

Darby, E. H., Lustron House, (Lustron Houses in Alabama, MPS) 321 Beverly, Florence, 00000127

Forks of Cypress Cemetery, 0.25 mi. N of Jackson Rd., E side of Dowdy Rd., N of Little Cypress Creek, Florence vicinity, 00000140

#### Madison County

Jude, George, House, 2132 Winchester Rd., Huntsville, 00000139

#### Montgomery County

Huntingdon College Campus Historic District, 1500 E. Fairview Ave., Montgomery, 00000138

#### Perry County

Uniontown Historic District, Roughly bounded by Tomasene St., Taylor St., East Ave., and Green St., Uniontown, 00000137

#### Tuscaloosa County

Quayle, Margaret, Lustron House, (Lustron Houses in Alabama, MPS) 27 Parkview Dr., Tuscaloosa, 00000126

#### ALASKA

##### Juneau Borough-Census Area

MacKinnon Apartments, 236 Third St., Juneau, 00000144

#### ARIZONA

##### Maricopa County

Ross, John M., House, 6722 N. Central Ave., Phoenix, 00000145

#### MASSACHUSETTS

##### Worcester County

Warren Public Library, Main St. at Bacon St., Warren, 00000146

#### MISSOURI

##### St. Louis Independent City

Jewel Box, Jct. of Wells Dr. and McKinley Dr., Forest Park, St. Louis, 00000147

#### MONTANA

##### Blaine County

Lodgepole Community Hall, Fort Belknap Indian Community, Lodgepole, 00000148

A request for REMOVAL has been made for the following resource:

#### PENNSYLVANIA

##### Greene County

Kent, Thomas, Jr., Farm 208 Laurel Run Rd., Waynesburg, 98000444

[FR Doc. 00-2745 Filed 2-7-00; 8:45 am]

BILLING CODE 4310-70-P

#### DEPARTMENT OF LABOR

##### Pension and Welfare Benefits Administration

##### Prohibited Transaction Exemption 2000-05; Exemption Application No. D-10542, et al.; Grant of Individual Exemptions; Business Men's Assurance Company of America, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

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

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

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

##### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

##### Business Men's Assurance Company of America (BMA) Located in Kansas City, MO

[Prohibited Transaction Exemption 2000-05; Exemption Application No. D-10542]

##### Exemption

###### Section I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the sales and transfers of assets of an employee benefit plan (the Plan) to BMA pursuant to the terms of a benefit-responsive or a non-benefit responsive synthetic guaranteed investment contract (the Benefit-Responsive BMA Synthetic GIC or the Non-Benefit Responsive BMA Synthetic GIC) entered into by the Plan sponsor with BMA;<sup>1</sup>

(2) Advances made by BMA to a Plan in order to make unanticipated benefit payments, if applicable, under a Benefit-Responsive BMA Synthetic GIC; and (3) the sweeping of interest and other proceeds to BMA from a Plan's Contractholder Custodial Account established under either a Benefit-Responsive BMA Synthetic GIC or a Non-Benefit Responsive BMA Synthetic GIC. This exemption is subject to the general conditions set forth below in Section II.

###### Section II. General Conditions

(a) The decision to enter into a BMA Synthetic GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of BMA.

(b) Only Plans with total assets having an aggregate market value of at least \$50 million are permitted to purchase BMA Synthetic GICs; provided however that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity has

<sup>1</sup> Unless specifically noted, references to the BMA Synthetic GIC refer to both types of Synthetic GIC products that are offered to Plan investors by BMA.

purchased a BMA Synthetic GIC, the foregoing \$50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million, or

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity has purchased a BMA Synthetic GIC, the foregoing \$50 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity —

(i) Has full investment responsibility with respect to Plan assets invested therein, and

(ii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of \$100 million.

(c) Prior to the execution of a BMA Synthetic GIC, the Plan fiduciary receives a full and detailed written disclosure of all material features concerning the BMA Synthetic GIC, including—

(1) A copy of the underlying agreement for the BMA Synthetic GIC and accompanying application, which stipulate the relevant provisions of the Contract, the applicable fees, if any, and the rights and obligations of the parties;

(2) Investment Guidelines defining the manner in which BMA will manage the assets in the Contractholder Custodial Account;

(3) A copy of the Custodial Agreement between BMA, the Plan fiduciary and the custodian (the Custodian); and

(4) Copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Upon the selection by a Plan fiduciary of a BMA Synthetic GIC, BMA will supply the Plan fiduciary of a Plan [including a Plan that provides for participant investment selection (the Section 404(c) Plan)], a summary of the pertinent features of the documents listed above in paragraphs (c)(1) through (c)(3) of this Section II which the Plan fiduciary, in its discretion, deems appropriate for distribution to such participant, to the extent necessary to satisfy the requirements of section 404(c) of the Act.

