4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions from Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: **D-11649, Meridian Medical Associates, S.C, Employees' Retirement Plan and Trust (the Plan); D-11710, El Paso Corporation Retirement Savings Plan (the Plan); and D-11714, Ed Laur Defined Benefit Plan (the Plan).**

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the

comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: moffitt.betty@dol.gov, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

WARNING: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All

comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27,

2011).[1] 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 requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

[1]The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Meridian Medical Associates, S.C.
Employees' Retirement Plan and Trust (the Plan)
Located in Joliet, Illinois
[Exemption Application No. **D-11649**]

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

I – TRANSACTIONS

If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 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), 4975(c)(1)(D), and 4975(c)(1)(E) of the Code, will not apply to:

(a) The cash purchase (the Purchase) by the Plan (formerly, the Will County Medical Associates, S.C. Employees' Retirement Plan & Trust) of a 52 percent (52%) beneficial ownership interest in a parcel of improved real property (the Annex) located in Joliet, Illinois, from the JMG Property, LLC (the

LLC), a party in interest with respect to the Plan;

(b) The entry by the Plan through a land trust (no. 6722), into a lease (the Annex Lease) with Meridian Medical Associates, S.C. (the Employer) (formerly, the Will County Medical Associates, S.C.), as lessee, of a 52 percent (52%) beneficial ownership interest in the Annex; and

(c) The personal guarantees, jointly and severally, by each of the shareholders of the Employer of the obligations of such Employer under the terms of the Annex Lease; provided that the conditions set forth, below, in Section II are satisfied.

II – CONDITIONS

(a) With respect to the Purchase by the Plan of a 52 percent (52%) beneficial ownership interest in the Annex from the LLC:

(1) The Purchase is a one-time transaction for cash;

(2) The terms and conditions of the Purchase are no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(3) Prior to entering into the Purchase, an

independent, qualified fiduciary (the I/F) determines that the Purchase is in the interest of, and protective of the Plan and of its participants and beneficiaries;

(4) The I/F negotiates, reviews, and approves the terms of the Purchase prior to the consummation of such Purchase;

(5) The acquisition price paid by the Plan for a 52 percent (52%) beneficial ownership interest in the Annex is not more than the fair market value of such interest, as determined by an independent, qualified appraiser, as of the date of the Purchase;

(6) An independent, qualified appraiser determines, as of the date of the Purchase, the fair market value of a parcel of improved real property (the Original Facility), which is adjacent to the Annex, and in which the Plan holds a 100 percent (100%) beneficial ownership interest through a land trust (no. 2024);

(7) Immediately following the Purchase, the combined fair market value of the Plan's 52 percent (52%) beneficial ownership interest in the Annex and the fair market value of the Plan's 100 percent (100%) beneficial ownership interest in the Original Facility when added together (the Combined Facility) does not exceed 20 percent (20%) of the fair market value of the

total assets of the Plan;

(8) In the event of any actual or potential divergence of interests between the Plan and the LLC, that results as a consequence of their shared ownership interest in the Annex, the I/F takes appropriate steps to resolve such conflicts of interest and in all events acts prudently and solely in the interest of the Plan with respect to all decisions pertaining to the acquisition, holding, management, and disposition of the Plan's interest in the Annex. To the extent that a conflict occurs, the I/F has, by its written agreement, the sole authority acting on behalf of the Plan to determine the resolution of any conflict that arises from the shared beneficial ownership of the Annex by the Plan and the LLC and that such determination shall be binding on the LLC; and

(9) The Plan does not incur any fees, costs, commissions, or other charges as a result of engaging in the Purchase, other than the necessary and reasonable fees payable to the I/F and to the independent, qualified appraiser, respectively.

(b) With respect to the Annex Lease:

(1) The terms and conditions of the Annex Lease are no

less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(2) Prior to entering into the Annex Lease, the I/F, acting on behalf of the Plan, negotiates, reviews, and approves the terms and conditions of the Annex Lease, and determines that the Annex Lease is in the interest of, and protective of the Plan and its participants and beneficiaries;

(3) The I/F monitors and enforces compliance with the conditions of this exemption and monitors and enforces compliance with all of the terms of the Annex Lease throughout the initial term of such lease and throughout the duration of each renewal of such lease, and is also responsible for legally enforcing the payment of rent and the proper performance of all other obligations of the Employer under the terms of such lease;

(4) The rent paid to the Plan by the Employer under the initial term of the Annex Lease, and the rent paid to the Plan by the Employer during each renewal of such lease, is based upon the fair market value of the Annex, as established by an independent, qualified appraiser at the time of such initial term and at the time of each renewal of such lease;

(5) The rent under the Annex Lease is adjusted at the commencement of the second year of the term of such lease and is adjusted every second year thereafter by the I/F, based on an appraisal of the fair market value of the Annex, as established by an independent, qualified appraiser at the time of each such adjustment of rent. If twelve percent (12%) of the fair market value of the Annex, established by such appraisal at the time of any such adjustment, is greater than the then current base rent under the Annex Lease, then the base rent is revised by the I/F to reflect the increase in fair market value of the Annex, as established by such appraisal. If twelve percent (12%) of the fair market value of the Annex, established by such appraisal at the time of any such adjustment, is less than or equal to the then current base rent, then the base rent remains unchanged by the I/F;

(6) The terms of the Annex Lease are triple net, such that the Employer, as lessee, is responsible for paying, in addition to monthly rent, all costs for maintenance, taxes, utilities, and insurance on the Annex;

(7) Prior to entering into any renewal of the Annex Lease, the I/F, acting on behalf of the Plan, approves such renewal beyond the initial term of such lease; and

(8) The Plan does not incur any fees, any costs, any commissions, and any other charges and expenses as a result of entering into the Annex Lease, other than the necessary and reasonable fees payable to the I/F and payable to the independent, qualified appraiser, respectively.

SUMMARY OF FACTS AND REPRESENTATIONS

1. The Plan is a defined contribution plan with a cash or deferred compensation arrangement. The Plan was established on January 20, 1972, and has been amended and restated on several occasions since that date, the latest being March 10, 2010. The Plan had, as of December 31, 2011, total assets valued at approximately $31,197,086. It is represented that the most recent update of the number of participants in the Plan is dated December 31, 2010, as reflected on the Plan's Form 5500. As of December 31, 2010, the Plan had 277 participants, including former employees with deferred benefits. The Plan maintains an individual account for each such participant. Some of the participants in the Plan are also shareholders of the Employer. Some of the shareholders of the Employer also serve as the trustees of the Plan (the Trustees). The Trustees are parties in interest and fiduciaries with respect to the Plan, pursuant to section 3(14)(A) of the Act. The Trustees are elected by the

Board of Directors of the Employer (the Board). It is represented that the Trustees have the exclusive right to decide on investments for the Plan without a recommendation from the Board.

2. The sponsor of the Plan is the Employer, an Illinois medical corporation which was incorporated on November 29, 1971. As the sponsor of the Plan, the Employer is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act. The Employer is engaged in the general practice of medicine. The Employer conducts its operations in both the Original Facility and in the Annex. The Employer employs 45 physicians and more than 200 staff and administrative personnel. Some of the employees are also shareholders of the Employer.

3. The LLC is a limited liability company established on June 24, 2004, for the purpose of purchasing the Annex and leasing it to the Employer. In July 2011, there were twenty-two (22) members of the LLC. All of the members of the LLC are current or former shareholders of the Employer. The Trustees of the Plan are also members of the LLC. It is represented that the LLC is a party in interest with respect to the Plan, pursuant to section 3(14) (G) of the Act.

4. In 1981, the Department granted an individual exemption, Prohibited Transaction Exemption 81-96 (PTE 81-96),[2] which permitted the Plan to purchase the Original Facility from the Employer. The Original Facility consists of approximately 2.28 acres of real property improved by a two-story medical office building, completed in 1969, including a parking lot with 90 spaces. The Original Facility contains approximately 10,583 square feet on each floor for a total (above ground) of approximately 21,166 square feet. In addition, the Original Facility has a fully finished basement containing approximately 10,583 square feet of additional space. Further, PTE 81-96 permitted the Employer to extend credit at an interest rate of 6 percent (6%) per annum to the Plan in connection with the purchase by the Plan of the Original Facility. Currently, however, it is represented that there are no mortgages, no liens, and no other encumbrances of title on the Original Facility. In addition, PTE 81-96 permitted the Plan to lease the Original Facility (the 1981 Lease) to the Employer under triple net terms for a minimum guaranteed rent of $263,000 for a period of 18 years ending on November 1, 1999. Union National Bank and Trust Co. (UNB) of Joliet, Illinois, an independent party, represented

[2] 46 FR 53816, October 30, 1981.

at the time the 1981 Lease was entered that the transactions which were the subject of PTE 81-96 were in the interest of the Plan and that the terms of such transactions were arm's length. UNB also was responsible for monitoring the transactions which were the subject of PTE 81-96 and exercising the rights of the Plan with respect to such transactions.

