

breach of the Omnibus Agreement by Pinnacle constitutes an Early Termination Event if such breach continues because Northwest fails to exercise its rights as a stockholder to cause the Pinnacle directors to cure the breach or to replace such directors. *See* Omnibus Agreement, Definition of "Early Termination Event" at section 1.1.

Eclat Consulting Valuation

The Independent Fiduciary represents that the description of the valuation by Eclat Consulting (Eclat) of Pinnacle in the Proposed Exemption commencing in the second column of 68 FR 2580 (the Eclat Report) should be updated to reflect Eclat's valuation of Pinnacle as of January 15, 2003. The January 15, 2003 Eclat valuation report (January 15, 2003 Valuation) was attached to the Independent Fiduciary's report submitted to the Department on April 25, 2003 (*see* below for a discussion of these documents).

Put Option

As previously mentioned in the March 3 Comment, the changes to the description of the Put Option in the Proposed Exemption are noted by the Independent Fiduciary who adds that the Proposed Exemption should be revised in accordance with the definition of "Market Value" in section 1.1 and the language of section 8.3 of the Omnibus Agreement. In particular, subparagraph (i) at 68 FR 2580 of the Proposed Exemption should reflect that, prior to an IPO, the Plans will be entitled to the greatest of (1) the value of the stock when contributed, (2) the fair market value of the stock on the date that the determination of fair market value is made (*e.g.*, with respect to the Put Option, the date the Put Option is exercised), or, if greater, (3) the value as of the closing date of the Put Option.

Similarly, subparagraph (iii) at 68 FR 2580 should reflect that, after an IPO, the Plans will be entitled to the greatest of the value of the stock at the time of the contribution, or the average of the closing price for the Pinnacle Stock on the public market for the 10 trading days (or such other number if fewer than 10) preceding the exercise date, or

as of the last trading day before the closing date of the Put Option.

In addition, in the paragraph immediately following subparagraph (iii) in the second column of 68 FR 2580, the reference to the price of Pinnacle Stock being determined as of the exercise date should be expanded to reflect these concepts. Similarly, in the second column of 68 FR 2588 (third full paragraph), the reference in subclause (II) to the closing price of Pinnacle shares on the closing date should refer to the last trading day before the closing date.

Plan Director

As also mentioned in the March 3 Comment, the Independent Fiduciary notes that at the fifth paragraph of the "Voting Provisions" section in the Proposed Exemption at column 2 of 68 FR 2585, the description of the required affirmative vote of the director designated by the Plans should be expanded to include the approval of: amending the Note, amending Pinnacle's charter or by-laws in certain respects, implementing certain changes in Pinnacle's capital structure, or issuing capital stock prior to an IPO, as set forth in the Omnibus Agreement. *See* Omnibus Agreement at section 7.2. Additionally, the Independent Fiduciary corrects language in the fifth paragraph of the "Voting Provisions" of the Proposed Exemption that states a majority of Pinnacle's board is needed for the approval of compensation of Pinnacle's CEO. Section 7.2(b) of the Omnibus Agreement requires only that the appointment of a new CEO be approved by a majority of Pinnacle's board (excluding the Northwest Director), and does not make reference to the compensation of Pinnacle's CEO.

Additional Comments

The Independent Fiduciary reports that it negotiated the following additional requirements.

1. A comprehensive set of representations and warranties relating to both Pinnacle, Northwest and its affiliates. *See* Omnibus Agreement at sections 5.1 and 5.2.
2. An additional provision that would prohibit Northwest from using its rights under the Series A Preferred Share to block a Transfer of Pinnacle Stock following an Early Termination Event. *See* Omnibus Agreement at section 6.3.
3. Northwest Airlines Corporation (NWA Corp.) will guarantee Northwest's obligations under the Omnibus Agreement, including the Put Option. *See* Omnibus Agreement at section 8.8.
4. The right to engage an investment banker on behalf of the Plans in an IPO,

at Northwest's expense. *See* Omnibus Agreement at section 9.1(d).

5. A provision providing that the exercise price of any options on Pinnacle Stock granted to its executive employees under its stock incentive plan at the time of an IPO would be at the greater of the value of the stock at the time it was contributed to the Plans or the IPO price. *See* Omnibus Agreement at section 11.2.

Finally, Fiduciary Counselors requests that in Section III. Definitions at (a) of the Proposed Exemption in column 1 of 68 FR 2590, the reference to "5 percent (5%) of such fiduciary's gross income, for Federal income tax purposes, in its prior tax year, will be paid by Northwest" should read "5 percent (5%) of such fiduciary's annual gross revenue in the year of its engagement, will be paid by Northwest."

The Department has determined that it would be appropriate to modify the definition of independent fiduciary as follows:

"(3) the annual gross revenue received by such fiduciary, during any year of its engagement, from Northwest and its affiliates exceeds 5 percent (5%) of the independent fiduciary's annual gross revenue from all sources for its prior tax year."

Fiduciary Counselors and Eclat April 25, 2003 Submissions

On April 25, 2003, Fiduciary Counselors provided to the Department the Independent Fiduciary Report on Contribution of Pinnacle Airlines Corp. Stock to the Northwest Airlines Pension Plan For Contract Employees dated March 16, 2003 (the IF Report), the January 15, 2003 Eclat valuation of Pinnacle (the January 15, 2003 Valuation), and an explanation of the valuation of the Put Option.

The Independent Fiduciary Report

The Independent Fiduciary represents that after extensive negotiations during November and December, 2002, and January, 2003, Fiduciary Counselors and Northwest, along with Pinnacle and NWA Corp., Northwest's ultimate parent company, entered into an Omnibus Agreement, dated January 15, 2003, which sets forth the terms and conditions pursuant to which Fiduciary Counselors will accept the Pinnacle Stock (the Contribution).⁶

⁶ Fiduciary Counselors notes that immediately prior to the transaction, NWA Inc. (NWA), an affiliate of Northwest, owned 86,842 shares of common stock, par value \$0.01 per share, of Pinnacle Airlines, Inc., a Georgia corporation, constituting all of the issued and outstanding

Northwest and the Air Line Pilots Association dated as of September 13, 1998, as amended, or any successor agreement. This Section requires that all "revenue flying" for Northwest and its affiliates must be performed by pilots on the integrated Pilots System Seniority List in accordance with the collective bargaining agreement, except for revenue flying by an airline that at all times operates only aircraft that are certified with a maximum passenger capacity of 60, and a maximum gross takeoff weight of less than 70,000 pounds.