grant CSA's expansion request. The Assistant Secretary will make the final decision on granting the request, and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register.**

### Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on April 20, 2010.

**David Michaels,**

*Assistant Secretary for Occupational Safety and Health.*

[FR Doc. 2010–9546 Filed 4–23–10; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

## Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2010–12; Exemption Application No. L–11566]**

## Grant of Individual Exemption Involving Chrysler LLC, Located in Auburn Hills, MI

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Grant of individual exemption.

This document contains an individual exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). The transactions involve the New Chrysler VEBA Plan and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust) (collectively the VEBA).[1]

**DATES:** *Effective Date:* This exemption is effective as of June 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Warren Blinder, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8553. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On October 5, 2009, the Department published a notice of proposed individual exemption from the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Act (the Notice, or proposed exemption).[2] The proposed exemption was requested in an application filed by New Chrysler, the successor to the assets of Chrysler LLC, pursuant to section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury Department to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is being issued solely by the Department.

### Background

On March 30, 2008, Chrysler LLC and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the UAW), along with respective class representatives (Class Counsel) of plaintiff class members in *UAW* v. *Chrysler LLC* (the English Case) entered into a Settlement Agreement (the English Settlement Agreement) providing, among other things, that Chrysler LLC transfer responsibility and funding for retiree health care benefits to a voluntary employees' beneficiary association (a VEBA).[3] The English Case had been brought to contest Chrysler LLC's asserted right to unilaterally modify the retiree health benefits under the Chrysler Health Care Program for Hourly Employees. Under the English Settlement Agreement, Chrysler LLC's obligation to provide post-retirement medical benefits to the "Class" and "Covered Group" would be terminated, and instead, Chrysler LLC would transfer certain assets to the VEBA Trust to provide the Class and Covered Group with post-retirement medical benefits under the New Chrysler VEBA Plan.[4]

As a result of deteriorating economic conditions and a growing liquidity crisis, on April 30, 2009, Chrysler LLC and 26 of its domestic direct and indirect subsidiaries filed a bankruptcy action under chapter 11 of Title 11 of the United States Code (the Bankruptcy Code) with the Bankruptcy Court and announced a plan for a partnership with Italian automaker Fiat S.p.A. (Fiat).[5] On June 10, 2009, Chrysler LLC completed the sale under Section 363 of the Bankruptcy Code (a Section 363 Sale) of substantially all of its assets to an entity called New Carco Acquisition LLC (later renamed Chrysler Group LLC, and hereinafter referred to as "New Chrysler"), a Delaware limited liability company formed by Fiat North America LLC, a subsidiary of Fiat.[6] As discussed in greater detail in the proposed exemption, Fiat will initially own a minority 20% stake of New Chrysler with the option of acquiring additional equity if certain milestones are met.

Through the Bankruptcy proceeding, New Chrysler acquired certain core assets from Chrysler LLC in exchange for the assumption of certain liabilities of Chrysler LLC and a cash payment to Chrysler LLC pursuant to the Master Transaction Agreement, dated as of April 30, 2009 as subsequently amended (collectively with other ancillary and supporting documents, the "MTA"). Following the Bankruptcy proceeding and the sale of the assets from Chrysler LLC to New Chrysler, initial ownership of New Chrysler will be broken into two classes of membership interests, Class A (800,000 interests) and Class B (200,000 interests). Fiat will initially own the 200,000 Class B membership interests, representing 20% of the voting and economic interest of New Chrysler; the United States Treasury Department (the Treasury Department) will own 98,461 Class A membership interests; the Canadian Government will together own 24,615 Class A membership interests, and the VEBA Trust will own 676,924 Class A membership interests (the Class A membership interests initially owned by the Trust are referred to herein as the "Shares"), in each case, subject to the applicable terms and conditions described below. In addition, after the Sale, New Chrysler became the new legal entity, Chrysler Group LLC.

The assets in the Section 363 Sale were sold free and clear of liens, claims,

[1] Because the New Chrysler VEBA Plan will not be qualified under section 401 of the Internal Revenue Code of 1986, as amended, there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under Title I of the Act.

[2] See Notice of Proposed Individual Exemption Involving Chrysler LLC, Located in Auburn Hills, MI, 74 FR 51182 (October 5, 2009).

