

may receive compensation from Northern in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, and (iii) more than 2 percent (2%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by Northern and its affiliates in the fiduciary's current tax year.

(E) The term "Transferable Securities" shall mean securities (1) for which market quotations are readily available (as determined under Rule 2a-4 of the 1940 Act) and (2) which are not: (i) Securities which, if distributed, would require registration under the 1933 Act; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Mutual Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) which are not readily distributable; (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and (vi) securities subject to "stop transfer" instructions or similar contractual restrictions on transfer.

(F) The term "relative" means a "relative" as that term is defined in section 3(15) of ERISA (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Effective Date: The exemption is effective as of the date this notice of final exemption is published in the **Federal Register**.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 18, 2002, at 67 FR 69560.

For Further Information Contact: Ms. Andrea W. Selvaggio of the Department, telephone (202) 694-8540. (This is not a toll-free number).

Brightpoint, Inc. (Brightpoint) Located in Indianapolis, Indiana

[Prohibited Transaction Exemption 2003-02; Exemption Application No. D-10999]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective June 5, 2001, to: (1) The payment (the Payment) by Brightpoint of \$108,738.85 (the Assessment Amount) to the Millennium Trust Company LLC (Millennium) on behalf of the Brightpoint, Inc. 401(k) Plan (the Plan) for the purpose of satisfying a court-ordered assessment against the assets of the Plan (the Assessment) that arose in connection with the \$68,100,000.00 deficiency (the Deficiency) incurred by the Independent Trust Corporation (Intrust); and (2) the transfer by the Plan to Brightpoint (the Repayment) of certain assets recovered by PricewaterhouseCoopers LLP (the Receiver) in connection with the Deficiency, if the following conditions are met:

(A) In the event the Plan receives an amount of assets from the Receiver (a Recovery Amount) that is greater than the Assessment Amount, the Plan will not be required to pay Brightpoint that portion of the Recovery Amount that is in excess of the Assessment Amount;

(B) In the event the Plan receives a Recovery Amount that is less than the Assessment Amount, the Plan will not be required to pay Brightpoint the difference between the Assessment Amount and the Recovery Amount;

(C) The Plan will not pay any of the costs and/or fees associated with the Payment and the Repayment;

(D) The Deficiency did not arise in connection with any improper act undertaken by a Plan fiduciary (other than Intrust or its principals); and

(E) Upon notification of the Intrust losses, the Brightpoint Plan fiduciaries undertook, and will continue to undertake, any actions necessary to ensure that the assets of the Plan were, and are, adequately protected.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published in the **Federal Register** on October 8, 2002 (67 FR 62822).

For Further Information Contact: Christopher Motta of the Department, telephone (202) 693-8544. (This is not a toll-free number.)

General Information

The attention of interested persons 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/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his 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 requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) 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 transactional 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

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC this 3rd day of February, 2003.

Ivan Strasfeld,

*Director of Exemption Determination,
Employee Benefits Security Administration,
Department of Labor.*

[FR Doc. 03-2963 Filed 2-5-03; 8:45 am]

BILLING CODE 4510-29-P