

would be liable for any losses resulting from such a breach of fiduciary responsibility, even if a contribution in kind does not constitute a prohibited transaction under section 406 of ERISA.

The selection of an independent qualified appraiser to determine the value of an in-kind contribution and the acceptance of the resulting valuation are fiduciary decisions governed by the provisions of Part 4 of Title I ERISA. In discharging its obligations under section 404(a)(1), the independent fiduciary must take steps calculated to obtain the most accurate valuation available. In addition, the fiduciary obligation to act prudently requires, at a minimum, that the independent fiduciary conduct an objective, thorough, and analytical critique of the valuation. In conducting such verification, the independent fiduciary must evaluate a number of factors relating to the accuracy and methodology of the valuation and the expertise of the independent qualified appraiser. Reliance solely on the valuation provided by the appraiser would not be sufficient to meet this prudence requirement.

In considering whether to accept an in-kind contribution, the Independent Fiduciary's responsibilities include the following:

1. The Independent Fiduciary must prudently determine the fair market value of the Pinnacle Stock as of the date it is contributed to the Plans. In determining the fair market value of the stock, the Independent Fiduciary must obtain an appraisal by a qualified independent appraiser, and must ensure that the appraisal is consistent with sound principles of valuation.

2. The Independent Fiduciary must ensure that each appraisal, at a minimum, includes the following elements:

- (a) A summary of the appraiser's qualifications to evaluate Pinnacle Stock,

- (b) A statement that the appraiser is independent of Pinnacle and Northwest, and that the appraiser has no interest in the securities issued by Pinnacle or Northwest,

- (c) A statement that the appraisal is being conducted to determine the fair market value of Pinnacle Stock, which is defined as the price at which the stock would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are well informed about the stock and the market for the stock,

- (d) A statement of the stock's value, the methodologies used in determining

the value, the reasons for the valuation in light of the methodologies, and the reasons that the appraiser chose to apply particular valuation methods rather than others,

- (e) A statement of the relevance or significance accorded to the valuation methodologies taken into account,

- (f) The effective date of the valuation,

- (g) A description of the nature of Pinnacle's business and history,

- (h) A description of the economic outlook in general, and of the condition and outlook of Pinnacle's industry in particular,

- (i) An analysis of Pinnacle's financial condition and earning capacity,

- (j) A description of all of the factors taken into account in making the valuation, including any restrictions, understandings, agreements or obligations limiting the Plans' ability to dispose of the stock,

- (k) A statement of past transactions involving Pinnacle Stock, including dates, amounts, price, and whether the transactions were at arms-length, as well as a description of any attempts to buy or sell Pinnacle Stock over the last five years, including a description of any previous plans for initial public offerings,

- (l) An analysis of the market price of securities of corporations engaged in the same or similar lines of business as Pinnacle, which are actively traded on a recognized exchange or automated broker-dealer quotation system,

- (m) An analysis of the marketability, or lack thereof of the Pinnacle Stock, with specific reference to any restrictions, understandings, agreements, or obligations limiting the Plans' ability to dispose of the Pinnacle Stock,

- (n) An analysis of the degree to which actual control (both in form and in substance) will pass to any of the Plans as a result of any of the contemplated transactions,

- (o) To the extent that Pinnacle's current or projected revenues and expenses are related to, or dependent upon, contracts, agreements, or understandings between Northwest and Pinnacle, an analysis of Northwest's financial condition, the likelihood of a Northwest bankruptcy, and the potential impact of a Northwest bankruptcy on those contracts, agreements, or understandings, and on the market value of Pinnacle Stock, and

- (p) Any other factors necessary for a prudent determination of the market value of Pinnacle Stock.

3. The Independent Fiduciary must investigate the facts and assumptions underlying the appraisals to ensure that stock contributions are not valued at

more than fair market value. The Independent Fiduciary must not simply defer to the conclusions reached by the appraiser, but rather will take appropriate action to ensure:

- (a) That the appraisal is based upon complete, accurate, and current data;

- (b) That the appraiser is appropriately qualified to conduct the valuation;

- (c) That the valuation methodologies are appropriate and adequately explained and that the appraiser has adequately justified its decision not to use alternative methodologies;

- (d) That any variables used in the valuation analysis such as projected revenues, expenses, operating margins, depreciation, discount rates, capitalization rates, and multipliers are adequately supported by market data;

- (e) That the stock's value is calculated with appropriate discounts for lack of marketability and control after a reasoned evaluation of the relevant market data concerning such discounts, as well as of each Plan's actual ability to effectively dispose of its stock or to control Pinnacle;

- (f) That the appraisal's reasoning and assumptions are consistent, logical, and supported by appropriate financial and economic data and that any calculations are accurate;

- (g) That the valuation is based on complete, accurate, and audited financial statements, which have been properly analyzed;

- (h) That the assumptions underpinning the valuation are properly identified, and a careful analysis is performed of the impact of changes in those assumptions on the value of Pinnacle Stock;

- (i) That the valuation has appropriately considered Northwest's financial condition in valuing Pinnacle Stock, as well as the impact of a Northwest bankruptcy on the value of Pinnacle Stock; and

- (j) That the fair market value of the stock has been determined by way of a prudent investigation.

4. The Independent Fiduciary must ensure that all of the conditions above are satisfied with respect to any past contributions of Pinnacle Stock, as well as any future contributions. If previous valuations or analyses do not comport with these conditions, the Independent Fiduciary must perform any additional work necessary to make the valuations and analyses consistent with the conditions of this exemption. In no circumstance, however, may the parties treat Pinnacle Stock previously contributed to the Plans as if it had a higher value than was attributed to it at the time of the original contribution.