5. In 2001, the Department issued another Prohibited Transaction Exemption 2001-25 (PTE 2001-25),[3] to the same applicants[4] which provided retroactive and prospective relief for a lease (the 1999 Lease) to the Employer of the Original Facility by First Midwest Trust Company of Joliet, Illinois (FMB),[5] as the holder of legal title under the terms of a land trust (no. 2024), and by the Plan, as beneficial owner of the

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[3] 66 FR 40734, August 3, 2001.

[4] At the time that the Department issued PTE 81-96 and at the time the Department issued PTE 2001-25, the Employer was known as the "Joliet Medical Group, Ltd.," and the Plan was known as the "Joliet Medical Group, Ltd. Employee Retirement Plan and Trust."

[5] It is represented that in 1983 First Midwest Bancorp, Inc., a bank holding company, purchased UNB, and the name of UNB was subsequently changed to First Midwest Bank and Trust. It is represented that First Midwest Bank and Trust, First Midwest Trust Company, and First Midwest Bank whenever referred to in the application all represent the same entity and will be referred to herein as FMB.

Original Facility. The term of the 1999 Lease was for a period of five (5) years (1999-2004), with an option to renew and extend such lease for two (2) additional successive terms of five (5) years each, subject to the approval of FMB, acting as the independent, qualified fiduciary under PTE 2001-25. [6] Accordingly, it is represented that, since 1981 FMB or a predecessor has served as the I/F with respect to the Plan in connection with PTE 81-96 and PTE 2001-25.

Under the terms of the 1999 Lease, the Employer leased the Original Facility for a "floating" monthly rental rate of one percent (1%) of the then appraised value ($3,200,000) of the Original Facility ($3,200,000 times .01 equals $32,000), or twelve percent (12%) of the fair market value of the Original Facility on an annualized basis ($3,200,000 times .12 equals $384,000). The terms of PTE 2001-25 require that an

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[6] It is represented that FMB agreed in 2004 and again in 2009 to the exercise of each of the five (5) year term extensions permitted under the 1999 Lease. Accordingly, the exemptive relief provided by PTE 2001-25 with respect to the leasing by the Plan of the Original Facility to the Employer shall cease, as of October 31, 2014, upon the expiration of the second five (5) year term extension of the 1999 Lease. The Department notes that, should the transactions which are the subject of this proposed exemption be granted, such final exemption does not alter the terms and conditions of PTE 2001-25 with respect to the leasing by the Plan of the Original Facility to the Employer and will not extend the relief provided under PTE 2001-25 to such lease beyond October 31, 2014.

independent, qualified appraiser update the rent every other year, but that the minimum guaranteed monthly rent (regardless of any possible decrease in the appraised value of the Original Facility) would remain $32,000 monthly. It is represented that, with respect to both the 1981 Lease and the 1999 Lease of the Original Facility, the Employer has always paid the rent on time and has otherwise complied with the terms and conditions of such leases and the terms and conditions of PTE 81-96 and PTE 2001-25.

6. The Annex which is the subject of this proposed exemption is physically connected to the Original Facility by means of a single-story entrance foyer and reception area that is a part of the Annex structure. Although the Annex and the Original Facility occupy adjacent parcels, both properties share the same street address, 2100 Glenwood Avenue in Joliet, Illinois.

The Employer purchased the Annex on July 13, 2001, from Blue Cross and Blue Shield of Illinois, an unrelated third party, for a purchase price of $3,757,731.15. The Annex consists of approximately 1.93 acres of real property improved by a single-story medical office building completed in 1996, including a parking lot with 117 spaces. The medical office building contains approximately 13,600 square feet of space at the ground

level and another 11,128 square feet at the basement level, for a total of approximately 24,728 square feet of space.

On June 28, 2004, the Employer transferred full legal ownership of the Annex to a land trust (no. 6722) controlled by FMB, as trustee. In this regard, it is represented that in Illinois a land trust exists only to hold title and to facilitate easy transfer of property without expense and administrative process of re-recording instruments of transfer with the county. As discussed above, FMB also serves as the trustee of the land trust (no. 2024) with respect to the legal ownership of the Original Facility. As such, FMB currently holds 100 percent (100%) legal title to both the Original Facility and the Annex. It is represented that FMB, as trustee for the land trusts (nos. 6722 and 2024), has no discretionary authority and serves only as a directed trustee with respect to such land trusts. It is represented that legal ownership held by FMB of the Original Facility and the Annex will not be affected by the proposed Purchase transaction. Further, it is represented that the Plan's current 100 percent (100%) beneficial ownership interest in the Original Facility will not be affected by the proposed Purchase transaction.

On June 30, 2004, acting as the legal owner of the Annex

through the land trust (no. 6722), FMB executed a written assignment of 100 percent (100%) of the beneficial ownership interest in the Annex to the LLC. It is represented that on July 1, 2004, the Employer entered into a triple net lease of the Annex with FMB, as legal owner, and the LLC, as the beneficial owner, for a term of five (5) years with successive one (1) year renewal options, unless either party provides a written notice of termination or written notice of intent not to renew. The base rent for the Annex for each lease year under the terms of this lease was $271,200, payable in equal monthly installments of $22,600. It is represented that pursuant to this lease of the Annex, the Employer, as lessee, has paid monthly rent for the use of the Annex to FMB, acting as the lessor. FMB, in turn, has transmitted all rental payments received from the Employer to the LLC, as the current 100 percent (100%) beneficial owner of the Annex.

7. Relief is requested for the proposed Purchase by the Plan from the LLC of a 52 percent (52%) beneficial ownership interest in the Annex. Specifically, the applicant requests relief from sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act, because the LLC is a party in interest with respect to the Plan. As a result of the proposed Purchase, the

LLC, which currently holds a 100 percent (100%) beneficial ownership interest in the Annex, will retain only a 48 percent (48%) beneficial ownership interest in the Annex.

8. The proposed Purchase transaction is feasible in that it will be a one-time transaction for cash. Further, it is represented that the proposed Purchase transaction is protective of the Plan and its participants and beneficiaries. In this regard, as discussed more fully, below, Private Bank and Trust Company (PBTC) has represented that it will act as the I/F on behalf of the Plan with regard to the transactions which are the subject of this proposed exemption.

9. It is represented that FMB, as mortgagee, currently holds a mortgage on the Annex in the amount of approximately $3,100,000 with the LLC, as the mortgagor. However, it is represented that the Purchase transaction will be protective of the Plan in that the Plan's 52 percent (52%) beneficial ownership interest in the Annex will be free and clear of any liens, notes, or encumbrances on such Annex.

10. It is further represented that the proposed Purchase is protective of the Plan and its participants and beneficiaries, in that the purchase price to be paid by the Plan for a 52 percent (52%) beneficial ownership interest in the Annex will

be determined by an independent, qualified appraiser. Further, it is represented that the fair market value of a 52 percent (52%) beneficial ownership interest in the Annex and the fair market value of the Original Facility will be updated as of the date of the purchase by the Plan.

The Plan retained Mr. Joseph E. Batis, (Mr. Batis), an accredited appraiser with Edward J. Batis & Associates, Inc. of Joliet, Illinois, to inspect the Annex and the Original Facility, and to render an opinion as to the fair market value of each of these properties. Mr. Batis is qualified in that he has actively engaged since 1983 in the practice of real estate analysis and valuation counseling, and has acquired extensive experience in the valuation of partial interests in property. In addition, Mr. Batis has been a member of the MAI Appraisal Institute since 1994, and is also certified by the State of Illinois as a general real estate appraiser.

Mr. Batis represents that both he and his firm are independent of the Employer, and the LLC. It is represented that any fees received from the Employer, as well as any fees received from the LLC, have never equaled or exceeded one percent (1%) of the annual gross billings of Edward J. Batis and Associates, Inc.