(e) Subsequent to a Plan's investment in a BMA Synthetic GIC, the Plan fiduciary will receive the following ongoing disclosures regarding such investment:

(1) A periodic report consisting of a Contract Value Record Report, which specifies the affected Plan's BMA Synthetic GIC Contract Value Record balance for the prior period, contributions, withdrawals [*i.e.*, Scheduled Withdrawals (the Scheduled Withdrawals) and, if applicable, Unscheduled Withdrawals (the Unscheduled Withdrawals)], interest earned, and the current period's ending Contract Value Record balance; (The time periods covered by the Contract Value Record Report will be selected in advance by the independent Plan fiduciary and may be sent monthly, quarterly or annually.)

(2) A periodic Market Value Statement, which is supplied by the Custodian on a quarterly basis, that specifies the prior period's ending market value for the assets in the Contractholder Custodial Account, contributions made by the Plan sponsor to the BMA Synthetic GIC after the initial deposit, Scheduled Withdrawals and, if applicable, Unscheduled Withdrawals, any fees paid to BMA, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current period's ending market value and rate of return, and a summary of transactions; and

(3) Upon request from the Custodian (*i.e.*, not more often than quarterly), a portfolio listing. (The reports referred to in paragraphs (e)(1)–(e)(3) of this Section II will be made available to the Plan fiduciary, which, in turn, will provide copies to participants in a Section 404(c) Plan upon request, to the extent the Plan fiduciary deems it necessary.)

(f) Each BMA Synthetic GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(g) Each BMA Synthetic GIC has a predefined, fixed maturity date selected by the Plan fiduciary and agreed to by BMA.

(h) In the event BMA sells assets from a Plan's Contractholder Custodial Account to BMA's general account or to an affiliate during the term of the BMA Synthetic GIC or at such GIC's maturity, the transaction is—

(1) Effected for cash;

(2) The sales price of the security is equal to the fair market value of such asset as of the close of business on the date of the sale, as determined by independent sources; and

(3) The Plan incurs no brokerage or transaction costs in connection with the transaction.

(i) BMA maintains books and records of each BMA Synthetic GIC transaction for a period of six years. Such books and records are subject to annual audit by independent, certified public accountants.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on December 17, 1999 at 64 FR 70732.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**John Hancock Mutual Life Insurance Company (John Hancock) Located in Boston, MA**

[Prohibited Transaction Exemption 2000-06; Exemption Application No. D-10718]

### Exemption

#### Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the (1) receipt of common stock of John Hancock Financial Services, Inc., the holding company for John Hancock (the Holding Company), or (2) the receipt of cash or policy credits, by or on behalf of any eligible policyholder (the Eligible Policyholder) of John Hancock which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, other than certain Eligible Policyholders which are Plans maintained by John Hancock or an affiliate for their own employees (the John Hancock Plans), in exchange for such Eligible

Policyholder's membership interest in John Hancock, in accordance with the terms of a plan of reorganization (the Plan of Reorganization) adopted by John Hancock and implemented pursuant to Chapter 175 of the Massachusetts General Laws.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt or holding, by the John Hancock Plans, of employer securities in the form of excess Holding Company stock, in accordance with the terms of the Plan of Reorganization.

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

### *Section II. General Conditions*

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under Massachusetts Insurance Law and is subject to review and supervision by the Massachusetts Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of John Hancock as part of such Commissioner's review of the Plan of Reorganization, and determines, after the hearing, whether the Plan of Reorganization conforms to the requirements of chapter 175, section 19E of the Massachusetts General Laws and whether the Plan is prejudicial to the Eligible Policyholders of John Hancock or the insuring public. The Superintendent may object to the Plan of Reorganization if he or she finds that it is not fair and equitable to New York Eligible Policyholders.

(c) As part of their determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Reorganization.

(d) Each Eligible Policyholder has an opportunity to vote to approve the Plan of Reorganization after full written disclosure is given to the Eligible Policyholder by John Hancock.

(e) One or more independent fiduciaries of a Plan that is an Eligible Policyholder receives Holding Company stock, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither John Hancock nor any of its affiliates exercises any discretion or provides "investment advice," as that term is defined in 29 CFR 2510.3-21(c), with respect to such acquisition.

