

behalf of Northwest pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1, 1995) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is issued solely by the Department.

The notice set forth a summary of the facts and representations contained in Northwest's November 6, 2002 application for exemptive relief (Application) 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 proposed exemption and/or to request that a public hearing be held. In response to the solicitation of comments from interested persons, the Department received over 1,700 letters, e-mails, faxes and phone calls, of which more than 1,000 requested that a public hearing be held on the Proposed Exemption. Many of the commenters expressed concern about the effect of the Proposed Exemption on the Plans. The concerns expressed generally related to the proposed contribution of Pinnacle Stock instead of a cash contribution to the Plans; the value and method of valuation of the Pinnacle Stock; the effects of the proposed transactions on the Plans; and the adequacy of the proposed safeguards that are intended to protect the Plans' interests. In view of the comments requesting a hearing, on March 11, 2003, the Department published in the **Federal Register** (68 FR 11589) a notice of hearing on the Proposed Exemption. The hearing on the Proposed Exemption was held on May 5 and 6, 2003 at the Department of Labor (the Hearing). Upon consideration of all of the comments received and testimony offered at the Hearing, the Department has determined to grant the proposed exemption subject to certain modifications. These modifications and the major comments are discussed below.

Discussion of the Comments

Northwest March 3, 2003 Comment

By letter dated March 3, 2003, Northwest described the Northwest contribution of Pinnacle Stock made to the Contract Plan on January 15, 2003

(the March 3 Comment). Northwest represents that the contribution was effected after the date on which the Department had completed work on the Proposed Exemption. The details of the Pinnacle Stock contribution were provided in the March 3, 2003 letter. Northwest also provided more detail about the final terms of the transactions as agreed to by Northwest and the Plans' independent fiduciary, Aon Fiduciary Counselors, Inc. (Fiduciary Counselors or Independent Fiduciary). Northwest states that, in this regard, some refinements were made to the provisions of the "Term Sheet" when the parties negotiated and entered into the final "Omnibus Agreement" (executed on January 15, 2003). The changes incorporated into the Omnibus Agreement were requested and approved by Fiduciary Counselors. In this regard, Northwest believes that this provided even more favorable terms for the Plans than those reflected in the Term Sheet.²

Contribution of Pinnacle Stock

Northwest reported that the Omnibus Agreement was executed between Pinnacle Airlines Corporation (Pinnacle), Northwest Airlines, Inc. (Northwest), Northwest Airlines Corporation (NWA Corp.) and Aon Fiduciary Counselors, Inc. (Fiduciary Counselors). Pursuant to the terms of the Omnibus Agreement, Northwest contributed Pinnacle Stock to the Contract Plan. The Omnibus Agreement provided for two contributions to be made to the Contract Plan on January 15, 2003. An "Initial Contribution" was made in the amount of \$41,149,911. The Initial Contribution was comprised of 1,819,833 shares valued at \$22.61 per share.³ The amount of the Initial Contribution is equal to the amount that was required to meet the quarterly funding requirements under ERISA section 302 and Code section 412(l) for the Contract Plan due on January 15, 2003. The Omnibus Agreement also provided for an "Additional Initial Contribution" to the Contract Plan in

² Northwest notes that the Omnibus Agreement, while consistent with the Term Sheet, provides specific terms for: the contribution transactions; transferability of Pinnacle Stock; corporate governance; voting rights; the Put Option; representations and warranties; and a number of other matters.

³ Northwest represents that the amount of shares necessary to satisfy the required contribution was based upon a final valuation of Pinnacle by Fiduciary Counselors, relying on a valuation report prepared by Eclat Consulting. Northwest notes that, while Fiduciary Counselors received and reviewed valuation information provided by Morgan Stanley & Co. Inc. (Morgan Stanley), Fiduciary Counselors retained Eclat to provide valuation services.

the amount of \$2,671,983 (118,167 shares valued at \$22.61 per share).

The Term Sheet did not provide for the Additional Initial Contribution. This additional contribution was agreed upon as a result of a technical concern raised by Fiduciary Counselors regarding covenants in Northwest's \$1.125 billion Credit and Guarantee Agreement dated October 24, 2000, as amended under which Northwest is the borrower (the Credit Agreement), with Northwest's bank lenders. The Additional Initial Contribution served to provide the Plans with added protection until Northwest obtained written assurances from the bank lenders that the Put Option does not violate the Credit Agreement. On February 14, 2003, Northwest obtained formal written confirmation from the bank lenders that none of the rights afforded to the Plans in the Omnibus Agreement nor the exercise of such rights would violate the Credit Agreement. Accordingly, Northwest notes that, consistent with the Omnibus Agreement's terms, the Additional Initial Contribution will be treated as a credit balance and be applied toward future contributions to the Contract Plan.

The total value of the Initial Contribution and Additional Initial Contributions made to the Contract Plan was \$43,821,894. Pinnacle Stock in that amount was transferred to State Street Bank, the trustee for the Northwest Master Trust for Defined Benefit Plans that holds the assets of all of the Northwest Plans (the Master Trust). Northwest instructed State Street Bank to establish an "Investment Fund" in connection with the Plans' Master Trust. The Investment Fund holds Pinnacle Stock on behalf of the Contract Plan and the Salaried Plan. As a result of instructions given to State Street, after the contribution was made to the Investment Fund, the Contract Plan owns 83.5% of the Investment Fund, while the Salaried Plan owns 16.5% of the Investment Fund. Each Plan's percentage ownership reflects the relative size of each Plan to each other. At that time, the Pilot Plan did not participate in the Pinnacle Stock Investment Fund.⁴

⁴ Northwest states, as noted in the Proposed Exemption, that the Master Trust is established in a manner such that all Plans hold an undivided and commingled interest in the assets of the Trust. Since Northwest was prohibited from investing the Pilot Plan's assets in employer stock, the Pilot Plan at that time, did not participate in the investment fund. However, Northwest notes that it has received the consent of the Air Line Pilots Association (ALPA), the union representing Northwest pilots, to permit the Pilot Plan to hold Pinnacle Stock (see