

Assets, the sale of the Entire Farmland Account will follow the same investment queue procedures, as described above for individual Farmland Assets.

The applicant maintains that the Allocation Policy is objective, because there is an established and easily administered rule that determines the priority among competing Farmland Separate Accounts. The Farmland Separate Account with the oldest outstanding commitment is allocated the investment. The applicant further maintains that this approach is also fair. In this regard, the applicant points out that unlike other types of investments, the identification of appropriate real estate investments, including farmland, takes time. Accordingly, the applicant maintains that it is appropriate and fair to allocate opportunities to those Farmland Separate Accounts that have the longest outstanding commitments to JHLIC or HNRG awaiting investment. In this regard, customers know that their commitments will be filled in full before new competing requests are accommodated.

9. Assets held in the Farmland Separate Accounts are considered assets of the plans participating in such Farmland Separate Accounts, pursuant to 29 CFR 2510.3-101(h)(1)(iii) of the Department's regulations. In addition, the assets of certain Holding Entities through which JHLIC's Customers hold Farmland Assets may also constitute plan assets if the Customer is an ERISA-Covered Plan and the Holding Entity is a pass-through entity, pursuant to 29 CFR 2510.3-101(a)(2) of the Department's regulations.

As investment managers for the Farmland Separate Accounts, JHLIC and HNRG are both fiduciaries and parties in interest to ERISA-Covered Plans participating in the Farmland Separate Accounts, pursuant to section 3(14)(A), and (B) of the Act. As a discretionary manager of the Farmland Assets held by the Holding Entities that are pass-through entities, HNRG is a fiduciary and party in interest with respect to any ERISA-Covered Plans that invest in these Holding Entities.

10. The transfer of a Farmland Asset or Farmland Assets or an Entire Farmland Account from one Farmland Separate Account to another could constitute a violation of section 406(b)(2) of the Act, if one of the Accounts holds plan assets. Section 406(b)(2) of the Act provides that a plan fiduciary shall not in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of

the plan or the interests of its participants or beneficiaries. Because JHLIC or its Affiliate serves as investment manager to both the Buying and Selling Account, it could be viewed as representing adverse parties in a transaction involving a plan. Accordingly, the applicant requests an exemption from the prohibitions of section 406(b)(2) of the Act to cover the subject transactions.

11. The applicant maintains that the proposed exemption is administratively feasible, because each transaction involving an ERISA-Covered Plan can be readily identified and audited. The proposed exemption would not require continued monitoring or other involvement on behalf of the Department of Labor or the Internal Revenue Service.

12. The applicant represents that the proposed exemption is protective of the rights of participants and beneficiaries of ERISA-Covered Plans that are Customers, because decisions regarding which Farmland Asset or Farmland Assets or Entire Farmland Account to be transferred and the timing of the transfers will be made by JHLIC and its Affiliates in conformance with each Customer's investment guidelines, which have been agreed upon by the Customer. In addition, if JHLIC or HNRG determines that it should liquidate a Farmland Asset or Farmland Assets held in an Account or an Entire Farmland Account or if as a result of certain "triggering events," described in Condition 3 of this proposed exemption, such liquidation must occur and JHLIC concludes that the particular Farmland Asset, Farmland Assets, or Entire Farmland Account to be sold is an appropriate investment for the portfolio of another Farmland Separate Account, JHLIC will engage an Independent Fiduciary to represent the interests of any ERISA-Covered Plans, as set forth in Condition 3. The individual or firm selected to serve as an Independent Fiduciary; must satisfy the criteria, as set forth in Condition 12(d) of this proposed exemption.

13. For each transaction requiring an Independent Fiduciary, the purchase or sale of a Farmland Asset or Farmland Assets or Entire Farmland Account may not be completed unless the Independent Fiduciary determines that the transaction, including the purchase price, would be in the best interest of the particular Account(s) involved based on investment policies and procedures of the Account(s).

Where a transaction between ERISA-Covered Plans and a triggering event has occurred, the fee for the services of the Independent Fiduciary will be charged

as an acquisition expense to the Buying Account(s). In a transaction other than the one described in the above sentence, each side would pay the fee for the services of the Independent Fiduciary, to the extent that an Independent Fiduciary is required by the terms of the exemption. For example, the Buying Account would pay for an Independent Fiduciary, as required under the exemption to represent the interest of the Buying Account, and the Selling Account would pay for an Independent Fiduciary, as required under the exemption to represent the interest of the Selling Account. In a situation where more than one account is on the buying or on the selling side of the transaction, it is expected that there will not be more than one Independent Fiduciary required to represent the accounts on a single side of the transaction. In that event, the costs of the fees for the services of the Independent Fiduciary would be shared, as negotiated by the accounts whose interests the Independent Fiduciary represents in the transaction.

14. It is represented that the proposed exemption provides sufficient safeguards for the protection of the participants and beneficiaries of the ERISA-Covered Plans. In this regard, participation in the proposed transactions by ERISA-Covered Plans is limited to plans having total assets in excess of \$100 million. The minimum asset requirements will help ensure that the fiduciaries reviewing these transactions are sophisticated investors familiar with complex investments.

15. Further, the applicant represents that each Account that buys or sells a Farmland Asset or Farmland Assets or Entire Farmland Account will pay no more and receive no less than fair market value of the Farmland Asset or Farmland Assets or Entire Farmland Account at that time of the transaction. For a Farmland Asset, fair market value shall be determined by a qualified, independent real estate appraiser experienced with the valuation of farmland properties similar to the type involved in the transaction, and may include customary closing adjustments. It is represented that customary closing adjustments may arise where agricultural land bearing crops is sold prior to harvest and may involve an agreement between the buyer and seller that either: (1) The buyer reimburse the seller for documented expenses incurred during the growing period in the cultivation of such crops, up to the date of closing; or (2) the buyer retain a certain amount of the crops and the seller receive the proceeds for any crops