

**DEPARTMENT OF LABOR****Employee Benefits Security Administration****Prohibited Transaction Exemption 2003-09; [Exemption Application No. D-11042] et al. Grant of Individual Exemptions; Metropolitan Life Insurance Company (MetLife)**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or 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 makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

**Metropolitan Life Insurance Company (MetLife) Located in New York, NY [Prohibited Transaction Exemption 2003-09; Exemption Application No. D-11042]****Exemption**

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,<sup>1</sup> shall not apply, effective April 6, 2001, to the cash sale (the Sale) to MetLife of a note (the Note), issued by the Pacific Gas & Electric Company (PG&E), by MetLife's Liquidity Plus Account (the Account) for which MetLife acts as investment manager and is a party in interest with respect to employee benefit plans (the Plans) invested in such Account.

This exemption is subject to the following conditions:

(a) The Sale was a one-time transaction for cash.

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

(d) As manager of the Account, MetLife determined, at the time of the transaction, that the Sale was appropriate for, and in the best interests of, the Account, the Plans investing therein, and their participants and beneficiaries.

(e) MetLife took all appropriate actions necessary to safeguard the interests of the Account and the Plans in connection with the Sale.

(f) If the exercise of any of MetLife's rights, claims or causes of action in connection with its ownership of the Note results in MetLife recovering from PG&E an aggregate amount that is greater than the sales price for such Note, MetLife will refund such excess amount to the Account.

**Effective Date:** This exemption is effective as of April 6, 2001.

For a more complete statement of the facts and representations supporting the

<sup>1</sup> For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 3, 2003 at 68 FR 10041.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna M.N. Mpras of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

**The JPMorgan Chase Bank (Located in New York, New York)**

[Prohibited Transaction Exemption 2003-10; Application No. D-11062]

**Exemption****Section I—Transactions**

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A)–(E) of the Code, shall not apply as of December 31, 2000, to:

(A) the continuation of a lease (the Lease), by the Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank (the Fund) with respect to which JPMorgan Chase Bank (JPMCB) is the trustee (the Trustee), of office space in a certain commercial office building (the Property) to Chase Global Funds Service Company (CGF), a party in interest with respect to employee benefit plans whose assets are invested in the Fund (Plans) and an affiliate of JPMCB; and

(B) the continued and future provision by JPMCB or its affiliates of letters of credit (Letter(s) of Credit) to guarantee the obligations of unrelated third-party tenants to pay rent to the Fund under commercial real estate leases.

This exemption is subject to the conditions set forth in Section II.

**Section II—Conditions**

(A) The Fund is represented by a fiduciary independent of JPMCB and its affiliates (the independent fiduciary) with respect to the Lease to perform the following functions:

(1) Confirm that when the Lease originally was entered into, and as modified to date, all the terms and conditions of the Lease, including those relating to renewal options and rights of first refusal, were commercially reasonable and at least as favorable to the Plans as those terms and conditions which could have been obtained at arm's length with an unrelated third party;

(2) determine, based upon a written appraisal report by a qualified appraiser independent of JPMCB and its affiliates, that the leasing renewal rate the Fund will charge CGF if CGF elects to exercise

its renewal options under the Lease, effective in 2004 and thereafter, and that the leasing rate with respect to any space leased by CGF in the Property pursuant to any rights of first refusal CGF has under the Lease, accurately reflect at least fair market rental value;

(3) negotiate and approve, subject to the appropriate ERISA fiduciary standards, such amendments to the Lease upon renewal(s) as it deems appropriate, including, for example: (i) a shorter renewal term than the current five year term; (ii) additional renewal period(s) (provided that the rent paid in any time periods after February 28, 2009, under any newly granted renewal option(s) would be at 100% of fair rental value, as opposed to the 95% of fair rental value that applies for periods through February 28, 2009); (iii) the lease of less square footage than the current square footage covered under the Lease; (iv) the lease of more square footage than the current square footage covered under the Lease (provided that the rent paid for any square footage in excess of the current square footage would also be leased at 100% of fair rental value, and not 95% of fair rental value); (v) using a "base year" under the Lease (upon which certain periodic increases such as taxes are calculated) updated to the year 2004, and (vi) allowing CGF to install shatter-proof glass in the space it leases; provided that all such amendments are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, as determined by the independent fiduciary; and

(4) represent the Fund and the participants (Participants) in the Plans as independent fiduciary in any circumstances in addition to those described in subsection (3) above while the Lease (including any periods of renewal) is in effect which would present a conflict of interest for the Trustee, including but not limited to: default by CGF or disagreement on an economic computation under the Lease.