As of February 15, 2012, Mr. Batis issued separate appraisal reports addressing the fair market value of the Annex and the fair market value of the Original Facility. In conducting his valuations of the Annex and the Original Facility, Mr. Batis considered the three valuation methodologies commonly utilized in arriving at a value estimate: (i) the cost approach, (ii) the direct sales comparison approach, and (iii) the income approach.

In this regard, Mr. Batis concluded that the direct sales comparison approach and the income approach were suitable for the valuation of the Annex and for the valuation of the Original Facility. Mr. Batis represents that the cost approach was excluded, because there has not been sufficient new construction in the local market to support such an approach. In the final appraisal reconciliation of the fair market value of the Annex and the fair market value of the Original Facility, Mr. Batis placed more weight on the results of the direct sales comparison approach, because the primary appeal of the Annex and the Original Facility is to an owner-occupant. After physically inspecting both properties, analyzing all relevant data, and reconciling the applicable valuation methodologies, Mr. Batis determined that the fair market value of the Annex was $4,600,000, as of February 15, 2012, and that the fair market value of the Original Facility was $3,800,000, as of the same

date. Mr. Batis has also represented that the foregoing valuations do not require adjustment for the assemblage value of the Combined Facility, because the Annex and the Original Facility can be marketed as separate and independent properties based upon the fact that the entrance foyer connecting these two buildings can easily be removed.

11. In addition to the Purchase transaction, the Employer also seeks an exemption to enter into the Annex Lease, under which FMB, as legal owner, and the Plan, as beneficial owner, will lease a 52 percent (52%) beneficial ownership interest in the Annex to the Employer.

The proposed entry into the Annex Lease is feasible in that the terms of such lease will be evidenced by a written document. Pursuant to the terms of the Annex lease, the Plan will receive 52 percent (52%) of all rental payments made by the Employer under such Lease. In addition, the terms of the Annex Lease provide for an initial term of ten (10) years, with an option to renew and extend such lease for two (2) additional successive terms of five (5) years, each of which is subject to the approval of PBTC, acting as the I/F on behalf of the Plan, as discussed below. The annual lease payments payable by the LLC to the Plan under the terms of the Annex Lease will be twelve percent (12%)

of the fair market value (currently $4,600,000) of the Annex ($4,600,000 times .12 equals $552,000 a year), or the equivalent of $22.32 per square foot. The minimum guaranteed monthly base rent under the Annex Lease (regardless of any possible decrease in the appraised fair market value of the Annex) shall be $46,000 or one percent (1%) of the fair market value (currently $4,600,000) of such Annex ($4,600,000 times .01 equals $46,000).

12. It is represented that the proposed Annex Lease is in the interest of the Plan and the participants and beneficiaries of the Plan in that the rent payments under the Annex Lease will provide a fixed return to the account balances of participants in the Plan and will represent an opportunity to generate a guaranteed cash flow for the Plan.

13. It is represented that the entry into the Annex Lease is protective of the Plan, because the terms of the Annex Lease are no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties. In this regard, Mr. Batis, in a letter dated, March 16, 2012, determined the fair market monthly rental value of the Annex. In making this determination, Mr. Batis considered the commercial rents charged per square foot at six (6) comparable medical office buildings in the local area,

and ascertained that the market rents for properties similar to the Annex ranged from $10.00 to $22.50 per square foot. Based on this information, Mr. Batis concluded that the fair market monthly rental value of the Annex should reflect $22.32 per square foot applicable to the total area of the Annex which includes 13,600 square feet of area on the main level and 11,128 square feet of finished area on the lower level.

Under the terms of the Annex Lease, Schedule A provides for an annual rent equal to 12 percent (12%) of the fair market value of the Annex; provided that any decrease in the value of the Annex shall not be considered in determining the annual rent amount for the Annex. Accordingly, the annual lease payments payable by the Employer for the Annex should reflect twelve percent (12%) of the fair market value ($4,600,000) of the Annex or the equivalent of $46,000 monthly rent and annual rental of $552,000. In his letter dated March 16, 2012, Mr. Batis concluded that based on comparable rental properties, the Annex rents (determined at 12 percent (12%) of fair market value of the Annex) are within the range of fair market rents in the local market. It is represented that Mr. Batis will update the fair market monthly rental value the Annex, as of the date of the entry into the Annex Lease. It is further represented that a new

appraisal by an independent, qualified appraiser will be performed every 24 months to update the rent under the Annex Lease.

14. In addition to the Purchase transaction, the applicant also seeks an exemption for the personal guarantees, jointly and severally, by each of the shareholders of the Employer of the obligations of such Employer under the terms of the Annex Lease between the Plan and the Employer. It is represented that each of these guarantors under the Annex Lease, as an employee of the Employer, is a party in interest with respect to the Plan, pursuant to section 3(14)(H) of the Act.

It is represented that the proposed personal guarantees are in the interest of and protective of the Plan and the participants and beneficiaries of the Plan, because in the event of a default by the Employer, the Plan has recourse to the shareholders of the Employer for satisfaction of the Employer's obligations under the terms of the Annex Lease, including but not limited to the payment of rent for the initial ten (10) year term. The proposed personal guarantees are feasible in that these guarantors have a net worth in the aggregate in excess of $10,000,000, which is well in excess of the obligations of the Employer under the terms of the Annex Lease, including but not

limited to the payment of rent for the initial ten (10) year term.

15. PBTC has been retained by the Plan to serve as the I/F for purposes of the transactions described in this proposed exemption. PBTC acknowledges and accepts its responsibilities as the I/F with respect to the proposed exemption. It is represented that PBTC will take whatever actions are necessary to protect the interests of the Plan.

In a letter dated November 8, 2011, Ms. Kelly C. White, Trust Officer for PBTC, represents that PBTC is independent and qualified to serve as the I/F for the Plan. PBTC is independent of the Employer and the LLC. It is represented that any fees for services rendered by PBTC in the past twelve (12) months to the Employer, to the LLC, and to the Plan, including services rendered as the I/F, will not exceed one percent (1%) of the revenue generated by PBTC in the past year.

PBTC is qualified to serve as the I/F for the Plan, because it has been providing private trust services since the 1991. Not only does PBTC provide a wide range of trust services, PBTC also has expertise with respect to qualified retirement plans and directed individual retirement accounts. As of June 30, 2011,

PBTC had $12.5 billion in assets.

In agreeing to serve as the I/F for purposes of this proposed exemption, PBTC has enumerated a variety of duties that it has discharged or will discharge acting on behalf of the Plan. Among other things, the responsibilities of PBTC include: (a) negotiating, reviewing, and approving the terms and conditions of the Purchase, and determining whether the Purchase in the interests of, and protective of, the Plan and its participants and beneficiaries; (b) negotiating, reviewing, and approving the terms and conditions of the Annex Lease, and determining whether such lease is in the interests of, and protective of, the Plan and its participants and beneficiaries; (c) determining that the terms and conditions of the Purchase are no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties; (d) determining that the terms and conditions of the Annex Lease are no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties; (e) verifying the appraised value of the Annex on the date of the Purchase and ascertaining that no fees are paid by the Plan in consummating the Purchase through the transfer of beneficial

interests; (f) analyzing the terms of the Annex Lease to determine whether such lease provisions are reasonable and whether the rental rate is at, or better than, market value; (g) monitoring the collection of monthly rent and the transmittal of such rent to the Plan; (h) monitoring that the monthly rent is twelve percent (12%) of the appraised value of the Annex; (i) monitoring compliance by the Employer with the conditions of the exemption and with the terms and conditions of the Annex Lease, throughout the duration of such lease and each renewal of such lease, and assuming responsibility for legally enforcing payment of the rent and the proper performance of all other obligations of the Employer under the Annex Lease; (j) verifying that the aggregated fair market value of the Original Facility and the Annex does not exceed 20 percent (20%) of the total assets of the Plan at the time of the Purchase; (k) certifying annually that all rents for the year have been collected and all distributions made; and (l) providing quarterly statements.

In addition to the foregoing duties, PBTC, acting as the I/F, has reviewed the appraisal reports for both the Annex and the Original Facility that were prepared by Mr. Batis. In particular, PBTC has reviewed the appraisal methodologies utilized by Mr. Batis, the independent, qualified appraiser, and

has determined that Mr. Batis' methodology and his conclusions concerning the fair market value of the Annex and the Original Facility are persuasive and sound. PBTC will also be responsible for reviewing the appraisal reports for the Annex, as submitted every 24 months to determine that the correct amount of rent is charged to the Employer.

