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–11580, Robert W. Baird & Co. Incorporated and its Current and Future Affiliates and subsidiaries (collectively, Baird); and D–11611, Security Benefit Mutual Holding Company (MHC) Benefit Life Insurance Company (SBL, and together with the Applicants), *et al.*

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, NW., Washington, DC 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, NW., Washington, DC 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 (55 FR 32836, 32847, August 10, 1990). 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.

Robert W. Baird and Co. Incorporated and Its Current and Future Affiliates and Subsidiaries (Collectively, Baird), Located in Milwaukee, Wisconsin

[Application No. D–11580]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Transactions

If the proposed exemption is granted, 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, effective October 9, 2009, to the cash sale (the Sale) by a Plan (as defined in Section II(d)) of an Auction Rate Security (as defined in Section II(b)) to Baird, provided that the following conditions are met: [1]

(a) The Sale was a one-time transaction made on a delivery versus payment basis in the amount described in paragraph (b);

(b) The Plan received an amount equal to par value of the Auction Rate Securities (the ARS or the Securities) plus accrued but unpaid income (interest or dividends, as applicable) as of the date of the Sale;

(c) The last auction for the Securities was unsuccessful;

(d) The Sale was made in connection with a written offer (the Offer) by Baird containing all of the material terms of the Sale;

(e) The Plans did not bear any commissions or transaction costs with respect to the Sale;

(f) The decision to accept the Offer or retain the Auction Rate Security was made by a Plan fiduciary or Plan participant or an individual retirement account (an IRA (as defined in Section II(d)) owner who is independent (as defined in Section II(c)) of Baird. Notwithstanding the foregoing, in the case of an IRA which is beneficially owned by an employee, officer, director or partner of Baird, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner if all of the other conditions of this Section I have been met;

(g) The Plan does not waive any rights or claims in connection with the Sale;

(h) The Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest with respect to the Plan;

(i) If the exercise of any of Baird's rights, claims or causes of action in

[1] For purposes of this proposed exemption, references to section 406 of ERISA to refer as well to the corresponding provisions of section 4975 of the Code.

connection with its ownership of the Securities results in Baird recovering from the issuer of the Securities, or any third party, an aggregate amount that is more than the sum of:

(1) The purchase price paid to the Plan for the Securities by Baird; and

(2) The income (interest or dividends, as applicable) due on the Securities from and after the date Baird purchased the Securities from the Plan, at the rate specified in the respective offering documents for the Securities or determined pursuant to a successful auction with respect to the Securities, Baird will refund such excess amount promptly to the Plan (after deducting all reasonable expenses incurred in connection with the recovery);

(j) Neither Baird nor any affiliate exercises investment discretion or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the decision to accept the written Offer or retain the Security (unless the Sale involves an IRA whose owner is an employee, officer, director or partner of Baird);

(k) Baird and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Sale such records as are necessary to enable the person described below in paragraph (l)(i), to determine whether the conditions of this proposed exemption, if granted, have been met, except that—

(i) No party in interest with respect to a Plan which engages in a Sale, other than Baird and its affiliates, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(i);

(ii) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of Baird, such records are lost or destroyed prior to the end of the six-year period.

(l)(i) Except as provided, below, in paragraph (l)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of any Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any IRA owner, participant or beneficiary of a Plan that engages in the Sale, or duly authorized representative of such IRA owner, Plan participant or beneficiary;

(ii) None of the persons described, above, in paragraph (l)(i)(B)–(D) shall be authorized to examine trade secrets of Baird, or commercial or financial information which is privileged or confidential; and

(iii) Should Baird refuse to disclose information on the basis that such information is exempt from disclosure, Baird shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II. Definitions

(a) The term "affiliate" of another person means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a "Dutch Auction" process.

(c) The term "Independent" means a person who is not Baird or an affiliate (as defined in Section II(a)).

(d) The term "Plan" means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); or an employee benefit plan as defined in section 3(3) of the Act.

Effective Date: If this proposed exemption is granted, it will be effective October 9, 2009.

Summary of Facts and Representations

1. Founded in 1919, Robert W. Baird & Co. Incorporated ("Baird") is an employee-owned wealth management, capital markets, asset management and private equity firm. With its headquarters in Milwaukee, Wisconsin, Baird has offices in the United States, Europe and Asia. Baird is a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the Financial Industry Regulatory Authority. Baird is also a federally registered investment adviser. It provides trade execution, custody and other standard brokerage services, as well as investment advice and asset management services to individual, trust, institutional, corporate and other clients, including pension, profit-sharing and retirement plans and accounts.

2. In October 2009, Baird communicated in writing to its clients, including the Plans, its offer (the Offer) to purchase certain auction rate securities (*i.e.,* the Securities) for an amount equal to the par value of the applicable Security, plus any accrued and unpaid income (interest or dividends, as applicable) thereon. The purchase transactions occurred on the first regular auction date for the applicable Security that followed the Plan's submission to Baird of its written acceptance of the Offer.

3. The Plans that have so far purchased the Securities from Baird pursuant to the Offer include sixty-six Individual Retirement Accounts (IRAs), subject to section 4975 of the Code, for which Baird serves as a nonbank custodian or trustee.

4. Baird represents that the Securities are debt or preferred equity auction rate securities issued with an interest or dividend rate that is reset on a regular basis (generally between every 7 and 35 days) through a "Dutch Auction" process. Historically, by means of such auction process, the interest or dividend rate was periodically adjusted to a level at which demand for the Security depleted the available supply at a purchase price equal to the par value of the Securities. In this way, the auctions served as a form of secondary market for the Securities, by providing liquidity at par on a regular, periodic basis to any holder who wished to sell the Securities. The applicant represents that the Securities were frequently purchased by, or for the benefit of, clients seeking a reasonable short-term return and a high degree of liquidity.

5. If an auction for one of the Securities fails (*e.g.,* because there is insufficient demand for the Security), the interest or dividend rate will be reset to the "maximum rate" or "failed auction rate" (in either case, "default rate") for that Security as specified in the offering documents for such Security. In some cases, the default rate changes from time to time as specified in the relevant documents.

