

board, like any board fulfilling its fiduciary duties, will seek to maximize the value of the enterprise. In addition, Fiduciary Counselors negotiated comprehensive voting and governance rights specifically for the Plans under the Omnibus Agreement. For example, Fiduciary Counselors appointed a director to Pinnacle's board who sits on the board's audit committee. Once the Plans own 50% of the Pinnacle Stock, the Plans' director will exercise additional approval rights relating to the company's bylaws and capital structure. In addition, changes to the ASA and other significant transactions must be approved by a majority of Pinnacle's directors, which majority must include the Plans' director.

Modifications to the ASA

On July 23, 2003, Northwest confirmed to the Department that the modifications to the ASA referred to in the Proposed Exemption have been made. The ASA was revised to provide that the acquisition or disposition of shares of Pinnacle Stock pursuant to the terms of the Omnibus Agreement does not constitute a Change of Control (as defined in the ASA). The ASA also was revised to eliminate the unilateral right of Northwest to terminate the ASA in the event of the bankruptcy of Northwest.

10% Limitation

In the March 5 Comment, Fiduciary Counselors corrected previous information provided to the Department in the Proposed Exemption with reference to "employer securities or employer real property" in the last sentence of paragraph 14 in column 1 of 68 FR 2584 (emphasis added) and each other place it occurs. This phrase should be changed to "employer securities and employer real property".

In this regard, the Department wishes to note that Northwest has not requested, and the Department is not providing, any relief for any contribution of Pinnacle Stock that, when aggregated with any employer securities and employer real property currently held by any of the Plans, represents more than 10 percent of the value of that Plan's assets.

Best Interest Standard

In the March 5 Comment, Fiduciary Counselors noted that, consistent with the statutory requirements of section 404(a) of ERISA, the reference in the Proposed Exemption to "the *best* interests of the Plans' participants and beneficiaries" (emphasis added) should be changed to "the interests of the Plans' participants and beneficiaries".

Entity References

In the March 3 Comment, Northwest observed that there are three references to NWA Inc. in the second column at 68 FR 2584 that should reference Northwest (Northwest Airlines, Inc.), the wholly-owned subsidiary corporation of NWA Inc. The references appear almost halfway down the column beginning in the fourth full paragraph, and in the last paragraph in the column.

Jones Day

The March 5 Comment noted that due to the firm's recent name change, the reference to "Jones, Day, Reavis & Pogue" in the first column of the Proposed Exemption at 68 FR 2584 should be changed to "Jones Day".

Determination of the Department

Accordingly, based upon the representations made by the Applicant, the written comments received in response to the Proposed Exemption, the record of the public hearing, and the analysis conducted by the Independent Fiduciary, the Department has determined to grant the exemption. The Department has, in transactions of this nature, placed emphasis on the need for an Independent Fiduciary and on such Independent Fiduciary's considered and objective evaluation of the transactions. In its deliberations, which included its analysis of all aspects of the transactions, the Independent Fiduciary has consistently represented for the record that no contribution of Pinnacle Stock will be accepted on behalf of the Plans unless such transactions are found by the Independent Fiduciary to be in the interests of the Plans. Finally, the Department notes that the Independent Fiduciary's satisfaction of its obligations in connection with the determination of the fair market value of the Pinnacle Stock as previously described by the Department in the Preamble to the final exemption is a critical factor in the Department's decision to grant a final exemption.

The Application pertaining to the exemption, the Proposed Exemption, the comments submitted to the Department and the responses to the comments, the transcript of the Hearing, and all other documents submitted to the Department concerning this exemption have been included as part of the public record of the Application. The complete Application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S.

Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the January 17, 2003 Notice of Proposed Exemption at 68 FR 2578.

General Information

The attention of interested person is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of the plans;

(4) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transactions, which are the subjects of the exemption.