In connection with its duties as the I/F acting on behalf of the Plan with respect to the transactions described in this proposed exemption, PBTC has the responsibility of resolving all other issues that might arise associated with the Plan's beneficial ownership of and leasing of the Annex in the best interests of the Plans participants and beneficiaries. Further, PBTC is responsible for any issues that may arise in connection with the co-ownership of the Annex by the Plan and the LLC.**7** In

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7 The Department notes that, in the event the proposed exemption is granted, the Purchase by the Plan of a partial beneficial ownership interest in the Annex from the LLC would result in a co-investing arrangement between the Plan and the LLC, which in turn could give rise to conflicts of interest between these parties. In this regard, section 406(b)(1) of the Act prohibits the fiduciary of a plan from dealing with plan assets in his or her own interests or for his or her own account. In addition, section 406(b)(2) of the Act specifically prohibits plan fiduciaries in their individual or in any other capacity from acting in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Accordingly, the Department notes that if, over time, the shared ownership of the Annex results in a divergence of interests between the Plan and the LLC, violations of section

this regard, PBTC represents that in the event of any actual or potential divergence of interests between the Plan and the LLC, as a consequence of their shared beneficial ownership interest in the Annex, PBTC in all events will act prudently and solely in the interest of the Plan with respect to all decisions pertaining to the acquisition, holding, management, and disposition of the Plan's beneficial ownership interest in the Annex. Further, to the extent that a conflict occurs, the I/F has, by its written agreement, the sole authority acting on behalf of the Plan to determine the resolution of any conflict that arises from the

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406(b) of the Act could occur. In the event that such a divergence of interests develops between the parties, PBTC, acting as the I/F, would be required to take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction. **See** ERISA Advisory Opinion Letter 2000-10A (July 27, 2000). The Department further notes that it is not providing relief, herein, for any violations of the Act that may arise in connection with this co-investing arrangement. In addition, the Department notes that the general standards of fiduciary conduct under the Act would apply to the purchase by the Plan of a beneficial ownership interest in the Annex. Section 404(a)(1) of the Act requires, among other things, that a fiduciary discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries, and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. Accordingly, PBTC, the I/F acting on behalf of the Plan, must act prudently and solely in the interest of the Plan and its participants and beneficiaries with respect to all decisions pertaining to the acquisition, holding, management, and disposition of the beneficial ownership interest in the Annex by the Plan.

shared beneficial ownership of the Annex by the Plan and the LLC and that such determination shall be binding on the LLC.

In a letter, dated November 8, 2011, PBTC made additional representations concerning how it proposes to respond to potential issues that may emerge as a consequence of the shared beneficial co-ownership of the Annex between the Plan and the LLC in the following situations: (a) issues associated with late payment or non-payment of rents, (b) issues associated with the possible sale of the Annex to third parties, (c) issues associated with the necessity of major repairs and the cost of repairs, (d) issues associated with any government action or eminent domain, and (e) other issues associated with joint ownership of the Annex and rental of the properties.

Specifically, it is represented that in the event of late payment or non-payment of rent by the Employer, PBTC will pursue its remedies under the Annex Lease to ensure payment, including the option of bringing a lawsuit against the Employer. In this regard, given that rent has been timely paid in the past, PBTC does not anticipate any issue arising in the near future.

If an opportunity arises to sell the Annex to an unrelated third party, PBTC will ensure that the Plan will receive the

greater of the fair market value of the Plan's beneficial ownership interest in the Annex at the time of the sale or the original purchase price paid by the Plan to acquire such interest, so that the Plan will not lose principal. It is further represented that PBTC will undertake to obtain for the Plan the best price possible for the sale of the Plan's beneficial ownership interest in the Annex (provided that it would be in the interest of the Plan to sell such interest). In the event that repairs to the medical office building located on the Annex are required during the term of the Annex Lease, PBTC notes that the Employer, as lessee, would be responsible for the costs associated with such repairs, and that in the event of major repairs which are caused by fire or weather, the damage to the building would be covered by insurance. If the Employer is unable to bear the costs of repairs, or in the rare event some emergency threatens the integrity of the Annex, PBTC will take appropriate steps to protect the building. Depending on the circumstances, PBTC represents that it would first look to the principals of the Employer to pay their proportionate cost of such repairs.

In the event of an eminent domain taking of the Annex by a governmental entity, PBTC represents that it will take whatever

actions are appropriate to protect the Plan and its participants and beneficiaries, including resisting the eminent domain action, if that course is reasonable.

As a condition of this exemption, immediately following the Purchase, the aggregate fair market value of the Plan's interest in the Combined Facility shall not exceed 20 percent (20%) of the fair market value of the total assets of the Plan. PBTC has concluded that this proposed limitation on the percentage of the Plan's assets that will be invested in the Combined Facility is protective of the Plan, because such a restriction will prevent an undue concentration of the Plan's assets in any particular investment.

With respect to the percentage of the Plan's assets involved in the proposed transaction, Mr. Batis, in his appraisal report, dated February 15, 2012, determined that the fair market value of the Annex was $4,600,000. A 52 percent (52%) beneficial ownership interest in the Annex would equal $2,392,000 ($4,600,000 times .52 equals $2,392,000). Accordingly, the fair market value of the Plan's 52 percent (52%) beneficial ownership interest in the Annex ($2,392,000) would constitute approximately 7.667 percent (7.667%) of the Plan's total assets of $31,197,086, as of December 31, 2011.

Further, in his appraisal report, dated February 15, 2012, Mr. Batis' also determined that the fair market value of the Plan's 100 percent (100%) beneficial ownership interest in the Original Facility was $3,800,000. So, the fair market value of the Plan's 100 percent (100%) beneficial ownership in the Original Facility ($3,800,000) comprises an additional 12.180 percent (12.180%) of the value of the Plan's total assets $31,197,086, as of December 31, 2011. Accordingly, as a result of the proposed Purchase transaction, the Plan's aggregate beneficial ownership interest in the Combined Facility (7.667% and 12.180%) attributable to the Plan's interest in the Annex and the Original Facility, respectively) constitutes approximately 19.847 percent (19.847%) of the Plan's total assets, as of December 31, 2011.

After analyzing the terms and conditions of the proposed Purchase and the proposed Annex Lease, and based upon all of the financial and empirical data at its disposal, PBTC concluded, for the reasons discussed above, that the Purchase transaction and the Annex Lease transaction which are the subjects of this proposed exemption are in the interest of the Plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries.

16. In summary, the applicant represents that the transactions, as described herein, satisfy the requirements of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the Annex Lease represents an opportunity to generate a guaranteed cash flow to the Plan of twelve percent (12%) per annum, thereby providing a fixed rate of return to the individual accounts of participants and beneficiaries of the Plan and providing a more predictable method for ascertaining the retirement income available to such persons; (b) prior to entering into the subject transactions, PBTC, acting as I/F on behalf of the Plan, will negotiate, review, and approve the terms of the Purchase of the Annex by the Plan, as well as the terms of the Annex Lease; (c) PBTC will take appropriate steps to resolve such conflicts of interest and in all events acts prudently and solely in the interest of the Plan with respect to all decisions pertaining to the acquisition, holding, management, and disposition of the Plan's interest in the Annex; (d) to the extent that a conflict occurs, PBTC has, by its written agreement, the sole authority acting on behalf of the Plan to determine the resolution of any conflict that arises from the shared beneficial ownership of the Annex by the Plan and the LLC and that such determination shall be binding on the LLC; (e) the Purchase will be a one-time transaction for cash; (f) the terms

and conditions of the Purchase and the Annex Lease will be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties; (g) prior to entering into the subject transactions, PBTC will determine that the Purchase and the Annex Lease are in the interest of, and protective of the Plan and of its participants and beneficiaries; (h) the acquisition price paid by the Plan for the 52 percent (52%) beneficial ownership interest in the Annex will not be more than the fair market value of such interest, as determined by an independent, qualified appraiser on the date of the Purchase; (i) as of the date of the Purchase, an independent, qualified appraiser will determine the fair market value of the Original Facility; (j) immediately following the Purchase, the fair market value of the Combined Facility will not exceed 20 percent (20%) of the Plan's total assets at the time of the Purchase; (k) the Plan will not incur any fees, any costs, any commissions, and will not incur any other charges and expenses as a result of engaging in the Purchase and as a result of engaging in the Annex Lease, other than the necessary and reasonable fees payable to the I/F and to the independent, qualified appraiser, respectively; (l) PBTC will monitor and enforce compliance with the conditions of this proposed exemption and will monitor and enforce compliance with