6. Baird states that auctions for the Securities have failed consistently since approximately February, 2008. In addition, because the auctions have failed consistently since February, 2008 and given the absence of any other

meaningful secondary market for the Securities, the Securities no longer provide the liquidity that had been anticipated when they were acquired. The proposed exemption, if granted, will be retroactive to October 9, 2009, the date of the written Offer by Baird to acquire the Securities from the Plans.

7. Baird represents that the Securities that were held by the IRAs were issued by a variety of issuers.

8. Generally, the IRAs purchased the Securities through Baird or another broker-dealer.

9. Baird states that the terms of the Offer expressly provided that a client is not obligated to sell Securities and must affirmatively agree to enter into a sale of Securities to Baird, (*i.e.,* a Sale). Baird represents that any IRA's decision to sell the Securities to Baird pursuant to its Offer has been made by the IRA owner.

10. Baird estimates that the total aggregate par value plus accrued and unpaid income (interest or dividends, as applicable) thereon for Securities held by the IRAs represent $8.125 million.

11. Baird represents that the Sale of the Securities by an IRA benefited the IRA because of the IRA's inability to sell the Securities at par as a result of continuing failed auctions. In addition, Baird states that each transaction was a one-time Sale for cash in connection with which such IRA did not bear any brokerage commissions, fees or other expenses.

12. Baird states that, pursuant to the terms of the Offer, the Sale of Securities by an IRA to Baird resulted in an assignment of all of the IRA's rights, claims, and causes of action against an issuer or any third party arising in connection with or out of the client's purchase, holding or ownership of the Securities. This assignment did not include any rights, claims or other causes of action against Baird. Rather, such assignment was limited to rights, claims and causes of action against the issuers of the Securities and any third parties unrelated to Baird. This has been the case at all times with respect to the subject Securities from the date as of which retroactive relief has been requested. Baird states further that if the exercise of any of the foregoing rights, claims or causes of action results in Baird recovering from the issuer or any third party an aggregate amount that is more than the sum of (a) the purchase price paid for the Securities by Baird and (b) the income (interest or dividends, as applicable) due on the Securities from and after the date on which Baird purchased the Securities from the IRA, Baird will refund such excess amount promptly to the IRA (after deducting all reasonable expenses incurred in connection with the recovery).

13. In summary, Baird represents that the transactions satisfied the statutory criteria of section 4975(c)(2) of the Code because: (a) Each Sale was a one-time transaction for cash; (b) each IRA received an amount equal to the par value of the Securities, plus accrued but unpaid income (interest or dividends, as applicable), which was beneficial to the IRA due to the IRA's inability to sell the Securities at par because of continuing failed auctions; (c) no IRA paid any commission or other transaction expenses with respect to the Sale; (d) each IRA voluntarily entered into the Sale, as determined in the discretion of the IRA owner; and (e) Baird will promptly refund to the applicable Plan any amounts recovered from the issuer or any third party in connection with its exercise of any rights, claims or causes of action as a result of its ownership of the Securities, if such amounts are in excess of the sum of (i) the purchase price paid for the Securities by Baird and (ii) the income (interest or dividends, as applicable) due on the Securities from and after the date on which Baird purchased the Securities from the Plan, at the rate specified in the offering documents for the ARS or determined pursuant to a successful auction with respect to the Securities.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Security Benefit Mutual Holding Company (MHC) and Security Benefit Life Insurance Company (SBL, and Together With MHC, the Applicants), Located in Topeka, Kansas

[Application No. D–11621]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) 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. Covered Transaction

If the exemption is granted, 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,[2] shall not apply, effective July 30, 2010, to the receipt of cash or policy credits (Policy Credits), by or on behalf of a policy owner of SBL that is an eligible member (Eligible Member), which is an employee benefit plan or retirement arrangement that is subject to section 406 of the Act and/or section 4975 of the Code (a Plan), other than a Plan maintained by MHC and/or its affiliates, in exchange for the extinguishment of such Eligible Member's membership interest in MHC, in accordance with the terms of a plan of demutualization and dissolution (the D&D Plan), adopted by MHC and implemented in accordance with Kansas Insurance Law.

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

Section II. General Conditions

(a) The D&D Plan was implemented in accordance with procedural and substantive safeguards that were imposed under the laws of the State of Kansas and was subject to review, approval, and supervision by the Kansas Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviewed the terms that were provided to Eligible Members as part of such Commissioner's review of the D&D Plan, and the Commissioner approved the D&D Plan following a determination that such D&D Plan was fair and equitable to all Eligible Members.

(c) Each Eligible Member had an opportunity to comment on the D&D Plan at the Commissioner's public comment meeting or evidentiary hearing on the D&D Plan.

(d) Each Eligible Member had an opportunity to vote to approve the D&D Plan after full written disclosure was given to the Eligible Members by MHC.

(e) Pursuant to the D&D Plan, an Eligible Member generally received cash, except that an Eligible Member received Policy Credits, and not cash, to the extent that—

(1) Consideration was allocable to the Eligible Member based on ownership of a Tax-Qualified Contract; or

(2) SBL made an objective determination that payment of Consideration in the form of cash would be disadvantageous to such Eligible Member in respect of applicable income or other taxation provisions.

(f) Any determination made by SBL under Paragraphs (e)(1) or (e)(2) above was based upon objective criteria that was applied consistently to similarly situated Eligible Members.

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

(g) Any act or determination undertaken by an Eligible Member that was a Plan with respect to attending and/or submitting comments for the Commissioner's public comment meeting and/or evidentiary hearing, attending MHC's special meeting to consider the D&D Plan, and/or voting on the D&D Plan, was made by one or more Plan fiduciaries that were independent of SBL and its affiliates, and neither SBL nor any of its affiliates provided investment advice within the meaning of 29 CFR 2510.3–21(c) or exercised investment discretion with respect to such act or determination.

(h) All Eligible Members that were Plans participated in the demutualization of MHC (the Demutualization) on the same basis as all other Eligible Members that were not Plans.

(i) No Eligible Member paid any brokerage commissions or fees in connection with the receipt of Policy Credits.

(j) All of SBL's policyholder obligations remained in force and were not affected by the D&D Plan.

(k) The terms of the Demutualization were at least as favorable to the Plans as the terms of an arm's length transaction between unrelated parties.

(l) Any Plan Eligible Member whose Consideration was placed in a trust, escrow account, or other similar arrangement (the Escrow Arrangement), pursuant to the D&D Plan, will receive a distribution of such Consideration from the Escrow Arrangement, and will not forfeit such Consideration.

