, 1999 for \$754,783 (including accrued but unpaid interest) and were sold on August 16, 2001 for \$816,641 by the Plans (including accrued but unpaid interest).

6. It is represented that Conoco issued a total of \$1.9 billion of the Bonds. Accordingly, the Plans purchased 0.043% of the total Bond issue. The coupon rate on the Bonds was 6.95% per annum. The Bonds had a credit rating of BBB+/Baa1 by Standard and Poor's Rating Services and Moody's Investor Service, Inc., respectively, at the time of the Plans' purchase. No change in such rating occurred while the Bonds were held by the Plans. The applicant represents that the expected duration of the Bonds was approximately 11.5 years. The Bonds paid interest semi-annually, with the total principal amount payable at maturity. The Bonds also had certain special features that allowed them to be called (*i.e.*, redeemed) by the issuer, at certain times. The Bonds represented a de minimus percentage of each Plan's total assets. In the aggregate, the Bonds represented less than 1% of the Trust's total assets at the time of the acquisition.

7. The applicant states that the transaction was in the interests of the Plans' participants and beneficiaries since the acquisition and sale of the Bonds resulted in a profit totaling \$61,858. Moreover, the applicant represents that the purchase of the Bonds was equitable to the Plans since the Plans paid no more than the current fair market value for the Bonds at the time of the acquisition. In this regard, it is represented that in providing the acquisition price of the Bonds to DCMC, the DCMC trader responsible for the purchase of the Bonds utilized pricing mechanisms commonly employed in the over-the-counter fixed-income markets. Specifically, the purchase price was

determined in consideration of competitive offers from multiple dealers.¹⁶

The applicant represents that upon identifying the extension of credit as a prohibited transaction, DCMC acted promptly to deal with the problem by filing for a retroactive exemption from the Department. In addition, the applicant has established new internal compliance procedures for considering any new purchases of debt instruments for client pension plans in order to avoid future prohibited transactions under the Act.¹⁷ According to the applicant, special lists must now be maintained for each Plan of all joint ventures where CONSOL owns (directly or indirectly) at least 50% of the joint venture and another joint venturer owns at least 10% of the joint venture.

Pursuant to compliance procedures, the applicant's bond trading personnel must check these lists prior to any new purchases of such bonds for the Plans. The lists must be updated monthly.

8. In summary, the applicant represents that the proposed exemption will satisfy the criteria of section 408(a) of the Act because:

(a) The purchase of the Bonds by the Plans was a one-time cash transaction;

(b) The Plans' purchased the Bonds at their current fair market value from an unrelated party, based on prices determined by reputable, independent third party market sources;

(c) The Bonds were sold by the Plans on August 16, 2001 for \$816,641 at a profit of \$61,858 for the Plans; and

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Conoco or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

FOR FURTHER INFORMATION CONTACT:

Brian Buyniski of the Department at (202) 693-8545. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section

¹⁶ Pricing sources for the acquisition of the Bonds were electronic sources on trader desks.

Information concerning dealer quotes is updated via computer monitors available to each of the primary security dealers. These sources include, but are not limited to, Bloomberg, Telerate, Reuters, Salomon Yield Book and Lehman Brothers PC Product in addition to daily flow and pricing indications received directly from 10-15 broker/dealers.

¹⁷ The Department is providing no opinion in this proposed exemption as to whether such prohibited transactions, if entered into by the Plans, would be covered by PTE 2001-05.

408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of January, 2003.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

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NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.