the terms of the Annex Lease, throughout the initial term of such lease and any renewal of such lease, and is responsible for legally enforcing the payment of rent and the proper performance of all other obligations of the Employer under the terms of such lease; (m) the rent paid to the Plan by the Employer under the initial term of the Annex Lease, and the rent paid to the Plan by the Employer during each renewal of such lease, will be based upon twelve percent (12%) of the fair market value of the Annex, as established by an independent, qualified appraiser at the time of such initial term and at the time of each renewal; (n) the rent under the Annex Lease will be adjusted at the commencement of the second year of the term of such lease and adjusted every second year thereafter, based on twelve percent (12%) of the fair market value of the Annex, as established by an independent, qualified appraiser at the time of each such adjustment of rent; (o) if twelve percent (12%) of the fair market value of the Annex, established by such appraisal at the time of any such adjustment, is greater than the then current base rent under the Annex Lease, then the base rent will be revised to reflect the increase in fair market value of the Annex, as established by such appraisal; (p) if twelve percent (12%) of the fair market value of the Annex, established by such appraisal at the time of any such adjustment, is less than or equal to the then current

base rent, then the base rent will remained unchanged; (q) the terms of the Annex Lease will be triple net; (r) prior to entering into any renewal of the Annex Lease, PBTC, acting as the I/F on behalf of the Plan, will be responsible for approving any renewal of the Annex Lease beyond the initial term of such lease; (s) PBTC will review the appraisals as submitted periodically to determine the correct rental amount is paid to the Plan; and (t) the guarantors have a net worth in the aggregate in excess of $10,000,000, which is well in excess of the obligations of the Employer under the terms of the Annex Lease, including but not limited to the payment of rent for the initial ten (10) year term.

NOTICE TO INTERESTED PERSONS

Those persons who may be interested in the publication in the FEDERAL REGISTER of the Notice of Proposed Exemption (the Notice) include participants of the Plan and former participants of the Plan with account balances.

It is represented that notification will be provided to each of these interested persons by first class mail, within fifteen (15) calendar days of the date of the publication of the Notice in the FEDERAL REGISTER. Such mailing will contain a copy of the Notice, as it appears in the FEDERAL REGISTER on the date of

publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department at (202) 693-8551. (This is not a toll-free number).

El Paso Corporation Retirement Savings Plan (the Plan)

Located in Houston, Texas

[Application No. **D-11710**]

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I: Transactions

If the proposed exemption is granted the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,[8] shall not apply, in connection with a merger transaction (the Merger) between El Paso Corporation (El Paso) and Kinder Morgan, Inc. (KMI):

[8] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(a) to the acquisition by the individually directed accounts of the participants of the Plan (the Invested Participants) of certain publicly traded warrant(s) (the Warrant(s)) issued by KMI, which will become a party in interest with respect to the Plan after the Merger; and

(b) to the holding of the Warrants by the accounts in the Plan of the Invested Participants; provided that the conditions, as set forth in Section II of this proposed exemption, are satisfied at the time of the acquisition of the Warrants by the accounts in the Plan of such Invested Participants and throughout the duration of the holding of the Warrants in the accounts of such Invested Participants.

Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described, herein, and as set forth in the application file and upon compliance with the conditions, as set forth in this proposed exemption.

(a) The Warrants will be acquired by the individually-directed accounts of the Invested Participants, all or a portion of whose accounts in the Plan hold the common stock of El Paso (the EP Stock);

(b) The exchange by the shareholders, including the Invested Participants, of the EP Stock for Warrants will result from an independent act of El Paso and KMI, as corporate entities in connection with the Merger, and will occur automatically without any action or control on the part of such shareholders, including the Invested Participants;

(c) The acquisition of the Warrants by the Invested Participants will occur in connection with the Merger, and such Warrants will be made available on the same terms to all shareholders of the EP Stock, including the Invested Participants;

(d) The decisions with regard to the holding and disposition of the Warrants will be made by each of the Invested Participants in accordance with the provisions under the Plan for individually-directed accounts;

(e) The Warrants allocated to the accounts of the Invested Participants in the Plan may be exercised or sold at any time by such Invested Participants giving investment directions in accordance with the provisions of the Plan;

(f) The Invested Participants will not pay any fees or commissions in connection with the acquisition and holding of the Warrants, nor will the Invested Participants pay any fees on the exercise of the Warrants; and

(g) Prior to entering into the Merger, El Paso will obtain all necessary approvals from any relevant state agencies and federal agencies, including, but not limited to the U.S. Department of Justice Antitrust Division, the Federal Energy Regulatory Commission, the Securities and Exchange Commission (SEC), and the Federal Trade Commission.

SUMMARY OF FACTS AND REPRESENTATIONS

1. The Plan and the trust maintained as a part thereof are intended to qualify under sections 401(a) and 501(a) of the Code. The Plan is a defined contribution plan. The Plan is designated as a profit sharing plan under section 401(a)(27) of the Code; however, contributions are not dependent on whether any participating employer has current or accumulated profits. The Plan includes participant elective deferrals under section 401(k) of the Code and matching contribution under section 401(m) of the Code. The fair market value of the total assets of the Plan, as of October 31, 2011, was $973,420,169.

As of October 31, 2011 there were 9,646 participants and beneficiaries in the Plan. The Plan provides that a participant may direct the investment of the assets in his account. The Plan is intended to be a plan as described in section 404(c) of the Act.

2. The El Paso Corporation Retirement Saving Plan Committee and its members (the Committee) have discretion with respect to selecting the investment alternatives under the terms of the Plan. Further, the Committee has the responsibility and authority with respect to the management, acquisition, disposition, or investment of the assets of the Plan to the extent that such responsibility and authority is not delegated to participants, investment managers, or the trustee of the Plan. The Committee is the named fiduciary for the Plan and has general responsibility for the administration of the Plan and for reviewing the trustee. As such, the Committee is a party in interest with respect to the Plan, pursuant to section 3(14)(A) of the Act.

JPMorgan Chase Bank, National Association is the trustee of the Plan, and as such is a party in interest with respect to the Plan, pursuant to section 3(14)(A) of the Act. JPMorgan Retirement Plan Services LLC is the recordkeeper for the Plan, and as such is a party in interest as a service provider with respect to the Plan, pursuant to section 3(14)(B) of the Act.

3. El Paso, a Delaware corporation, owns a North American interstate natural gas pipeline system, exploration and production companies, and an emerging midstream business. El Paso is the sponsor of the Plan in which its employees and the

employees of its subsidiaries participate. As an employer any of whose employees are covered by the Plan, El Paso is a party in interest to the Plan, pursuant to section 3(14)(C) of the Act. The authorized capital stock of El Paso consists of 1,500,000,000 shares of EP Stock and 50,000,000 shares of preferred stock, par value $.01 per share.

4. El Paso, in its capacity as the sponsor of the Plan, has amended the terms of the Plan to provide the EP Stock as an investment option under the Plan. The Plan provides that a participant may elect to invest assets held in his or her account in this investment option. All assets invested in this investment option are allocated to such individual participant's account. The EP Stock is available under the EP Stock investment option, subject to certain limits on the percentage of new contributions and the percentage of the existing account balances which may be invested in the EP Stock. It is represented that the Plan held in the aggregate approximately 9,905,558 shares of EP Stock, as of December 31, 2010, which had a fair market value of $136,102,369, based on a price per share of $13.74, as of December 31, 2010. It is represented that the Plan held in the aggregate approximately 9,239,616 shares of EP Stock, as of October 31, 2011, which had a fair market value of $230,990,400, based on a price per share of $25.00, as of October 31, 2011.

The fair market value of the EP Stock held in the accounts of Invested Participants in the Plan in the aggregate constitutes approximately 15 percent (15%), as of December 31, 2010, and approximately 23.74 percent (23.74%), as of October 31, 2011, of the fair market value of the total assets of the Plan. It is represented that the percentage of each participant's account invested in the EP Stock varies according to participant investment elections and changes in the value of the EP Stock relative to other investment options.

5. It is represented that the EP Stock is a "qualifying employer security," as defined under section 407(d)(5) of the Act and 4975(e) of the Code. The Stock is listed for quotation on the New York Stock Exchange under the symbol "EP."