(m) SBL maintains or causes to be maintained, for a period of (6) six years, the records necessary to enable the persons described in paragraph (n)(1) of this section to determine whether the applicable conditions of this exemption have been met. Such records are readily available to assure accessibility by the persons identified in paragraph (n)(1) of this section.

(n)(1) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (m) of this section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of an Eligible Member that is a Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Eligible Member that is a Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any Eligible Member that is a Plan, or any duly authorized representative of such participant or beneficiary.

(2) A prohibited transaction is not deemed to have occurred if, due to circumstances beyond the control of SBL, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than SBL is subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (n)(1) of this section.

(3) None of the persons described in paragraphs (B)–(D) of section (n)(1) are authorized to examine the trade secrets of SBL or commercial or financial information which is privileged or confidential.

(4) Should SBL refuse to disclose information on the basis that such information is exempt from disclosure, SBL shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term "MHC" means Security Benefit Mutual Holding Company, and any affiliate of MHC, as defined below in Section III(b).

(b) An "affiliate" of a person includes—

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

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

(c) The "Adoption Date" refers to March 2, 2010, the date that MHC's Board of Directors adopted the D&D Plan.

(d) The term "Consideration" means the cash or Policy Credits receivable by an Eligible Member in exchange for the extinguishment of such Eligible Member's membership interest in MHC, in accordance with the terms of the D&D Plan.

(e) The "D&D Plan" means the plan of demutualization and dissolution adopted by MHC and implemented in accordance with Kansas Insurance Law, dated as of March 2, 2010.

(f) The term "Eligible Member" means a person, other than MHC or its subsidiaries, who, as reflected in the records of SBL or other relevant entities, is the owner of one or more Eligible Policies on the Adoption Date.

(g) The term "Eligible Policy" or "Eligible Policies" means a policy that, as reflected in the records of SBL or other relevant entities, is in force on the Adoption Date, unless the policy is excluded pursuant to the D&D Plan.

(h) The term "Policy Credit" means consideration to be paid in the form of an increase in cash value, account value, dividend accumulations or benefit payment, as appropriate, depending upon the policy.

(i) The term "SBL" means Security Benefit Life Insurance Company and any affiliate of SBL, as defined in Section III(b).

(j) The term "Tax-Qualified Contract" means an Eligible Policy in one of the following forms, that is held, other than through a trust, on the date that Consideration is distributed—

(1) An annuity contract that qualifies for the treatment described in section 403(b) of the Code;

(2) An individual retirement annuity within the meaning of section 408(b) of the Code;

(3) An individual annuity contract or an individual life insurance policy issued directly to a Plan participant pursuant to a Plan qualified under section 401(a) or section 403(a) of the Code;

(4) A group annuity contract issued to an employer, designed to fund benefits under a Plan sponsored by the employer that qualifies under section 401(a) or section 403(a) of the Code;

(5) An annuity contract issued in connection with a Plan established by a governmental entity that qualifies for the treatment described in section 457 of the Code; or

(6) Any other form of contract MHC determines must receive Policy Credits in order to retain the contract's tax-favored status.

Section IV. Effective Date

If granted, this proposed exemption will be effective as of July 30, 2010.

Summary of Facts and Representations

MHC and Affiliated Entities

1. MHC, which is no longer in existence, was the Topeka, Kansas-based, former common parent of a consolidated group of companies that included Security Benefit Corporation (SBC), which in turn was the parent corporation of a consolidated group of companies that included Security

Benefit Life Insurance Company (SBL).[3] MHC was formed in 1998 as a mutual holding company for SBL and its affiliates. At the time of MHC's formation, SBL converted from a mutual life insurance company to a stock life insurance company within a mutual holding company structure pursuant to a plan of conversion (the Prior Conversion). The Prior Conversion had the effect of separating policyholders' contract rights and membership interests under SBL's policies such that the contract rights under the policies remained with SBL and the membership interests transferred to MHC.

2. As a mutual holding company, MHC could not issue common or preferred stock. Instead, SBL policyholders, by reason of their ownership of SBL policies, became members of MHC (the Members) and had certain rights under Kansas law. These rights (Membership Interests) entitled the Members to vote on members of the Board of Directors of MHC and on extraordinary transactions and to receive assets in the event of the demutualization, dissolution or liquidation of MHC. The rights inherent in each Membership Interest were created by operation of Kansas law solely as a result of the policyholder's acquisition of the underlying SBL policy. Further, if an SBL policyholder surrendered his or her SBL policy, or if the contract terminated by the payment of benefits to the policy beneficiary, the policyholder's Membership Interest would terminate without payment of any consideration.

3. The Applicants explain that, as a mutual insurance holding company, MHC was not authorized to engage in the business of insurance. It was also not authorized to pay dividends or to make any other distributions or payments of income or profit, except as was directed or approved by the Commissioner or was provided by MHC's Articles of Incorporation in the event of MHC's liquidation or dissolution.

4. SBL, a direct wholly-owned subsidiary of SBC and an indirect wholly-owned subsidiary of MHC, is the largest Kansas-domiciled stock life insurance company, and is licensed to sell insurance products in every state except New York. Also based in Topeka, Kansas, SBL was founded in 1892 and became a mutual life insurance company in 1950, assuming its present name. SBL remained a mutual life insurance company until it converted to a stock company within a mutual holding company structure in 1998 in the Prior Conversion.

5. According to the Applicants, a major part of SBL's business involves the sale of (a) Annuity contracts that are held as part of tax-qualified and tax-sheltered retirement plans described in section 401(a), section 403(a), and section 403(b) of the Code, (b) annuities as part of individual retirement accounts or as individual retirement annuities described in section 408 of the Code and (c) annuity contracts held as part of plans described in section 457 of the Code. The Applicants represent that certain affiliates of MHC and SBL provide services to retirement plans, including SFR, which provides recordkeeping and related non-discretionary administrative services to retirement plan policyholders of SBL. The Applicants state that the SBL policyholders do not include any plans sponsored by MHC, SBL and/or any of their respective affiliates.