[3] *See, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, et al.* v. *Chrysler, LLC,* Civ. Act. No. 2:07–cv–14310 (E.D. Mich, complaint filed October 11, 2007).

[4] The New Chrysler VEBA Plan provides retiree medical benefits to members of the "Class" and the "Covered Group" as defined in the Settlement Agreement and in Section VI. of this exemption.

[5] In light of the Bankruptcy Proceeding, the English Settlement Agreement is of no further force or effect.

[6] *In re Chrysler LLC, et al.,* Case No. 09B 50002 (Document 3073), slip op. (Bankr. S.D.N.Y. May 31, 2009).

interests, and encumbrances. In addition, the claims of Chrysler LLC's unsecured creditors were not assumed by New Chrysler through the Bankruptcy proceeding unless expressly provided for pursuant to the MTA. Among the claims that were not assumed by New Chrysler, was the obligation owed by Chrysler LLC to provide retiree medical benefits pursuant to the Memorandum of Understanding Post-Retirement Medical Care, dated October 12, 2007, between Chrysler LLC and the UAW and the Memorandum of Understanding of Post-Retirement Medical Care, dated April 29, 2009, between Chrysler LLC and the UAW (together, the "MOUs"), as well as the English Settlement Agreement.

The UAW asserted during the Bankruptcy proceeding, and New Chrysler denied, that New Chrysler was bound by the MOUs as a successor to Chrysler LLC and that it was, therefore, responsible for providing the retiree medical benefits contemplated. After engaging in a series of negotiations, New Chrysler and the UAW agreed to enter into an additional settlement agreement that was presented to the Bankruptcy Court for approval once notice was provided to affected parties. Pursuant to the UAW Retiree Settlement Agreement dated June 10, 2009, between Chrysler Group LLC and the UAW (the Modified Settlement Agreement), New Chrysler agreed to provide retiree medical benefits to a defined group of current UAW retirees who were formerly employed by Chrysler LLC as well as a defined group of current active employees (once retired) of New Chrysler who are covered under a collective bargaining agreement between New Chrysler and the UAW (collectively, the Covered Group).

Ultimately, the Modified Settlement Agreement was approved by the Bankruptcy Court and the initial steps towards implementing the transactions that were at the heart of this exemption began to occur as contemplated. Specifically, upon the "Implementation Date," the retiree medical benefit obligations to the Covered Group became fixed and such obligations were transferred to the New Chrysler VEBA Plan and the VEBA Trust. The VEBA Trust was established and maintained by an independent committee (the Committee). Moreover, the Modified Settlement Agreement provided that the New Chrysler VEBA Plan was to be funded exclusively through the VEBA Trust. Accordingly, the VEBA Trust would be solely responsible for the payment of post-retirement medical benefits to members of the Class and Covered Group on and after January 1, 2010.

Under the Modified Settlement Agreement, New Chrysler became obligated to contribute to the VEBA Trust, on behalf of the New Chrysler VEBA Plan, (1) the Shares, which represent sixty-seven and sixty-nine one-hundredths percent (67.69%) of the fully diluted ownership of New Chrysler as of the consummation of the Section 363 Sale; and (2) a note issued by New Chrysler with a principal amount of $4,587,000,000 and an implicit interest rate of nine percent (9%) (the Note), payable in fixed annual installments pursuant to the following schedule:

| | | |
|---|---|---|
| 1 | Payment of $315 million | July 15, 2010. |
| 2 | Payment of $300 million | July 15, 2011. |
| 3 | Payment of $400 million | July 15, 2012. |
| 4 | Payment of $600 million | July 15, 2013. |
| 5 | Payment of $650 million | July 15, 2014. |
| 6 | Payment of $650 million | July 15, 2015. |
| 7 | Payment of $650 million | July 15, 2016. |
| 8 | Payment of $650 million | July 15, 2017. |
| 9 | Payment of $823.8 million | July 15, 2018. |
| 10 | Payment of $823.8 million | July 15, 2019. |
| 11 | Payment of $823.8 million | July 15, 2020. |
| 12 | Payment of $823.8 million | July 15, 2021. |
| 13 | Payment of $823.8 million | July 15, 2022. |
| 14 | Final Payment of $827.1 million | July 15, 2023. |

The Shares and the Note (together, the "New Chrysler Securities") were contributed to the VEBA Trust on June 10, 2009, which was the closing date of the Section 363 Sale. In addition, New Chrysler was obligated, under the Modified Settlement Agreement, to cause the assets held under a pre-existing internal Chrysler LLC VEBA (the Internal VEBA), attributable to the UAW retirees covered under the Modified Settlement Agreement and valued at $1,589,500,000 as of March 31, 2009, to be transferred to the VEBA Trust within 10 days after January 1, 2010.