(f) After each Eligible Policyholder is allocated 17 shares of Holding Company stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution

to the surplus of John Hancock which formulas have been approved by the Commissioner.

(g) With respect to a John Hancock Plan, where the consideration may be in the form of Holding Company stock an independent Plan fiduciary—

(1) Determines whether the Plan of Reorganization is in the best interest of the John Hancock Plans and their participants and beneficiaries.

(2) Votes at the special meeting of Eligible Policyholders on the proposal to approve or not to approve the Plan of Reorganization.

(3) If the vote is to approve the Plan or Reorganization,

(i) Decides whether the affected John Hancock Plan should receive Holding Company stock or cash (should the latter option be available) and instructs the appropriate Plan trustee to receive such consideration on behalf of the affected John Hancock Plan;

(ii) Monitors, on behalf of the affected John Hancock Plan, the acquisition and holding of the shares of any Holding Company stock received;

(iii) Makes determinations on behalf of the John Hancock Plan with respect to voting and the continued holding of the shares of Holding Company stock received by such Plan; and

(iv) Disposes of any Holding Company stock held by the John Hancock Plan which exceeds the limitation of section 407(a)(2) of the Act as reasonably as practicable but in no event later than six months year following the effective date of the demutualization;

(v) Takes all actions that are necessary and appropriate to safeguard the interests of the John Hancock Plans; and

(vi) Provides the Department with a complete and detailed final report as it relates to the John Hancock Plans prior to the effective date of the demutualization.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of Holding Company stock or in connection with the implementation of the commission-free sales and purchase programs.

(j) All of John Hancock's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

### *Section III. Definitions*

For purposes of this exemption:

(a) The term "John Hancock" means The John Hancock Mutual Life Insurance Company and any affiliate of John Hancock as defined in paragraph (b) of this Section III.

(b) An "affiliate" of John Hancock includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with John Hancock. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "Eligible Policyholder" means a policyholder whose name appears on the conversion date on John Hancock's records as the owner of a policy under which there is a right to vote and which, on both the December 31 immediately preceding the conversion date and the date the John Hancock's Board of Directors first votes to convert to stock form, is in full force for its full basic benefits with no unpaid premiums or consideration at the expiration of any applicable grace period, or which is being continued under a nonforfeiture benefit and continues to be eligible for participation in John Hancock's annual distribution of divisible surplus.

(d) The term "policy credit" means (i) for an individual or joint participating whole life insurance policy, the crediting of paid-up additions which will increase the cash value and death benefit of the policy; and (ii) for all other individual or joint life policies and annuities, (x) if the policy or contract has a defined account value, an increase in the account value, or, (y) if the policy or contract does not have a defined account value, the crediting of dividends left on deposit under the policy or contract.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) that was published on October 22, 1999 at 64 FR 57136.

### **Written Comments**

The Department received 45 written comments with respect to the proposed exemption. Forty-four of the comments were submitted by Eligible Policyholders and one comment was submitted by John Hancock.

Of the Eligible Policyholder comments received, fourteen commenters said they were in favor of the exemption and urged the Department to approve it. Six commenters requested information that

was pertinent to their insurance policies, but was not germane to the exemption request. Twenty-four commenters expressed their objection to the exemption for various reasons, which could be categorized in the following areas: (a) the effect of John Hancock's demutualization on policyholder benefits; (b) risks inherent in the demutualization; (c) the lack of benefits to Plan participants if the exemption is granted; and (d) whether the formula utilized by John Hancock to determine the amount of consideration to be allocated to Eligible Policyholders was adequate.

John Hancock's comment requested clarification to the Notice. The comment also sought to expand upon the description of the transactions described therein.

Discussed below are the substantive comments that were submitted by the Eligible Policyholders as well as John Hancock's responses to the issues raised in comment letters. Also discussed is John Hancock's comment and the Department's responses to specific areas of technical clarification in the operative language and definitions of the Notice and the Summary of Facts and Representations (the Summary).

#### Eligible Policyholder Comments

Sixteen commenters questioned the effect of John Hancock's demutualization on a policyholder's benefits or tax-exempt status. In response to these comments, John Hancock represents that the concerns of the policyholders have been addressed in the Policyholder Information Statement which was sent to all Eligible Policyholders. According to John Hancock, the document clearly states that the conversion of the company to a stock company will not reduce the benefits, values, guarantees or dividend rights of any policy, nor adversely affect any grandfathering or special tax status of any policy.

