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### Appendix A—Herfindahl-Hirschman Index Calculations

“HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ( $30^2 + 30^2 + 20^2 + 20^2 = 2600$ ). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Exemption Application No. D-11030]

#### Withdrawal of Notice of Proposed Exemption Involving Blue Cross and Blue Shield of Kansas (the Company) and Anthem Insurance Companies, Inc. (Anthem) Located in Topeka, KS

In the **Federal Register** dated January 3, 2002, the Department of Labor (the Department) published a notice of proposed exemption (the Notice) 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, as amended. The Notice provided prospective exemptive relief for the receipt of cash consideration by any eligible policyholder of the Company and Anthem which was an employee benefit plan (the Plan), including the Company's own in house Plan, in exchange for the termination of such Plan's membership interest in the Company, in accordance with the terms of a plan of conversion adopted by the

Company and implemented pursuant to Kansas Law. Due to the length of time since the publication of the proposal and unresolved litigation between the Company and the Kansas Commissioner of Insurance regarding the contemplated demutualization, the Department does not believe the Notice, as originally published, currently reflects accurate and complete material facts and representations. Therefore, the Department has decided to withdraw the Notice from the **Federal Register**.

Signed at Washington, DC, this 10th day of February, 2004.

**Ivan L. Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2004-02 *et al.*; Exemption Application No. D-11047 *et al.*]

#### Grant of Individual Exemptions; Bank of America, N.A.

**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.

#### Bank of America, N.A., Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 2004-02; Exemption Application No. D-11147]

### Exemption

#### Section I—Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of January 1, 2003, to:

(A) The granting to Bank of America, N.A. (Bank), either as an agent (the Agent) for a group of financial institutions (Lender(s)), or as a sole Lender, that will fund a so-called “credit facility” (Credit Facility) providing credit to certain investment funds (Fund(s)), by the Fund of a security interest in and lien on the capital commitments (Capital Commitments), reserve amounts, and capital contributions (Capital Contributions) of certain investors, including employee benefit plans (a Covered Plan, as defined in Section III(A)), investing in the Fund;

(B) Any collateral assignment and pledge by the Fund to the Agent, or to the Bank as sole Lender, of its security interest in each Investor's equity interest, including a Covered Plan's equity interest, in the Fund;

(C) The granting by the Fund to the Agent, or to the Bank as sole Lender, of