The Party in Interest Relationship/ Request for Exemptive Relief

6. The Applicants represent that neither MHC nor SBL is a "party in interest," as that term is defined in the Act, with respect to any Eligible Member which is an employee benefit plan or retirement arrangement that is subject to section 406 of the Act and/or section 4975 of the Code merely because SBL has issued an insurance policy to such Plan. However, according to the Applicants, affiliates of MHC and SBL provide a variety of services to Plans that are Eligible Members. The Applicants state that the provision of such services may cause MHC and/or SBL, due to their relationship with the service providers, to be parties in interest with respect to such Plans by reason of the derivative provisions of section 3(14) of the Act.

7. The Applicants note that, as a practical matter, it is not possible to identify all of the party in interest relationships that may exist between MHC and SBL and the Plans. Accordingly, the Applicants are seeking a broad exemption from the prohibited transaction restrictions of the Act in order to resolve inadvertent prohibited transactions that may occur in connection with implementation of the D&D Plan. As such, the Applicants have requested exemptive relief to cover the receipt of cash or Policy Credits by both trusteed and non-trusteed Plans upon the extinguishment of their existing Membership Interests in MHC, which may be viewed as a prohibited sale or exchange of property between such Plan and MHC and/or SBL in violation of section 406(a)(1)(A) of the Act and could also be construed as a transfer of plan assets to, or a use of plan assets by or for the benefit of, a party in interest in violation of section 406(a)(1)(D) of the Act. If granted, the exemption will be effective as of July 30, 2010.

The Decision To Demutualize

8. The Applicants state that, as of December 31, 2009, SBL's policyholder surplus, as reflected in its statutory financial statement, was approximately $427 million. Furthermore, SBL's financial strength rating from Standard & Poor's Ratings Services, a Standard & Poor's Financial Services, LLC business (S&P), as of February 26, 2010, was "BB+." The Applicants represent that SBL's capital and surplus position deteriorated significantly in 2008 and 2009 as a result of, among other things, realized and unrealized losses on collateralized debt obligations and other investments. According to the Applicants, when combined with the impact of lower equity markets on revenues and reserve requirements, these losses resulted in a decline of more than 50% in SBL's capital and surplus between the middle of 2008 and September 30, 2009.

9. In response to the deterioration of SBL's financial condition in 2008 and 2009, MHC's Board of Directors considered, and management pursued, a variety of strategic initiatives aimed at (a) Ensuring that obligations to policyholders would continue to be met, (b) raising significant amounts of new capital, (c) increasing liquidity and risk based capital at SBL, and (d) obtaining an investment grade financial strength rating from the rating agencies. Potential capital raising initiatives included, among other things, reinsurance transactions and other strategic combinations, the sale of various MHC subsidiaries and affiliates, and a merger or demutualization of MHC. MHC's Board of Directors also considered the viability of retaining MHC's current structure.

10. At the time, the Kansas Insurance Department had been closely monitoring SBL's financial condition and efforts to secure additional capital, in order to determine whether regulatory action was warranted or required. Based on the results of the strategic initiatives, and following discussions with the Kansas Insurance Department, MHC's Board of Directors determined that it would not be possible to secure the significant capital infusion needed by SBL to ensure that the

[3] MHC wholly owned SBC, which in turn was the common parent corporation of SBL, First Security Benefit Life Insurance and Annuity Company of New York, Security Financial Resources, Inc. SFR), Security Distributors, Inc., Rydex Holdings, LLC, Security Investors, LLC, Security Global Investors, LLC, and se2, Inc.

company would not become subject to regulatory action while maintaining the current mutual holding company structure.

11. On December 23, 2009, MHC and its direct wholly-owned subsidiary, SBC, entered into a non-binding letter agreement (the Letter Agreement) with Guggenheim Partners, LLC (Guggenheim), an unrelated party, contemplating the following plan: (a) An interim recapitalization of SBL; and (b) MHC's sale of SBC to an investor group led by Guggenheim (the Acquisition) and the concurrent Demutualization and dissolution (the Dissolution) of MHC. The Demutualization and Dissolution, together with the Acquisition, are cumulatively referred to herein as the "Transaction." On February 15, 2010, MHC, SBC and an investment vehicle for the investor group led by Guggenheim, Guggenheim SBC Holdings, LLC (the Investor), entered into a purchase and sale agreement (the Purchase and Sale Agreement) which superseded the Letter Agreement, pursuant to which (a) on February 25, 2010, SBC received $175 million from the Investor in the form of a loan in exchange for a secured note, and contributed the $175 million as capital to SBL (the Interim Recapitalization); (b) assuming that the Demutualization and Dissolution occurred as contemplated, the loan and all accrued interest thereon would be automatically converted into equity in SBC, and SBL would receive, through SBC, up to approximately $175 million in additional capital from the Investor at the closing of the Acquisition; (c) MHC would transfer all of SBC's issued and outstanding shares to the Investor; (d) Eligible Members would as a group, subject to any claims against MHC and certain conditions described herein, receive, in addition to increased capitalization of SBL, up to $20 million in cash or Policy Credits upon the extinguishment of their Membership Interests in MHC in the Demutualization and Dissolution; and (e) funds invested by the Investor would pay for the transaction expenses incurred by MHC, SBC and SBL. Thereafter, on or after the effective date of the Demutualization and Dissolution, MHC would dissolve.

12. The Kansas Insurance Department was actively monitoring the development of the Transaction, including the Letter Agreement, the Purchase and Sale Agreement and the D&D Plan. According to the Applicants, if MHC was unable to consummate the Transaction, MHC would be unable to ensure that the Kansas Insurance Department would not take regulatory action.

13. The Applicants note that MHC's Board of Directors believed that the Transaction would significantly improve SBL's financial condition. The Applicants explain that SBL's improved financial condition would allow SBL to mitigate current capital and regulatory concerns and permit SBL to operate with a stronger capital position, better prospects, higher financial strength ratings, and greater assurance that it will fulfill its obligations to its policyholders. In that regard, S&P improved its financial strength rating on SBL, first to "BB," credit watch positive (from credit watch negative), upon announcement of the Transaction, and then to "BB+," credit watch positive, upon completion of the Interim Recapitalization. S&P had further indicated that it could upgrade SBL to as high as "BBB+" upon closing of the Transaction.[4] In addition to strengthening the capital and surplus of SBL, the Applicants suggest that the cash or Policy Credits totaling up to $20 million in the aggregate, to be provided to Eligible Members upon the extinguishment of their otherwise illiquid Membership Interests, would enable Eligible Members to realize economic value from their Membership Interests that was not otherwise available to them.

