

determined the value of Pinnacle Stock. In doing so, Fiduciary Counselors' legal obligations run exclusively to the Plans, not to Northwest. As the Plans' independent fiduciary, Fiduciary Counselors must act prudently and in the interests of the Plans and their participants.

Northwest asserts that in valuing Pinnacle Stock, there are well-established valuation methodologies available to the valuation experts to assess the value of non-public securities like Pinnacle Stock. Such techniques were employed by Fiduciary Counselors and Eclat in this circumstance. In particular, the risk and the liquidity of the Pinnacle Stock were taken into account and are explained in the reports issued by Fiduciary Counselors and Eclat. Equally important, Fiduciary Counselors negotiated for special rights associated with the Plans' acquisition of Pinnacle Stock that limit the risks associated with Pinnacle Stock. For example, the Plans obtained a Put Option, corporate governance rights, voting rights in Pinnacle and the right to initiate an IPO or sale of Pinnacle Stock.

Collateral for Pinnacle Stock Contribution

Comment: Some comments suggested that Northwest be required to post collateral in order to contribute Pinnacle Stock to the Plans.

Northwest Response: Northwest explains that, while the Proposed Exemption and the Omnibus Agreement negotiated with Fiduciary Counselors do not require collateral, the Proposed Exemption and the Omnibus Agreement include provisions designed to limit the need for collateral. The purpose of collateral would be to protect the Plans from declines in the value of Pinnacle Stock and secure the Put Option accorded to the Plans. In this case, the Omnibus Agreement provides the Plans with a Put Option that allows Fiduciary Counselors at any time to "put" Pinnacle Stock back to Northwest at the greater of the price at the time the stock was contributed or the price at the time of the put.⁷ The Omnibus Agreement

further requires that Northwest provide regular notice of its liquidity to Fiduciary Counselors. Thus, the Put Option serves to protect the Plans from declines in the value of Pinnacle Stock and the liquidity notice feature ensures that the Independent Fiduciary has sufficient notice so that it may exercise the Put Option at a time when Northwest has sufficient financial resources to meet its obligation under the Put Option.

Northwest asserts that, while the Department has required collateral for some similar exemptions in the past, it has not required collateral in all cases. Here, they assert, the purpose of the exemption, to provide the Plans with a valuable security while maintaining Northwest's liquidity, would be undermined if assets were required to be used as collateral in connection with contributions of Pinnacle Stock. Moreover, to the extent that Northwest has assets to secure the contributions, such assets will be used to maintain the liquidity necessary for Northwest to weather the ongoing economic challenges.

Conflicts of Interest

Comments: Commenters expressed a concern that the contribution of Pinnacle Stock involves a conflict of interest on the part of Northwest.

Northwest Response: Northwest states that, because there is a potential for a conflict of interest, the Proposed Exemption required that Northwest appoint an independent fiduciary who is vested with the discretion to determine whether the Plans should acquire, hold or dispose of Pinnacle Stock. The Proposed Exemption included specific conditions that ensure that the independent fiduciary is free from conflicts of interest. The Proposed Exemption further required that the independent fiduciary obtain expert valuation advice from an independent valuation firm. Thus, to eliminate the potential for a conflict of interest, two parties completely independent of Northwest—Fiduciary Counselors and Eclat—represented the interests of the Plans in connection with the transaction.

Northwest represents that the final terms of the Omnibus Agreement reflect the fact that Fiduciary Counselors has represented the Plans' interests. In this regard, the Plans acquired Pinnacle Stock at a favorable price and the Plans obtained voting and management rights, anti-dilution rights, limits on

Northwest's ability to terminate the ASA, rights to sell the Pinnacle Stock or dispose of it in an IPO in a variety of circumstances, and a protective Put Option. In addition, Pinnacle has an independent Board of Directors with one member appointed by Fiduciary Counselors, and the Fiduciary Counselors-appointed Board member is entitled to special voting rights on certain matters.

Exposure to Future Underfunding

Comment: Several commenters expressed concern that the exemption would expose the Plans to increased underfunding in the future.

Northwest Response: Northwest notes that it has never before sought a prohibited transaction exemption and has never missed a pension funding payment. Indeed, during the 1990's, Northwest contributed to its pension plans millions of dollars more than the required amount of contributions. As Northwest's track record demonstrates, Northwest agrees that the Plans need to be soundly funded. The Proposed Exemption is part of Northwest's strategy to achieve that goal. Through the contribution of Pinnacle Stock, Northwest will be able to meet up to \$330 million (based on the current valuation) in near term funding obligations while maintaining the airline's ability to weather difficult times, to the benefit of all concerned. Moreover, when the IPO of Pinnacle Stock occurs, the Plans may benefit from a potentially significant IPO premium with respect to their holdings of Pinnacle Stock. In the absence of the contribution of Pinnacle Stock, the Plans could suffer from increased underfunding. This is because a cash contribution is not a viable alternative given the company's liquidity needs.

Preference for Cash Contribution

Comment: A number of commenters expressed a preference that pension contributions be made with cash rather than Pinnacle Stock.

Northwest Response: Northwest notes that like other major airlines, Northwest is in a temporary period of extraordinary airline revenue weakness and volatility. In this environment, it is necessary to maintain high liquidity reserves to ensure the viability of the airline and protect the long-term interests of the pension plans and plan participants.

Northwest asserts that, if its current cash needs were not so great, Northwest would make its pension contributions in cash as it has in the past. However, because of its liquidity needs, a cash contribution is not a viable alternative.

⁷ Northwest notes that specifically, if the Pinnacle Stock is not publicly traded, the Plans will receive the greatest of (i) the initial contribution value (the Floor Price), (ii) the fair market value as determined by the Independent Fiduciary at the time of the exercise of the Put Option, or, if greater, at the closing date of the Put Option, and, (iii) if a third party sale is elected by the Plans and Northwest does not exercise its right of first refusal, the proceeds from the sale of Pinnacle Stock held by the Plans to such third party. If the Pinnacle Stock is publicly traded, the Plans will receive the greater of (i) the Floor Price, or (ii) the average closing price for the stock on the public market for the 10 trading

days preceding the exercise date or, if greater, the closing price on the day before the Put Option closing date.