Also in connection with the effect of the demutualization on existing policyholder benefits, another commenter asserted that two representations made by John Hancock in the proposed exemption were false. First, the commenter noted that on page 57139 of the Summary, the second paragraph of Representation 6 states that—

John Hancock believes these consequences of the conversion will benefit all of its policyholders. John Hancock further explains that its insurance policies will remain in force and policyholders will be entitled to receive the benefits under their policies and contracts to which they would have been entitled if the Plan of Reorganization had not been adopted.

Second, the commenter noted that on page 57141 of the Summary, paragraph (h) of Representation 13 states that—

The Plan of Reorganization will not change premiums or reduce policy benefits, values, guarantees or other policy obligations of John Hancock to its policyholders and contractholders.

The commenter believed that, as a result of the demutualization, John Hancock's proposed changes to products and services offered under its health insurance program would constitute an unlawful termination of its group insurance policy which was not authorized under such policy. The commenter also argued that these material breaches would have severe consequences and an adverse effect upon its organization.

In response to this comment, John Hancock explains that it sold its group benefit operations to the Unicare Life and Health Insurance Company (Unicare) and the sale was structured as a reinsurance transaction so that John Hancock would still be the insurer of record until the next renewal of the contract. John Hancock explains that the correspondence between Unicare and the commenter stems from an attempt by Unicare to modify its product line with respect to its association business (*i.e.*, business sold to associations on behalf of many employers within the association). John Hancock acknowledges that Unicare is attempting to standardize its product mix for this type of business for the next contract cycle. In any event, John Hancock states that ongoing discussions between Unicare and the commenter do not relate to the demutualization and that John Hancock's statement in the Plan of Reorganization and Policyholder Information Statement regarding no changes to existing contracts as a result of the demutualization are entirely accurate. Further, John Hancock points out that none of the changes to the commenter's policy, if implemented, would be as a result of, or caused by the Plan of Reorganization.

Four commenters described the increased risk that would be caused by John Hancock's conversion to a stock company. However, in response to these commenters, John Hancock asserts that the policyholders lacked an understanding of the transaction and had every right to be heard at the hearing that was held on November 17, 1999.

Still another commenter suggested that there would be "no possible benefit to Plan participants" if the exemption is granted. In response to this commenter, John Hancock asserts that the

policyholder's notion is incorrect inasmuch as Eligible Policyholders that are Plans will receive Holding Company stock, cash or policy credits in exchange for their illiquid membership interests in John Hancock.

Finally, a commenter expressed concern about the adequacy of the formula utilized by John Hancock to determine the amount of consideration to be allocated to Eligible Policyholders. Based on prior experience with another insurance company demutualization, the commenter questioned John Hancock's characterization of certain investment contracts as "nonparticipating" as well as the resulting allocation formula.

In response to this comment, John Hancock asserts that only "participating" contractholders will be eligible for both the fixed and variable components of compensation, with the variable component being dependent on the policy's contribution to the surplus of the insurer, both historically and prospectively. John Hancock notes that the fixed component will be based upon a policy's voting interest while the variable component will be given in respect of a policy's contribution to the insurer's surplus. John Hancock further notes that only participating policies will have rights to divisible surplus and these views are consistent with the approach taken in insurance company demutualizations that have occurred in the United States over the past decade.

John Hancock explains that while the commenter may represent Plans that have non-participating policies with John Hancock, these Plans may have contracts with another insurer that are deemed participating. Although many of the features of the contracts may be similar, John Hancock explains that the difference in the participating status of the contracts is paramount for purposes of determining eligibility for the fixed component.

#### John Hancock's Comments

1. *Insurance Regulator Roles.* On page 57136 of the Notice, paragraphs (b) and (c) of the General Conditions describe the respective roles of the Massachusetts Insurance Commissioner and the New York Superintendent of Insurance with respect to John Hancock's Plan of Reorganization. John Hancock states that these paragraphs are not entirely clear. In the case of Massachusetts, John Hancock points out that the Commissioner must determine, after the hearing, whether the Plan of Reorganization conforms to the requirements of chapter 175, section 19E of the Massachusetts General Laws and whether the Plan is prejudicial to

the policyholders of John Hancock or the insuring public. John Hancock also points out that the Superintendent may object to the Plan of Reorganization if he finds that it is not fair and equitable to New York Eligible Policyholders.