14. The Applicants note that the Transaction proceeded on a more expedited basis than is typical of most demutualizations, because of SBL's precarious financial condition. According to the Applicants, MHC's Board of Directors determined that an expedited process was essential in order to avoid SBL becoming subject to regulatory action, thereby imperiling SBL's obligations to its policyholders. Furthermore, the Applicants state that the Board of Directors of MHC was concerned that, as time progressed, and SBL's financial situation worsened, it would be more difficult to effect the sale of SBL to a third party, such as Guggenheim.

Regulatory Supervision

15. Article 40 of Chapter 40 of the Kansas Insurance Code provides a procedural and substantive framework for the demutualization and dissolution of a mutual holding company.[5] Under Section 40–4002(a) of the Kansas Insurance Code, the board of directors of the insurer, by two-thirds majority, must (a) Adopt a resolution stating the reason why the demutualization will benefit the insurer and be in the best interests of its policyholders, and (b) approve a plan of demutualization. Pursuant to Section 40–4002(b) of the Kansas Insurance Code, a draft of the plan of demutualization may be submitted to the Commissioner for preliminary examination and comment prior to or after the adoption of the resolution. In addition, the Commissioner is permitted to retain experts in connection with its review at the expense of the insurer, pursuant to Section 40–4013 of the Kansas Insurance Code.

After the completion of the process of preliminary examination and comment and finalization of any revisions requested by the Commissioner, the plan of demutualization is submitted to the Commissioner for written approval. The plan of demutualization shall not become effective unless it is approved by the Commissioner pursuant to Section 40–4002(c) of the Kansas Insurance Code.

Among other requirements, the Commissioner's approval is subject to a finding that the plan of demutualization is fair and equitable to the policyholders, pursuant to Section 40–4004(a)(1) of the Kansas Insurance Code. This provision also requires the Commissioner to order a hearing on the plan of demutualization, conducted in accordance with the Kansas Administrative Procedure Act, for which the Commissioner will provide no less than twenty days written notice to the insurer and the policyholders (by publication or otherwise).

The plan of demutualization must be voted on by those policyholders who were policyholders of the mutual insurer on the day the plan of demutualization is initially approved by the board of directors of the mutual insurer, pursuant to Section 40–4002(d) and (g) of the Kansas Insurance Code. To be effective, the plan of demutualization must receive approval of two-thirds of those policyholders voting in person or by proxy at a meeting of the policyholders called for that purpose, pursuant to the bylaws of the insurer, except that if a majority of all the policyholders vote in person or by proxy, then approval by a majority of those voting shall constitute approval of the plan of demutualization, in accordance with Section 40–4002(d) of the Kansas Insurance Code.

[4] On Monday, August 2, 2010, three days after the closing of the Transaction, S&P improved its financial strength rating on SBL and its affiliate to "BBB+" from "BB+" and issued a positive outlook report.

[5] Sections 40–4001 and 40–4003a(c)(5) of the Kansas Insurance Code provide the Commissioner with the authority to apply this framework to the demutualization of a mutual holding company.

The meeting for approval of the plan of demutualization by the policyholders must be called by a majority of the board of directors, the chairperson of the board or the president, pursuant to Section 40–4005 of the Kansas Insurance Code. That provision also requires notice of the meeting to be accompanied by a copy of the plan of demutualization and such other information the Commissioner deems necessary to policyholder understanding, including a summary of the plan of demutualization in a form approved by the Commissioner.

16. Consistent with the requirements of the relevant portions of Articles 33 [6] and 40 of Chapter 40 of the Kansas Insurance Code, on March 2, 2010, MHC's Board of Directors unanimously (a) adopted a resolution approving the Demutualization and Dissolution of MHC and (b) approved and adopted the D&D Plan. The D&D Plan was submitted to the Commissioner for preliminary examination and comment in February 2010 and again in March 2010. On March 30, 2010, MHC's Board of Directors adopted a resolution approving and adopting the amended and restated D&D Plan, and they formally filed such plan with the Commissioner, for written approval, on March 31, 2010. In connection with her review of the D&D Plan, the Commissioner retained actuarial, financial, and legal advisors.

17. On March 31, 2010, at least 20 days in advance of the Public Comment Meeting to be held by the Commissioner, MHC provided each Eligible Member with a copy of the Security Benefit Member Information Booklet (MIB), describing in detail the transactions described herein. The Commissioner held the Public Comment Meeting on April 28, 2010, during which statements, questions, and comments were invited to be heard, but none were offered.

18. In addition to the D&D Plan, the Acquisition was subject to the approval of the Commissioner.[7] The Commissioner held an evidentiary hearing regarding the D&D Plan and the Transaction on May 5, 2010. At the hearing, the Commissioner incorporated all evidence, including exhibits submitted in support of the Transaction, into the record, and further announced that the record would remain open until May 11, 2010, to admit additional materials and statements. Subsequently, on May 18, 2010, based on its review of the record, the Commissioner issued an order approving the Transaction, subject to MHC's receipt of the required approval of its members to demutualize and dissolve.

19. A special meeting of the Members for approving the D&D Plan was called by the chairman of MHC's board of directors and took place on May 26, 2010. Each Member entitled to vote was entitled to only one vote regardless of the number of policies or amount of insurance and benefits held by or issued to the Member. According to the Applicants, there were approximately 190,784 Members eligible to vote on the D&D Plan.[8] According to the Applicants, of those members voting, approximately 90 percent voted in favor of the Plan. On July 30, 2010, the Transaction closed, and $165 million of capital was injected into SBL following an initial $175 million infusion on February 25, 2010.

20. The Applicants represent that any act or determination undertaken by an Eligible Member that was a Plan with respect to attending and/or submitting comments for the Commissioner's public comment meeting and/or evidentiary hearing, attending MHC's special meeting to consider the D&D Plan, and/or voting on the D&D Plan, was made by one or more Plan fiduciaries that were independent of SBL and its affiliates, and neither SBL nor any of its affiliates provided investment advice within the meaning of 29 CFR 2510.3–21(c) or exercised investment discretion with respect to such act or determination.