6. The application for exemption was filed on behalf of El Paso and its employees, officers, directors and 10 percent (10%) or more shareholders, the Committee, and the Plan (collectively, the Applicants). The Applicants have requested an exemption with respect to the transactions which are the subject of this proposed exemption. In this regard, relief has been requested: (a) for the acquisition of the Warrants by accounts of the Invested Participants in the Plan in connection with the Merger; and (b) for the holding of the Warrants by the accounts of the Invested Participants in the Plan.

It is represented that the subject transactions have not yet been consummated. It is represented that KMI and El Paso are merging for business reasons. It is represented that the combined enterprise will represent the largest natural gas pipeline network in the United States, the largest independent transporter of petroleum products in the United States, the largest transporter of carbon dioxide in the United States, and the largest independent terminal owner/operator in the United States.

The Merger has been approved by the Board of Directors of El Paso and KMI. In this regard, an Agreement and Plan of Merger, dated as of October 16, 2011, was entered into among KMI, Sherpa Merger Sub, Inc., Sherpa Acquisition LLC, Sirius Holdings Merger Corporation, Sirius Merger Corporation, and El Paso.

KMI has filed a Registration Statement with the SEC on Form S-4 in connection with the proposed transactions contemplated by the Merger, including a definitive Information Statement/Prospectus of KMI and a definitive Proxy Statement of El Paso. The Registration Statement was declared effective by the SEC on January 30, 2012. Post-effective amendments to the Registration Statement were filed on February 27, 2012, and on March 1, 2012. KMI and El Paso mailed the definitive Information Statement/Prospectus of KMI and the definitive Proxy Statement of

El Paso to their respective shareholders on or about January 31, 2012. Shareholders of both KMI and El Paso have now approved the transaction. In this regard, KMI's stockholder meeting was held on March 2, 2012, and El Paso's stockholder meeting was held on March 9, 2012. On March 9, 2011, the shareholders of El Paso overwhelmingly approved the Merger. Approximately 79 percent (79%) of all the shares of EP Stock were voted and more than 95 percent (95%) of those shares were voted in favor of the Merger. The Merger is expected to close in the second quarter of 2012, subject to the parties to the Merger obtaining the customary regulatory approvals.

7. It is represented that the Warrants to be acquired by the Plan in connection with the Merger will satisfy the definition of "employer securities," pursuant to section 407(d)(1) of the Act, because such Warrants will be securities issued by KMI, which, as a result of the Merger, will become the parent company of El Paso. However, as the Warrants are not shares of stock or marketable obligations, or interests in a publicly-traded partnership, such Warrants do not meet the definition of "qualifying employer securities," as set forth in section 407(d)(5) of the Act. In this regard, the subject transactions will constitute an acquisition and holding on behalf of the Plan of Warrants which are "employer securities," but

which are not "qualifying employer securities," in violation of section 407(a) of the Act. Accordingly, the Applicants have requested relief from sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act.

The Applicants also seek exemptive relief from section 406(b)(1) and 406(b)(2) of the Act with regard to conflicts of interest which could arise under the facts and circumstances, as set forth, herein and in the application file.

8. It is represented that the decision to enter into the Merger will be made by El Paso and KMI in their corporate capacities. Under the terms of the Merger, El Paso will become a wholly-owned subsidiary of KMI. According to representations in KMI's Form 10-Q, the total purchase price to be paid by KMI for the acquisition of El Paso is expected to be approximately $38 billion.

9. KMI will issue to each shareholder of EP Stock, including the Invested Participants, for each share of EP Stock held by each such shareholder either: (a) $25.91 in cash without interest; or (b) 0.9635 of a share of the Class P common stock of KMI (the Class P Stock)(which, fractional share had a rounded value of $31.20, based on the closing price of the Class P Stock at $32.38, as of January 27, 2012); or (c) $14.65 in cash without interest, plus 0.4187 of a share of the Class P Stock (which,

fractional share had a rounded value of $13.56, based on the closing price of the Class P Stock at $32.38, as of January 27, 2012). The closing price of the EP Stock, as of January 27, 2012 was $26.54.

Whichever option each of the shareholders of the EP Stock, including the Invested Participants, elect, is subject to certain conditions applicable to all such shareholders. If any of the shareholders of the EP Stock, including any of the Invested Participants, make no election, such shareholders will be deemed to have elected to receive option (c), as described above, the Class P Stock and cash. All elections will be subject to proration.

Regardless of which election is made by the shareholders of the EP Stock, including the Invested Participants, and even if no election is made by such shareholders, 0.640 of a Warrant will be issued with respect to each share of EP Stock held by such shareholders, including the Invested Participants, on the closing date of the Merger. It is represented that each such fraction of a Warrant has an assumed value of $0.96. Warrants will be allocated to the accounts of the Invested Participants whose accounts held EP Stock on the closing date of the Merger.

10. It is represented that the Class P Stock is publicly traded on the New York Stock Exchange. The authorized capital

stock of KMI consists of 2,819,462,927 shares of which 10,000,000 shares are preferred stock (par value $0.01 per share) and 2,809,462,927 shares are common stock (par value $0.01 per share). At the close of business on October 13, 2011, 110,898,898 shares of Class P Stock were issued and outstanding, and no shares of Class P Stock were held by KMI in its treasury.

It is represented that any Class P Stock acquired as a result of the Merger by the Invested Participants will become a "qualifying employer security," as defined under section 407(d)(5) of the Act and section 4975(e) of the Code, because the Class P Stock, will after the Merger, be a security issued by KMI, the parent company of El Paso.[9]

11. It is represented that the shareholders, including the Invested Participants, will receive the Warrants and other consideration automatically upon the closing date of the Merger. In this regard, it is represented that the Invested Participants and the Committee have no control over the receipt of the Warrants. However, prior to the closing date of the Merger, each of the Invested Participants has the right to transfer the assets in his or her account in the Plan which is invested in the EP

[9] The Department, herein, is not providing any relief with respect to the acquisition and holding by the Invested Participants of the Class P Stock.

Stock to any other investment option offered under the Plan and thereby, avoid receiving the Warrants.

12. It is represented that the Warrants will be issued pursuant to a certain warrant agreement (the Warrant Agreement) between KMI and a warrant agent (the Warrant Agent). It is represented that the Warrant Agent is Computershare Trust Company, N.A. and is an unrelated party to El Paso and KMI. The Warrant Agreement provides that the Warrants will be registered under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, and will be registered under the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder.

It is represented that the Warrants will be issued to the Invested Participants on the same basis that such Warrants will be issued to all other shareholders of the EP Stock. Pursuant to the terms of the Warrant Agreement, each of the shareholders of the EP Stock, including each of the Invested Participants, for each Warrant held will be able to purchase one share of Class P Stock (par value $0.01 per share) at the exercise price of $40 per share (the Exercise Price) during the period beginning on the date of the Warrant Agreement and ending on the five-year

anniversary of the date of the Warrant Agreement (the Five Year Term).

13. The Warrants may be exercised in whole or in part by presentation of a Warrant along with a Notice of Exercise to the Warrant Agent.[10] No fractional shares of Class P Stock will be issued upon the exercise of any Warrant, but KMI will pay the cash value of such fractional shares equal to the market price of the Class P Stock on the trading day on which such Warrants are exercised. Payment of the Exercise Price can be made at the option of the holder of the Warrants either: (a) in cash; (b) by delivering a certified or official bank check payable to the Warrant Agent; or (c) by delivering a written direction to the Warrant Agent that the holder desires to exercise Warrants, pursuant to a "cashless exercise."

14. In addition to the right to exercise the Warrants, the Warrants may be sold, assigned, transferred, pledged, encumbered,

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[10] With regard to the exercise of the Warrants, it is represented that the Invested Participants will rely on the relief provided by the statutory exemption, pursuant to section 408(e) of the Act. The Department is offering no view, as to whether the requirements of the statutory exemption provided in section 408(e) of the Act will be satisfied. Further, the Department, herein, is not providing any relief with respect to the exercise of the Warrants.

or in any other manner transferred or disposed of, in whole or in part in accordance with the terms of the Warrant Agreement and all applicable laws. In this regard, Invested Participants will have the right to sell the Warrants allocated to their accounts in the Plan at any time and from time to time during the Five Year Term, in the same manner as other holders of the Warrants.[11] It is represented that the Warrants will be listed on the New York Stock Exchange, the NASDAQ Stock Exchange, or another stock exchange reasonably agreed to by KMI and El Paso. Proceeds from the sale of the Warrants by Invested Participants may be directed into any other investment option under the Plan.