Paragraph (c) of Section II states that both the Commissioner and the Superintendent must concur on the terms of the Plan of Reorganization. However, John Hancock states that while it is true that both regulators must be satisfied that the Plan of Reorganization meets the appropriate statutory standard, there is no formal process in which they "concur on the terms of the Plan of Reorganization."

In response to these comments, the Department has revised paragraphs (b) and (c) of Section II to read as follows:

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of John Hancock as part of such Commissioner's review of the Plan of Reorganization, and determines, after the hearing, whether the Plan of Reorganization conforms to the requirements of chapter 175, section 19E of the Massachusetts General Laws and whether the Plan is prejudicial to the Eligible Policyholders of John Hancock or the insuring public. The Superintendent may object to the Plan of Reorganization if he or she finds that it is not fair and equitable to New York Eligible Policyholders.

(c) As part of their determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Reorganization.

John Hancock also wishes to acknowledge that there are differences between the statutory language describing the Commissioner's standard of review and those of the Superintendent. As noted above, the Massachusetts standard requires the Commissioner to find whether the Reorganization Plan is "prejudicial to the Eligible Policyholders of John Hancock or the insuring public." John Hancock believes the Massachusetts standard is broader because it focuses not only on "the eligible policyholders" of the demutualizing company but also on "the insuring public." In contrast, John Hancock explains that the New York standard requires the Superintendent to find that the transaction is "fair and equitable" to New York policyholders of the insurer and can, therefore, be viewed somewhat more narrowly than the Massachusetts standard.

John Hancock represents that it sees no substantive difference between the "not prejudicial" concept and the "fair and equitable concept." In John Hancock's view, the phrase "not prejudicial" implies "fairness." From John Hancock's past experience, it

believes the Commissioner also shares this view.

2. *John Hancock Plans.* On pages 57136 and 57141 of the Notice, paragraph (g)(3)(i) of Section II of the General Conditions and Representation 11 of the Summary, indicate that an independent fiduciary "receives such consideration on behalf of the affected John Hancock Plan." John Hancock wishes to clarify that while U.S. Trust Company, N.A. (U.S. Trust), the independent fiduciary for the John Hancock Plans, will make the decision as to what each Plan receives, the consideration, itself, is received by the Plan trustee based on the instructions of the independent fiduciary.

The Department concurs with this comment and has revised paragraph (g)(3)(i) of Section II and the second sentence of Representation 11 by adding the phrase "\* \* \* and instructs the appropriate Plan trustee to receive such consideration on behalf of the affected John Hancock Plan" after the parenthetical.

3. *Definition of "Policy Credit."* On page 57137 of the Notice, in Section III(d) of the Definitions, the term "policy credit" is defined as follows:

\* \* \* (1) for an individual or joint ordinary life insurance policy, an increase to the paid-up dividend addition value, and (2) for all other individual or joint life policies and annuities, (i) if the policy or contract has a defined account value, an increase in the account value, or (ii) if the policy or contract does not have a defined account value, an increase to the dividend accumulation fund.

John Hancock concedes that this definition is generally correct. However, it does not correspond exactly with the definition of the term in John Hancock's final Plan of Reorganization which defines the term as follows:

"Policy Credit" means (i) for an individual or joint participating whole life insurance policy, the crediting of paid-up additions which will increase the cash value and death benefit of the policy, and (ii) for all other individual or joint life policies and annuities, (x) if the policy or contract has a defined account value, an increase in the account value, or, (y) if the policy or contract does not have a defined account value, the crediting of dividends left on deposit under the policy or contract.

For the sake of conformity with John Hancock's final Plan of Reorganization, the Department has revised the definition of the term "policy credit," accordingly.

4. *Holding Company Formation.* On page 57138 of the Notice, in Representation 4 of the Summary, the third sentence of paragraph three states that the Holding Company will own 100

percent of two new holding companies being established to own existing subsidiaries of John Hancock and most other foreign insurance subsidiaries. John Hancock states that this sentence should be deleted as this aspect of its reorganization is no longer contemplated. In response to this change, the Department has deleted this sentence from the Summary.

5. *Date of Demutualization.* On page 57139 of the Notice, in Representation 5 of the Summary, the second sentence of paragraph (b) states that John Hancock's expected date of demutualization will occur during early February 2000. John Hancock wishes to clarify that the actual date of its demutualization will occur on February 1, 2000.