Distributions to Eligible Members

21. As noted above, and as outlined in the D&D Plan, the Investor made available $20 million for payment as Consideration to Eligible Members, provided, however, that this Consideration would be reduced by any claims against MHC in excess of $500,000 in the aggregate that were not otherwise paid or provided for, with the remainder paid as consideration to Eligible Members upon the extinguishment of their Membership Interests (such remainder, the Total Aggregate Consideration).[9] The cash portion of the Total Aggregate Consideration was distributed by check to Eligible Members entitled to receive cash payments, in accordance with the D&D Plan. In addition, pursuant to the D&D Plan, the Investor delivered the Policy Credit funding portion of the Total Aggregate Consideration to SBL, for crediting Policy Credits to Eligible Members entitled to be credited Policy Credits.[10]

22. The Applicants state that, pursuant to the D&D Plan, upon the extinguishment of their Membership Interests, Eligible Members had the opportunity to receive, in addition to the benefits of SBL's capital and surplus being strengthened, their share of the Total Aggregate Consideration. The Applicants represent that the Transaction did not diminish the benefits, values, guarantees and dividend eligibility of the Members' policies, nor did it change the premiums for such policies; however, the Transaction did extinguish the Membership Interests.

23. As described above, the D&D Plan provided Eligible Members whose Membership Interests were extinguished by the Transaction with Consideration in the form of cash or Policy Credits. The D&D Plan provides that, for this purpose, (a) "Eligible Member" means the owner of an Eligible Policy, (b) "Eligible Policy" generally means a policy that was in force as of the close of business on March 2, 2010, the date that the D&D Plan was initially adopted

[6] Article 33 of the Kansas Insurance Code governs insurance holding companies.

[7] Section 40–3304 of the Kansas Insurance Code provides that a domestic insurer, including any person controlling a domestic insurer, shall not be the target of an acquisition, take-over or merger unless the Commissioner approves such action following a hearing conducted in accordance with the Kansas Administrative Procedure Act.

[8] Members who held policies with SBL that were in force as of March 2, 2010, the date on which the D&D Plan was adopted, were eligible to vote on the D&D Plan.

[9] According to the Applicants, as provided by the D&D Plan, individuals having a claim of any kind were afforded an opportunity to file proof of such claim with the Kansas Insurance Department and MHC by May 4, 2010. As part of the Commissioner's approval of the D&D Plan, the Commissioner found the one claim submitted to be invalid. As a result, the Applicants state that the contemplated Total Aggregate Consideration will likely equal $20 million.

[10] "The proceeds of the demutualization will belong to the plan if they would be deemed to be owned by the plan under ordinary notions of property rights. See ERISA Advisory Opinion 92–02A, January 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets." See ERISA Advisory Opinion 2001–02A, February 15, 2001.

by MHC's Board of Directors, unless the policy is excluded pursuant to the terms of the D&D Plan, and (c) "Policy Credit" means Consideration to be paid in the form of an increase in cash value, account value, dividend accumulations or benefit payment, as appropriate, depending upon the policy.

24. Each Eligible Member was allocated only a fixed component of Consideration in an amount determined by dividing the Total Aggregate Consideration by the total number of Eligible Members. The Applicants note that no Eligible Member received any variable component of Consideration, and neither MHC nor any of its subsidiaries were Eligible Members with respect to any policy owned by any of them.

25. Pursuant to the D&D Plan, Consideration was generally paid to Eligible Members in cash; however, Consideration was paid by the crediting of Policy Credits, and not in cash, to each Eligible Member who owned an Eligible Policy that was in force and not in payout status on the date that the Consideration was distributed and was held, other than through a trust,[11] in one of the following forms of Tax-Qualified Contracts:

(a) An annuity contract that qualifies for the treatment described in section 403(b) of the Code;

(b) An individual retirement annuity within the meaning of section 408(b) of the Code;

(c) An individual annuity contract or an individual life insurance policy issued directly to a plan participant pursuant to a plan qualified under section 401(a) or section 403(a) of the Code;

(d) A group annuity contract issued to an employer, designed to fund benefits under a retirement plan sponsored by the employer that qualifies under section 401(a) or section 403(a) of the Code;

(e) An annuity contract issued in connection with a plan established by a governmental entity that qualifies for the treatment described in section 457 of the Code; or

(f) Any other form of contract MHC determined must receive Policy Credits in order to retain the contract's tax-favored status.[12]

26. In addition, Policy Credits were paid to an Eligible Member in the event that SBL determined that payment of Consideration in the form of cash would be disadvantageous to such Eligible Member in respect of applicable income or other taxation provisions. If an Eligible Member owned one or more Tax-Qualified Contracts and one or more other Eligible Policies, Consideration was credited to one of the Eligible Member's Tax-Qualified Contracts or Eligible Policies, as determined by SBL in accordance with operational rules established by SBL for allocating Consideration among one or more of such contracts. According to the Applicants, these rules were intended to be fixed rules that eliminate discretion in their application, and the overriding goal of the rules was to protect Eligible Members from adverse tax consequences.

27. The Applicants represent that, with regard to any determination made by SBL whether an Eligible Member would receive cash or Policy Credits, described above, the form of Consideration to be received by an Eligible Member was determined by SBL based on objective criteria, including the tax-qualification status of the Eligible Policy, whether the Eligible Policy was in payout status, and the number and type of Eligible Policies held by the Eligible Member. Furthermore, the Applicants state that, in order to ensure consistent application and the absence of any discretion in making these determinations, such criteria were set forth in written operating rules.

28. Under the D&D Plan, and except as described below, as soon as reasonably practicable and no more than 60 days following the effective date of the D&D Plan (*i.e.,* July 30, 2010), unless otherwise approved by the Commissioner, (a) SBL or, if applicable and with funds transferred by SBL, any company to which SBL reinsured or coinsured any Eligible Policy, credited Policy Credits to the Eligible Members that were entitled to be credited Policy Credits under the D&D Plan and (b) MHC, SBC, SBL or a bank or trust company (or such other entity) designated by MHC and that was reasonably acceptable to the Investor distributed cash, by check, net of any required withholdings, to the Eligible Members that were entitled to receive such cash. The Applicants state that no interest was payable on the Consideration and no Eligible Member paid any commissions or fees in connection with the receipt of the Consideration.