15. It is represented that the Committee will not take any action to cause the Invested Participants to exercise or sell the Warrants. If an Invested Participant takes no action either to exercise or sell the Warrants, then such Warrants will expire at the end of the Five Year Term.

16. It is represented that one of the available investment options under the Plan will be a newly established limited

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[11] Pursuant to section 1.21 of the Warrant Agreement, KMI has the right, except as limited by law, or other agreements to purchase or otherwise acquire Warrants at such times, in such manner, and for such consideration as it and the applicable holder may deem appropriate. The Department, herein, is not providing any exemptive relief with respect to the purchase nor with respect to the acquisition by KMI of any Warrants from the Invested Participants in the Plan, as holders of such Warrants.

brokerage window. The limited brokerage window will be a self-directed brokerage account that will allow Invested Participants to sell or exercise Warrants and direct any cash proceeds into another investment option under the Plan. The Warrants and the Class P Stock will be the only securities traded through the limited brokerage window.

Brokerage services to the limited brokerage window are offered by Chase Investment Services Corp. (CISC). It is represented that CISC is a member of Financial Industry Regulatory Authority. The clearing and custody services are provided by J.P. Morgan Clearing Corp. (JPMCC). Both CISC and JPMCC are members of the Securities Investor Protection Corporation. Both CISC and JPMCC are separately registered broker dealers. Both CISC and JPMCC are affiliates of JPMorgan Chase and Company. CISC and JPMCC, are parties in interest, as service providers to the Plan, pursuant to section 3(14)(B) of the Act. It is represented that CISC, and JPMCC are unrelated to KMI and to El Paso.

The brokerage arrangement is a prohibited transaction under section 406(a) of the Act, because it involves the furnishing of services between a party in interest (**i.e.**, CISC), and the Plan and the use of Plan assets to pay for those services. The Applicants represent that the brokerage arrangement does not give

rise to a prohibited transaction under section 406(b) of the Act, because the Plan fiduciaries have contracted for the brokerage service to be provided to the Plan and do not exercise discretion with respect to the brokerage service or the fee.**12** Further, the Applicants represent that CISC has no discretion with respect to the sale or exercise of the Warrants, and thus, will not be a fiduciary with respect to the Plan, in that Warrants held in the limited brokerage account will be exercised or sold only at the direction of the Invested Participants.

When an Invested Participant elects to sell or exercise a Warrant through the limited brokerage window, it is represented that CISC will be acting as an agent and will not engage in any principal transactions. In this regard, CISC will send the order to JP Morgan Securities, LLC (JPMS). JPMS is a party in interest, as a service provider to the Plan, pursuant to section 3(14)(B) of the Act. It is represented that JPMS is

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12 The Applicants have not requested exemptive relief with respect to the provision of brokerage services by CISC to the Plan. In this regard, the Applicants rely on the relief provided by section 408(b)(2) of the Act for services rendered to a plan, if the services are necessary, the contract or arrangement for such services is reasonable, and only reasonable compensation is paid for such services. The Department is offering no relief, herein, for the provision of brokerage services by CISC to the Plan and is providing no view, as to whether the requirements of the statutory exemption provided in section 408(b)(2)of the Act will be satisfied with respect to the provision of brokerage services by CISC to the Plan.

unrelated to KMI and to El Paso.

The Warrants deposited in the accounts of Invested Participants in the Plan will be allocated to the limited brokerage window. The Invested Participants will not pay any fees or commissions in connection with the acquisition or holding of the Warrants. The Warrants will be held by the Plan from the closing date of the Merger until each of the Invested Participants disposes of the Warrants allocated to his or her account by exercising the Warrants or by directing the sale of the Warrants through the limited brokerage window.

Upon the sale of Warrants through the limited brokerage window, all the cash proceeds will be swept automatically into a money market account on a daily basis; and subsequently, invested in another Plan investment option, as directed by an Invested Participant. The sweep account is maintained by CISC; however, CISC will have no discretion with respect to the amount or timing of any amount swept.**13**

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13 The Applicants have not requested exemptive relief with respect to the sweep account. In this regard, the Applicants maintain that the sweep services are provided to the Plan by CISC pursuant to a service agreement which satisfies section 408(b)(2) of the Act. The Applicants represent that neither Plan fiduciaries nor CISC exercise discretion with respect to such sweep services. The Department is offering no view, as to whether the requirements of the statutory exemption provided in section 408(b)(2) of the Act will be satisfied. Further, the Department, herein, is not providing any relief with respect to the provision of sweep services by CISC to the Plan.

Upon the sale of a Warrant, a fee will be deducted from the proceeds of the transaction, in the same manner that a fee would be deducted in connection with the sale of EP Stock prior to the Merger. If an Invested Participant uses the self-service options available under the Plan for changing the Plan investment allocation, the fee for the sale of a Warrant will be $9.99 for up to 1,000 Warrants and $0.02 per Warrant thereafter. If an Invested Participant requests a CISC representative to assist with the transaction, the fee will be $55.00 for the sale of up to 1,000 Warrants and $0.02 per Warrant thereafter.**14**

Upon exercise of a Warrant, the shares of the Class P Stock for which such Warrant was exercised will be credited to the Invested Participant's account and held in the limited brokerage

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14 The Applicants have not requested exemptive relief with respect to the receipt of a fee by CISC for the provision of brokerage services to the Plan. In this regard, the Applicants rely on the relief provided by section 408(b)(2) of the Act for payment by a plan to a party in interest for services rendered to such plan, if the services are necessary, the contract or arrangement for such services is reasonable, and only reasonable compensation is paid for such services. The Department is offering no relief, herein, for the receipt of a fee by CISC for the provision of brokerage services to the Plan, nor is the Department providing any relief for the receipt of compensation for the provision of clearing or custody services by JPMCC or for the receipt of compensation for the execution of the order by JPMS. Further, the Department, herein, is offering no view, as to whether the requirements of the statutory exemption provided in section 408(b)(2) of the Act will be satisfied with respect to the receipt of fees by CISC, JPMCC, and JPMS.

window until such Invested Participant makes an investment change election. No fees will be charged in connection with the exercise of a Warrant.

It is represented that prior to the closing on the Merger, El Paso intends to amend the Plan to prohibit any participants in the Plan from acquiring additional Warrants through the Plan after the Merger closes. It is represented that the decision to amend the Plan to include limitations on the investments is a settlor function that does not involve Plan fiduciaries. It is represented that the decision by El Paso to limit the acquisition of additional Warrants by the Plan was in part to encourage participants to diversify the investments in such participants' individually-directed accounts in the Plan.

17. The Applicants represent that the proposed exemption is administratively feasible. In this regard, the acquisition and holding of the Warrants by the accounts of the Invested Participants in the Plan will be a one-time transaction that involves an automatic distribution of such Warrants to all such Invested Participants. It is represented that it is relatively common in stock transactions, such as the anticipated transaction reflected in the Merger, to include stock warrants as part of the consideration for the stock of the target corporation.

18. The Applicants represent that the transactions which

are the subject of this proposed exemption are in the interest of the Plan, because the subject transactions represent a valuable opportunity to the accounts of the Invested Participants in the Plan to realize the potential value of the Merger. If the exemption is not granted, the Invested Participants would be deprived of investment returns that could be realized, if the Warrants were to be exercised or sold during the Five Year Term.

19. The Applicants also represent that the proposed exemption is in the interest of the accounts in the Plan of the Invested Participants. In this regard, the Invested Participants may select the most advantageous time to exercise and/or to liquidate the Warrants.

20. The Applicants further represent that the proposed exemption provides sufficient safeguards for the protection of the Plan and its participants and beneficiaries. In this regard, the acquisition and holding of the Warrants will occur automatically, as a result of the Merger. In addition, as the Warrants will be publicly-traded securities, the fair market value of the Warrants, if the Invested Participants choose to sell such Warrants, will be determined by the market.