6. *Risk-Based Capital Ratio Formula.* On page 57139 of the Notice, in Representation 5 of the Summary, paragraph (c) states, in part, that the Holding Company will contribute cash raised in the initial public offering to John Hancock in an amount at least equal to the amount required for John Hancock to maintain a risk-based capital ratio of not less than 200 percent following the payment and crediting of cash and establishment of reserves for policy credits called for by the Plan of Reorganization. John Hancock represents that the 200 percent risk-based capital ratio formula was revised at the request of the Commissioner during her informal review of the draft Plan of Reorganization and was subsequently incorporated into the final Plan of Reorganization. John Hancock explains that the Commissioner required the change to a more complicated formula in order to maximize the amount of IPO proceeds that would be available to be contributed to the insurer and used to fund distributions of cash to policyholders who do not elect Holding Company stock. Because its risk-based capital ratio is in excess of 200 percent, John Hancock states that the old formula would have permitted more IPO proceeds to be retained by the Holding Company.

Therefore, in accordance with the formula revision, John Hancock requests that Representation 5(c) be modified to read as follows:

(c) *Contribution to the Capital of John Hancock.* Following the transactions described above, the Holding Company will contribute cash raised in the IPO (after the payment of transaction expenses and the retention of a certain amount by the Holding Company, as permitted under both the old and the new formulas) to John Hancock, which shall apply substantially all such

proceeds to fund cash and policy credit consideration to policyholders.

The Department concurs with this change and has made the requested modification to the Summary. The Department also wishes to note that while both formulas would allow the Holding Company to retain a certain amount of cash raised in the IPO, under the new formula, more cash will be contributed by the Holding Company to John Hancock.

**7. Time Frame For Eligible Policyholder Submission of Election Form.** On page 57140 of the Notice, the first paragraph of Representation 10 of the Summary states, in pertinent part, that an Eligible Policyholder will be entitled to receive Holding Company stock if such Policyholder affirmatively elects, on a form provided to such Eligible Policyholder that has been properly completed and received by John Hancock prior to the date of the special policyholder meeting, a preference to receive stock. John Hancock notes that the time within which an Eligible Policyholder may submit the election form, indicating a preference to receive shares of Holding Company stock, has been extended until December 31, 1999.

**8. Role of U.S. Trust.** On pages 57136 and 57141 of the Notice, Section II(g)(3)(ii) and (iii) and Representation 11 of the Summary describe the role of U.S. Trust, the independent fiduciary for the John Hancock Plans in connection with the demutualization. Specifically, U.S. Trust will vote and make elections (*i.e.*, stock or cash) which are available to the John Hancock Plans under the Plan of Reorganization. However, once the demutualization is completed, John Hancock represents that U.S. Trust will have an ongoing role only with respect to those John Hancock Plans which continue to hold Holding Company stock that is in excess of the limitations of section 407(a) of the Act. Thus, once the stock holdings of an affected John Hancock Plan are brought within the 10 percent limit, which must occur within six months of the effective date of the demutualization, John Hancock explains that the retention of U.S. Trust will no longer be required.

The Department concurs with John Hancock's understanding with respect to the retention of U.S. Trust following the demutualization.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-10718) the Department is maintaining in this case.

The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**Cassano's Inc. 401(k) Plan and Trust (the Plan) Located in Dayton, Ohio**

[Prohibited Transaction Exemption 2000-07; Exemption Application Number D-10734]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of an improved parcel of real property (the Property) by the Plan to Cassano's, Inc. (Cassano's), a party in interest and disqualified person with respect to the Plan, provided that the following conditions are met:

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

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan receives the greater of \$155,500 or the fair market value of the Property as of the date of the Sale;

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and

(e) Cassano's files Form 5330 with the Internal Revenue Service (the Service) and pays certain excise taxes with respect to the past prohibited leasing of the Property within 90 days of the date this notice granting this exemption is published in the **Federal Register**.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to notice of proposed exemption published on November 9, 1999 at 64 FR 61134

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Martin Jara, telephone (202) 219-8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, D.C., this 3rd day of February, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determination,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

[FR Doc. 00-2858 Filed 2-7-00; 8:45 am]

**BILLING CODE 4510-29-P**

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**Exemption Application No. D-10384; Deutsche Bank AG, et al. (Deutsche Bank)**

**AGENCY:** Pension and Welfare Benefits Administration, Labor (the Department).

**ACTION:** Notice of technical correction.

On February 1, 2000, the Department published in the **Federal Register** (65 FR 4843) a notice of proposed exemption for Deutsche Bank which