The Escrow Arrangement

29. The D&D Plan further provided that, if an exemption from the Department had not been granted prior to the effective date of the Transaction (*i.e.,* July 30, 2010), MHC and SBL would delay distribution of Consideration to Eligible Members that were Plans and place the Consideration in an escrow, trust, or similar arrangement (*i.e.,* the Escrow Arrangement) [13] until the earlier of (a) the date the exemption was granted in form and substance satisfactory to SBL (or, if later and applicable to the Eligible Member, the date that private letter rulings from the IRS related to the distribution of Policy Credits to Eligible Members holding Tax-Qualified Contracts (the IRS Rulings) were obtained in form and substance satisfactory to SBL),[14] (b) December 31, 2010, or (c) such later date as may be required by the Commissioner (*i.e.,* June 30, 2011, *see* Representation 34). The D&D Plan further provided that, once the exemption was granted in form and substance satisfactory to SBL, the Consideration held in the Escrow Arrangement would be distributed, without interest, to the Eligible

[11] According to the Applicants, the IRS takes the position that a mutual insurance company's payment of cash consideration to the holder of a tax-qualified retirement contract in connection with the company's demutualization could have adverse tax consequences for the holder, including income taxation on the proceeds, excise tax penalties, and potential disqualification of the contract from favorable tax treatment. However, the IRS has issued a number of private letter rulings in the context of prior demutualization transactions holding that policy credits can be used to compensate holders of tax-qualified retirement contracts for the extinguishment of their membership interests in a demutualization transaction without negatively affecting the tax-favored status of the contract. *See, e.g.,* PLR 200820009 (May 16, 2008); PLR 200240051 (October 4, 2002); PLR 200132033 August 13, 2001); PLR 200124001 (June 18, 2001); PLR 200011035 (March 20, 2000); PLR 9512021 (December 29, 1994); and PLR 9230033 (February 4, 1992) (involving conversions of mutual holding companies as well as mutual insurance companies). Furthermore, the Applicants explain, in situations in which a tax-qualified retirement contract is held in a section 401(a) qualified trust, the IRS considers the membership interest to be held in the trust, which may receive consideration other than policy credits without experiencing adverse tax consequences.

[12] However, cash was paid to an Eligible Member who held an Eligible Policy that was a supplementary contract or a settlement option issued pursuant to an Eligible Policy on or before the effective date of the D&D Plan and to effect the annuitization of an individual deferred annuity, an immediate annuity contract or a deferred annuity contract in the period following deferment of annuity payments, if SBL determined that such cash was not subject to excise tax and did not constitute a prohibited transaction under the Code or cause a disqualification of the policy, or a related plan, in respect of which the cash was issued.

[13] The Applicants represent that the Escrow Arrangement was established with Deutsche Bank Trust Company Americas, a subsidiary of Deutsche Bank AG. The Applicants further represent that SBL has no ownership affiliation or other material relationship to Deutsche Bank Trust Company Americas.

[14] The IRS Rulings were issued on December 20, 2010.

Members that were Plans unless those Eligible Members had been allocated Consideration that was subject to further delay associated with the IRS Rulings. SBC or its affiliates would bear all costs and expenses of maintaining the Escrow Arrangement.

30. According to the Applicants, if Eligible Members holding contracts subject to the Act (ERISA Contracts) or Tax-Qualified Contracts were paid Consideration without having received the exemption or IRS Rulings, adverse consequences could result, including the imposition of prohibited transaction excise taxes under section 4975 of the Code, unanticipated taxes on distributions (including additional taxes under section 72(t) of the Code, excise taxes and withholding penalties) and the potential disqualification of Eligible Members that were Plans. Thus, the Applicants contend that the Escrow Arrangement was necessary because the delivery of Consideration to Eligible Members was not made contingent upon the receipt of the exemption or the IRS Rulings. The Applicants explain that, because time was of the essence in closing the Transaction, MHC could not plan for every contingency, such as the receipt of the exemption and the IRS Rulings.

As noted above, MHC was cognizant of SBL's precarious financial situation and its need to secure a capital infusion resulting from the Acquisition. In addition, MHC was concerned that the Investor would abandon its plans to purchase SBC, and the Kansas Insurance Department would intervene to take regulatory action, if the Transaction was not consummated quickly. Consequently, the Transaction closed on July 30, 2010, and the Escrow Arrangement was utilized to avoid the potential adverse consequences flowing from the receipt of Consideration by Eligible Members holding ERISA Contracts or Tax-Qualified Contracts in advance of the receipt of the exemption or the IRS Rulings.

31. The Applicants further contend that no interest should be required to be paid on any form of Consideration held in the Escrow Arrangement, primarily because the amount of interest would be *de minimis* as to each such Eligible Member.[15] Moreover, the Applicants suggest that the costs associated with calculating and adding the interest to the Consideration would offset any benefit to be derived from the interest payment.[16]

32. The D&D Plan also provides, in Section 5.4, that, if the exemption is not granted in form and substance satisfactory to SBL on or before December 31, 2010 (or such later date as may be required by the Commissioner), the Consideration held in the Escrow Arrangement shall be released to the general account of SBL, and Eligible Members that are Plans and otherwise entitled to receive Consideration under the D&D Plan in respect of their Tax-Qualified Contracts or ERISA Contracts, as the case may be, will receive no Consideration in connection with the Transaction.

33. According to the Applicants, the December 31, 2010 deadline for receipt of the IRS Rulings or the exemption constitutes a "failsafe" mechanism, in that it is designed to protect Plans from potential adverse tax consequences or disqualification in the event that Consideration is paid to Eligible Members holding Tax-Qualified Contracts or ERISA Contracts without the requisite regulatory approvals. According to the Applicants, the benefit of receiving the Consideration would be small (approximately $100 per Eligible Member) in comparison to the risk of adverse tax consequences, plan disqualification, and other penalties, if MHC failed to secure the proper regulatory approvals for the Transaction. Furthermore, the Applicants claim that there was a probability that only the exemption or the IRS Rulings would be approved (but not the other), thereby creating a "catch-22" where Consideration could neither be paid to Eligible Members nor kept in the Escrow Arrangement indefinitely. Instead, the Applicants suggest that Eligible Members would be better served in having Consideration flow to SBL for the benefit of SBL's policyholders, generally.