21. In summary, the Applicants represent that the subject transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Warrants will be acquired by the individually-directed accounts of the Invested Participants, all or a portion of whose accounts in the Plan hold the EP Stock;

(b) The exchange by the shareholders, including the Invested Participants, of the EP Stock for the Warrants will result from an independent act of El Paso and KMI, as corporate entities in connection with the Merger, and will occur automatically without any action or control on the part of such shareholders, including the Invested Participants;

(c) The acquisition of the Warrants by the Invested Participants will occur in connection with the Merger, and such Warrants will be made available on the same terms to all shareholders of the EP Stock, including the Invested Participants;

(d) The decisions with regard to the holding and disposition of the Warrants will be made by each of the Invested Participants in accordance with the provisions under the Plan for individually-directed accounts;

(e) The Warrants allocated to the accounts of the Invested Participants in the Plan may be exercised or sold at any time by such Invested Participants giving investment directions in accordance with the provisions of the Plan;

(f) The Invested Participants will not pay any fees or

commissions in connection with the acquisition and holding of the Warrants, nor will the Invested Participants pay any fees on the exercise of the Warrants; and

(g) Prior to entering into the Merger, El Paso will obtain all necessary approvals from any relevant state agencies and federal agencies, including, but not limited to the U.S. Department of Justice Antitrust Division, the Federal Energy Regulatory Commission, the SEC, and the Federal Trade Commission.

NOTICE TO INTERESTED PERSONS

Only those participants and beneficiaries whose accounts are invested in EP Stock on the closing date of the Merger will be affected by the subject transactions. Because participants may change their investment directions daily, it is represented that it is not possible to determine the exact number of affected participants and beneficiaries in advance of the closing date of the Merger.

Accordingly, the Applicants represent that, if the Merger closes **before** the Notice to Interested Persons is prepared and mailed, El Paso will provide notification of the publication in the FEDERAL REGISTER of the Notice of Proposed Exemption (the Notice) to all participants, beneficiaries, and alternate payees with account balances in the Plan, whose account

(or portion thereof) was invested in the EP Stock on the closing date of the Merger. The Applicants further represent that if the Merger closes **after** the Notice to Interested Persons is prepared and mailed, El Paso will provide notification of the publication in the FEDERAL REGISTER of the Notice to all participants, beneficiaries, and alternate payees who have an account in the Plan at the time the Notice to Interested Persons is prepared.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's most recent address maintained in the Plan administrator's records for each such interested person, within thirty (30) days of publication of the Notice in the FEDERAL REGISTER. Such mailing will contain a copy of the Notice, as it appears in the FEDERAL REGISTER on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment and to request a hearing.

A11 written comments and/or requests for a hearing must be received by the Department from interested persons within 60 days of the publication of this proposed exemption in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Ed Laur Defined Benefit Plan (the Plan)

Located in Amarillo, TX

[Application No. **D-11714**]

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). If the exemption is granted, 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,[15] shall not apply to the proposed cash sale by the Plan to Ed Laur (Mr. Laur) of shares of stock (the Stock) of EnergyNet.com (EnergyNet); provided that:

(a) The sale of the Stock by the Plan to Mr. Laur is a one-time transaction in which the Plan receives cash;

(b) As the result of the sale, the Plan receives the fair market value of the Stock, as determined by the CFO of EnergyNet, as of the most recent valuation of such Stock;

[15] Pursuant to 29 CFR 2510.3-3(b) of the Department's regulations, there is no jurisdiction with respect to the Plan under Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

(c) The Plan pays no commissions or fees in regard to the transaction; and

(d) The terms of the sale are no less favorable to the Plan than those the Plan would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

SUMMARY OF FACTS AND REPRESENTATIONS

1. The Plan is a defined benefit plan established in 2001. The Plan is sponsored by Ed Laur (Mr. Laur), a sole proprietor. As of December 31, 2010, the Plan had $335,442.64 in assets. It is represented that the estimated value of the Plan's assets, as of December 31, 2011, is $350,000. Mr. Laur and his wife, Mrs. Laur are the only participants in the Plan. It is represented that the benefit accruals under the Plan were frozen in 2006 and currently remain frozen.

2. Mr. Laur is the trustee and primary fiduciary with respect to the Plan. Mr. Laur works as a consultant in the grain industry.

3. EnergyNet is a local Amarillo, Texas corporation. EnergyNet is not traded on any exchange, but is traded locally in the Amarillo, Texas area. It is represented that there is no relationship between Mr. Laur and the ownership of EnergyNet. It is represented that EnergyNet in 2011 converted from a C-corporation to an S-corporation status.

4. In 2002, 2005, 2007, and 2010, the Plan purchased the Stock of EnergyNet for investment purposes from EnergyNet. It is represented that the Plan purchased a total of 161,012 shares of the Stock at an aggregate cost of $39,082.40. It is represented that the estimated amount of income received by the Plan from EnergyNet through December 31, 2011 is $5,000. It is further represented that the Plan did not incur any expenses as a result of the holding of the Stock through December 31, 2011. It is represented that, as of December 31, 2011, the Stock held by the Plan had an aggregate value of $40,253. It is represented that the value of the Stock represents slightly less than 12% of the total fair market value of the assets of the Plan.

5. As a result of the conversion in 2011 of EnergyNet from a "C-Corporation" to an "S-Corporation," it is represented that the Plan became a "tax payer" with respect to the income pass-through from EnergyNet to the Plan. As a result of the conversion, it is rep resented that the Plan will have received, pursuant to section 512(e) of the Code,[16] unrelated business

[16] Under special rules applicable to "S-Corporations," section 512(e) of the Code states that if an organization described in section 1361(c)(6) holds stock in an S-Corporation," such interest shall be treated as an interest in an unrelated trade or business, and all items of income, loss, or deduction and any gain or loss on disposition of the stock in the "S-

taxable income (UBTI) on the Plan's share of the 2011 dividends from EnergyNet in the amount of $11,000. The tax on such amount at a rate of 25.7 percent (25.7%) is represented to be $2,827 ($11,000 x .257 = $2,827). In addition, it is represented that the Plan will incur the cost of preparing and filing Form 990-T.

6. Mr. Laur proposes to purchase the Stock from the Plan at a purchase price which is the current fair market value of the Stock.

7. Mr. Laur represents that the proposed transaction is feasible in that it will be a one-time transaction in which the Plan will receive cash. In addition, Mr. Laur will bear any and all costs associated with the subject transaction and the filing of the application for exemption.

8. Mr. Laur represents that the proposed transaction is in the interest of the Plan, in that the Plan will receive in cash the fair market value of the Stock. Further, it is represented that as the conversion of EnergyNet from a "C-Corporation" to an "S-Corporation" was unforeseen when the Stock was purchased, it is represented that the Plan never intended to become subject to

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Corporation" shall be taken into account in computing the unrelated business taxable income of such organization.

Section 1361(c)(6) of the Code states that an organization which is described in section 401(a) or 501(c)(3), and which is exempt from taxation under section 501(a), such as the Plan, may be a shareholder in an "S-Corporation."

UBTI. Accordingly, it is represented that it would be in the interest of the Plan to avoid incurring UBTI on the 2011 dividends from EnergyNet and also to avoid the cost of preparing and filing Form 990-T. Further, the proposed exemption is in the interest of the Plan in that the Plan will pay no commissions or fees with regard to the subject transaction.

9. It is represented that the proposed transaction has sufficient safeguards in place for the protection of the Plan and its participants and beneficiaries. In this regard, the fair market value of the Stock will be determined, as of the most recent valuation date, by Jim Black (Mr. Black), the CFO of EnergyNet. It is represented that Mr. Black at the end of each calendar year provides a written stock value to Mr. Laur in Mr. Laur's capacity as the trustee of the Plan. It is represented that based on a letter from Mr. Black, the aggregate value of the 161,012 shares of the Stock held by the Plan is $40,253, as of December 31, 2011.

10. In summary, Mr. Laur represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because:

(a) The sale of the Stock by the Plan to Mr. Laur will be a one-time transaction in which the Plan will receive cash;

(b) As the result of the sale, the Plan will receive the fair market value of the Stock, as determined by the CFO of EnergyNet, as of the most recent valuation of such Stock;

(c) The Plan will pay no commissions or fees in regard to the transaction; and

(d) The terms of the sale will be no less favorable to the Plan than those the Plan would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

NOTICE TO INTERESTED PERSONS

As Mr. Laur and Mrs. Laur, his wife, are the only participants in the Plan, it has been determined that there is no need to distribute the Notice of Proposed Exemption (the Notice) to interested persons. Therefore, comments and requests for a hearing must be received by the Department within thirty (30) days of the date of publication of this Notice in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693-8551. (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 of the Act and/or 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, 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries,

and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be 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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of May, 2012.

Lyssa E. Hall
Acting Director of Exemption Determinations
Employee Benefits Security Administration
U.S. DEPARTMENT OF LABOR

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