(B) The Fund is represented by an independent fiduciary with respect to any existing or future Letters of Credit to perform the following functions:

(1) monitor monthly reports of rental payments of tenants utilizing a Letter of Credit issued by JPMCB or any affiliate to guarantee their lease payments;

(2) confirm whether an event has occurred that calls for the Letter of Credit to be drawn upon; and

(3) represent the Fund and the Participants as an independent fiduciary in any circumstances with respect to the Letters of Credit which would present a conflict of interest for the Trustee,

including but not limited to: the need to enforce a remedy against itself or an affiliate with respect to its obligations under a Letter of Credit.

(C) Future Letters of Credit are issued by JPMCB or an affiliate to guarantee the obligations of third-party tenants to pay rent to the Fund under commercial real estate leases only if the following additional conditions are met:

(1) JPMCB or its affiliate, as the issuer of a Letter of Credit, has at least an "A" credit rating by at least one nationally recognized statistical rating service at the time of the issuance of the Letter of Credit;

(2) the Letter of Credit has objective market drawing conditions and states precisely the documents against which payment is to be made;

(3) JPMCB does not "steer" the Fund's tenants to itself or its affiliates in order to obtain the Letter of Credit;

(4) Letters of Credit are issued only to tenants which are unrelated to JPMCB; and

(5) The terms of any future Letters of Credit are not more favorable to the tenants than the terms generally available in transactions with other similarly situated unrelated third-party commercial clients of JPMCB or its affiliates.

#### Section III—Definitions

(A) The term "independent fiduciary" means Aon Fiduciary Counselors, Inc. (AFC) or any successor independent fiduciary, provided that AFC or the successor independent fiduciary is: (1) independent of and unrelated to JPMCB and its affiliates, and (2) appointed to act on behalf of the Fund for the purposes described in conditions II(A) and (B) above. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with JPMCB, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that an independent fiduciary may receive compensation for acting as an independent fiduciary from JPMCB 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 (3) more than 5 percent of such fiduciary's annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in the fiduciary's current tax year.

(B) The term "affiliate" means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any officer, director, employee, relative or partner in any such person; and

(3) any corporation or partnership of which such person is an officer, director, partner or employee.

(C) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

*Effective Date:* The exemption is effective as of December 31, 2000.

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 March 21, 2003, at 68 FR 13954.

#### FOR FURTHER INFORMATION CONTACT:

Karen E. Lloyd of the Department, telephone (202) 693-8540. (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 at Washington, DC, this 19th day of May, 2003.

Ivan Strasfeld,

Director of Exemption Determinations,  
Employee Benefits Security Administration,  
Department of Labor.

[FR Doc. 03-12888 Filed 5-21-03; 8:45 am]

BILLING CODE 4510-29-P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application No. D-10269]

#### Withdrawal of the Notice of Proposed Exemption Involving the Travelers Group Inc. 401(k) Savings Plan (the Plan) Located in New York, NY

In the **Federal Register** dated December 30, 1996, (61 FR 68794), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned: (1) The in-kind contribution by Travelers Group Inc. (TGI) of certain options (the Stock Option or Stock Options) into the accounts in the Plan of eligible employees of TGI and its subsidiaries and affiliates (the Employees or Employee); (2) the holding of the Stock Options by such accounts; and (3) the exercise of such Stock Options by Employees in order to purchase shares of common stock of TGI.

By letter dated April 29, 2003, Citigroup Inc., (formerly TGI) and its affiliates requested that the application for exemption be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 19th day of May 2003.

Ivan L. Strasfeld,

Director of Exemption Determinations,  
Employee Benefits Security Administration,  
Department of Labor.

[FR Doc. 03-12890 Filed 5-21-03; 8:45 am]

BILLING CODE 4510-29-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. NRTL2-92]

#### Canadian Standards Association; Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the application of Canadian Standards Association (CSA) for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of the application.

**DATES:** You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

*Regular mail and express delivery service:* Your comments must be postmarked by June 6, 2003.

*Hand delivery and messenger service:* Your comments must be received in the OSHA Docket Office by June 6, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

*Facsimile and electronic transmission:* Your comments must be sent by June 6, 2003.

**ADDRESSES:** *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL2-92, Room N-2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693-2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

*Facsimile:* If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693-1648. You must include the docket number of this

notice, Docket NRTL2-92, in your comments.

*Internet access to comments and submissions:* OSHA will place comments and submissions in response to this notice on the OSHA Web page <http://www.osha.gov>. Accordingly, OSHA cautions you about submitting information of a personal nature (e.g., social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Web page. Please contact the OSHA Docket Office at (202) 693-2350 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

*Extension of Comment Period:* Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693-1644.

**FOR FURTHER INFORMATION CONTACT:** Sherry Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693-2110.

#### SUPPLEMENTARY INFORMATION:

##### Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Canadian Standards Association (CSA) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). CSA's expansion request covers the use of additional test standards. OSHA's current scope of recognition for CSA may be found in the following informational Web page: <http://www.osha-slc.gov/dts/otpc/nrtl/csa.html>.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL.

The Agency processes applications by an NRTL for initial recognition or for