34. Furthermore, the Applicants explain that, at the time that the D&D Plan was approved, MHC believed, based on past precedents, that the December 31, 2010 "failsafe" date would allow adequate time for full consideration of the applications by the IRS and the Department. They also contend that Members assented to the inclusion of the failsafe provisions in the D&D Plan when they approved the D&D Plan after full consideration of its terms, including having had the opportunity to review the MIB, to deliberate and vote on the D&D Plan, and to submit comments to the Commissioner through various formal processes. Furthermore, the Applicants note that the Commissioner approved of the December 31, 2010 deadline and failsafe provisions as fair and equitable and represented in writing to the Department that she would extend the deadline by at least six months if MHC had not secured the IRS Rulings or exemption by December 31, 2010.

35. The Department concurs with the Applicants that the increased complexity and administrative cost involved with paying interest on such Consideration, together with the small amount of Consideration allocable to each Eligible Member, outweigh the benefit in receiving nominal interest on such Consideration.

36. In addition, the Department understands that administrative impracticalities inherent in holding Consideration in the Escrow Arrangement for a period of time, prior to receipt of the exemption and the IRS Rulings, may have provided sufficient rationale for the failsafe provisions. However, the Department views the failsafe mechanism in the D&D Plan as a forfeiture of plan assets and as contrary to the protections afforded to plan assets and the parties who are entitled to such assets under the Act. Moreover, the Department believes that such failsafe mechanism, if employed, would fail to satisfy Section II(h) of the proposed exemption, which provides that Eligible Members that were Plans participated in the Demutualization on the same basis as other Eligible Members that were not Plans, and Section II(l) of the proposed exemption, which prohibits the forfeiture of Consideration. However, because the Commissioner has agreed to extend the December 31, 2010 deadline for an additional 6 months, the Department notes that it is likely that the exemption will be granted prior to such date.[17] Therefore, the forfeiture of the Consideration in the Escrow Arrangement and its associated prohibited transaction implications should not arise.

Merits of the Transaction

37. As previously discussed, the Applicants assert that the Transaction will significantly improve SBL's financial condition, which will allow SBL to mitigate current capital and regulatory concerns and permit SBL to operate with a stronger capital position,

[15] The Applicants state that the amount of Consideration allocable to each Eligible Member is approximately $100, and any interest on such amount would constitute cents on the dollar.

[16] The Applicants maintain that revised calculation requirements, additional tax reporting requirements, and allocation issues all could arise as a result of requiring the crediting of interest on Consideration held in escrow.

[17] As noted in footnote 13, the IRS Rulings were issued on December 20, 2010, prior to the occurrence of the December 31, 2010 deadline.

better prospects, higher financial strength ratings and greater assurance that it will fulfill its obligations to its policyholders. Therefore, according to the Applicants, SBL's policyholders, including those policyholders that are Plans, will derive a significant benefit from the Transaction.

38. Furthermore, the Applicants note that, as part of the Transaction and pursuant to the D&D Plan, Eligible Members, including Plans, also had the opportunity to receive Consideration in the form of cash or Policy Credits upon the extinguishment of such Eligible Members' Membership Interests. These Membership Interests, note the Applicants, were not transferable and had no value independent of the policies to which they were attributable. Therefore, the Applicants maintain, absent the Consideration payable under the D&D Plan, Eligible Members received no remuneration for their Membership Interests in the Demutualization.

Moreover, the Applicants declare that the D&D Plan will not diminish the benefits, values, guarantees and dividend eligibility of the Members' policies, nor will it change the premiums for such policies.

Summary

39. In summary, the Applicants represent that the Transaction satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The D&D Plan was implemented in accordance with procedural and substantive safeguards that were imposed under the laws of the State of Kansas and was subject to review, approval, and supervision by the Commissioner.

(b) The Commissioner reviewed the terms that were provided to Eligible Members as part of such Commissioner's review of the D&D Plan, and the Commissioner approved the D&D Plan following a determination that such D&D Plan was fair and equitable to all Eligible Members.

(c) Each Eligible Member had an opportunity to comment on the D&D Plan at the Commissioner's public comment meeting or evidentiary hearing on the D&D Plan.

(d) Each Eligible Member had an opportunity to vote to approve the D&D Plan after full written disclosure was given to the Eligible Members by MHC.

(e) Pursuant to the D&D Plan, an Eligible Member generally received cash, except that an Eligible Member received Policy Credits, and not cash, to the extent that—

(1) Consideration was allocable to the Eligible Member based on ownership of a Tax-Qualified Contract; or

(2) SBL made an objective determination that payment of Consideration in the form of cash would be disadvantageous to such Eligible Member in respect of applicable income or other taxation provisions.

(f) Any determination made by SBL under Paragraphs (e)(1) or (e)(2) of Section II of the proposed exemption was based upon objective criteria that was applied consistently to similarly situated Eligible Members.

(g) Any act or determination undertaken by an Eligible Member that was a Plan with respect to attending and/or submitting comments for the Commissioner's public comment meeting and/or evidentiary hearing, attending MHC's special meeting to consider the D&D Plan, and/or voting on the D&D Plan, was made by one or more Plan fiduciaries that were independent of SBL and its affiliates, and neither SBL nor any of its affiliates provided investment advice within the meaning of 29 CFR 2510.3–21(c) or exercised investment discretion with respect to such act or determination.

(h) All Eligible Members that were Plans participated in the Demutualization on the same basis as all other Eligible Members that were not Plans.

(i) No Eligible Member paid any brokerage commissions or fees in connection with the receipt of Policy Credits.

(j) All of SBL's policyholder obligations remained in force and were not affected by the D&D Plan.

(k) The terms of the Demutualization were at least as favorable to the Plans as the terms of an arm's length transaction between unrelated parties.

(l) Any Plan Eligible Member whose Consideration was placed in the Escrow Arrangement, pursuant to the D&D Plan, will receive a distribution of such Consideration from the Escrow Arrangement and will not forfeit such Consideration.

(m) SBL complied with and will continue to comply with, the recordkeeping requirements provided herein to enable certain authorized persons to determine whether the conditions of the exemption have been met, for so long as such records are required to be maintained.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693–8553. (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 13th day of January 2011.

Ivan Strasfeld,

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

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