

consideration for the Employer Stock nor any fees or commissions that arise in connection with the Contributions.

The Applicant notes that the transactions described herein require the oversight of an Independent Fiduciary. In this regard, a Plan fiduciary who is independent of the Employer and qualified as an investment manager must authorize each contribution of Employer Stock only after such Independent Fiduciary determines at the time of the transaction that such transaction is feasible, in the interest of the affected Plans, and protective of the participants and beneficiaries of such Plans. The Applicant represents that, to date, no Independent Fiduciary has been chosen. However, the Applicant states that the Employer may not pay any Independent Fiduciary that is chosen, or any successor thereto, an amount of income during the fiduciary's current tax year that exceeds one percent (1%) of such fiduciary's gross income (for federal income tax purposes) over its prior tax year. In addition, any Independent Fiduciary chosen by the Employer will acknowledge, in writing, that it: (1) Will act prudently and in the interest of the Plan's participants and beneficiaries with respect to the proposed transactions; and (2) fully understands that risks and benefits associated with the transactions discussed herein. The Applicant represents that any fees or costs associated with the Independent Fiduciary will be borne, either directly or indirectly, by the Trusts.

The Applicant represents that the Independent Fiduciary will establish the appropriate fair market value for the Employer Stock. In this regard, the Independent Fiduciary will: (1) Determine the recorded New York Stock Exchange closing price (the Closing Price) for the Employer Stock for the day on which such Employer Stock is contributed to a Trust; and (2) determine whether to discount the Closing Price by analyzing the percentage of issued and outstanding Employer Stock represented by the Contribution.⁸

Prior to approving any Contribution, the Independent Fiduciary will evaluate the appropriateness of the Trust(s)' acceptance of such Contribution given the investment needs of the affected Plan, the nature of the Contribution, and the impact of the Contribution on the

risk and return characteristics of such Plan's portfolio.⁹ With respect to the nature of the Contribution, the Applicant states that the Independent Fiduciary will perform an analysis of both the Employer Stock and the Employer for the purpose of: (1) Valuing such Employer Stock; and (2) analyzing the acquisition of such Employer Stock in light of the overall portfolio of the affected Plan. The Employer will provide the Independent Fiduciary with access to all information on the Employer that the Independent Fiduciary reasonably requires to make these analyses, including financial statements, annual reports, materials filed with the Securities and Exchange Commission, and independent research and reports.

The Applicant represents that the Independent Fiduciary will also have full discretion to accept or reject any Contribution, and to otherwise manage the Accounts subject to the specific investment allocation policies and guidelines of the Plan (the Investment Guidelines) as mutually agreed between the Employer and the Independent Fiduciary. These Guidelines will be re-evaluated at least annually by the Independent Fiduciary and the Employer. The Investment Guidelines may prohibit investment of assets in certain types of investments. Notwithstanding the Investment Guidelines mutually agreed to by the parties, the Independent Fiduciary and any successor Independent Fiduciary will remain subject to the fiduciary responsibility provisions of Section 404 of ERISA.

The Applicant represents that the Independent Fiduciary will analyze the impact of the Contribution on the risk and return characteristics of the affected Plan's portfolio. In analyzing such impact, the Independent Fiduciary will review: The expected return of the portfolio; the overall volatility of the portfolio; and the beta risk level or market risk of the portfolio. The

⁹ This analysis will include: (1) A review the Investment Guidelines to determine whether investment in Employer Stock is appropriate; (2) a determination as to whether acceptance of the Employer Stock is within the Investment Guidelines with respect to the percentage of Plan assets that may be committed to Employer Stock; (3) a determination as to the value of the Plan's assets committed to equities at the time of the proposed Contribution; (4) a determination as to whether the Plan can accept the proposed Contribution without exceeding the Investment Guidelines relating to equity investments; (5) a determination as to whether the proposed Contribution would have a detrimental effect on the ability of the Retiree Plan to meet its liquidity needs; and (6) a confirmation that the proposed Contribution would not be in lieu of any required asset or cash contributions.

Independent Fiduciary will compare the performance of modeled portfolios that include the Employer Stock with the performance of comparable portfolios that do not include the Employer Stock. Based on the results of the Independent Fiduciary's analysis, the Independent Fiduciary must determine, prior to its authorization of a Contribution, that the risk/return tradeoff of accepting the Contribution would be at least as favorable, if not more favorable, to the affected Plan(s) than without such Contribution.

The Applicant notes that subsequent to a Contribution, the Independent Fiduciary will periodically monitor, and have the ability to so monitor, the Employer Stock. Accordingly, the ongoing management of the Employer Stock will be subject to the sole discretion of the Independent Fiduciary. Finally, the Independent Fiduciary will make all of the decisions regarding the retention and any disposition of the Employer Stock, and the exercise of any voting rights associated with such Stock.

7. The amount of Employer Stock contributed to the Trusts will be limited. In this regard, with limited exceptions, the aggregate fair market value of the Employer Stock will not exceed 25% of the fair market value of the assets of an affected Plan.¹⁰ A Plan may hold and continue to hold Employer Stock in excess of 25% solely in situations where the Employer Stock: Appreciates at a greater rate than that of the other assets held under the Plan (*i.e.*, other than the Employer Stock); or depreciates at a rate that is less than that of the other assets held under the Plan. However, in no case will a Contribution be made to a Plan that contemporaneously holds an amount of Employer Stock that exceeds 25% of its total assets at the time of the Contribution.

The Applicant states that the Contributions will benefit the Retiree Plan, and any other Plan so affected. In this regard, the Applicant states that, subsequent to a Contribution, the Employer Stock will not be subject to any restrictions with respect to its marketability. Accordingly, the Employer Stock will be fully transferable at the discretion of the Independent Fiduciary. Further, the

¹⁰ This percentage limitation will generally be applied without regard to amounts of Employer Stock held by unrelated common or collective trust funds maintained by independent managers, so long as the Employer Stock held in such unrelated fund does not exceed five percent (5%) of the value of each such common or collective trust fund, and the Plan's interest in such fund does not exceed ten percent (10%) of the total assets in such common or collective trust fund.

⁸ According to the Applicant, the Independent Fiduciary will discount the Closing Price of the Employer Stock contributed by the Employer to the Trusts if the Independent Fiduciary determines that such amount of Stock may not be sold at the Closing Price within a reasonable period of time from the date of the Contribution.