**Written Comments**

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the Notice on or before November 19, 2009. Due to the failure by the Applicant to notify a small number of interested persons of the Notice, the Department extended the comment period until December 23, 2009.

During the comment period, the Department received ninety-two (92) telephone inquiries and forty (40) written comments from interested persons on the proposed exemption. Of the written comments received, the majority were submitted by participants in the New Chrysler VEBA Plan. In addition, counsel for the Committee and the Independent Fiduciary submitted comments. The Department received no hearing requests during the comment period.

Several of the written comments and callers supported the adoption of the exemption. In this regard, the UAW, along with Class Counsel, reviewed New Chrysler's application for exemption and expressed support for the application and stated their belief that the transactions which are the subject of the exemption are in the best interest of the New Chrysler Plan's participants and beneficiaries. Furthermore, the Department received written comments from the Committee and the Independent Fiduciary which supported the exemption and requested certain modifications and/or clarifications regarding the exemption.

Following is a discussion of the aforementioned comments, including the responses made by the Department to address the issues raised therein.

*Participant Comments*

The telephone inquiries received by the Department from participants in the New Chrysler VEBA Plan related to the commenters' difficulty in understanding the Notice or the effect of the exemption on the commenters' benefits, including

the general concern that the Modified Settlement Agreement is too advantageous to New Chrysler and would not ensure that benefit levels for participants will remain affordable.

With respect to the written comments submitted by interested persons, the majority of commenters neither supported nor opposed the exemption but instead raised other concerns that are beyond the scope of this exemption. Many such comments related to the perceived unfair treatment of retirees within the UAW and Chrysler LLC; a lack of participation afforded to retirees in the process of approving the settlements between Chrysler LLC and the UAW; concerns about the rising costs of healthcare; and the perceived government favoritism of the car companies at retirees' expense.

Several written comments and callers supported the adoption of the exemption. In addition, New Chrysler submitted a comment in support of the application and confirmed that New Chrysler effectuated the asset transfers to the VEBA Trust in accordance with the terms of the Modified Settlement Agreement. Specifically, New Chrysler represented that, pursuant to the Modified Settlement Agreement and under the terms of the Asset and Equivalent Transfer Agreement between New Chrysler and the UAW dated January 1, 2010, New Chrysler transferred $1.97 billion in cash and marketable securities to the VEBA Trust on January 1, 2010.[7]

*The Committee's Comment*

The Committee submitted a written comment that was supportive of the proposed exemption, and suggests certain modifications to the operative language of the proposed exemption and the Summary of Facts and Representations (the "Representations," and individually, a "Representation"). The Committee's comment letter also relates to the respective roles of the Independent Fiduciary and any investment banks retained by the Independent Fiduciary with respect to the Securities held by the VEBA Trust.

*A. Modifications to Summary of Facts and Representations*

1. *Number of Investment Banks.* As illustrated in the right column on page 51187 of the proposed exemption, the Representations state that the VEBA Trust will have three separate retiree accounts (the Separate Retiree Accounts) designed to segregate payments attributable to New Chrysler, General Motors (GM), and Ford Motor Company (Ford), pursuant to the terms of each company's settlement agreement with the UAW and each respective class. As described in the middle column of page 51190 of the proposed exemption, the Committee represented that, in the event that a single Independent Fiduciary represents two or more Separate Retiree Accounts:

> A separate investment bank will be retained with respect to each of the three plans comprising the VEBA Trust. The investment bank's initial recommendations will be made solely with the goal of maximizing the returns for the single plan that owns the securities for which the investment bank is responsible.

In its initial discussions with the Department, the Committee made the argument that the arrangement for retention of separate investment banks would minimize the likelihood of an immediate transactional conflict inherent wherein one Independent Fiduciary managing more than one Separate Retiree Account would be immediately confronted by the need to dispose of the securities of each company.

The Committee has retained Brock Securities LLC (Brock) as the Independent Fiduciary with respect to the Securities, and has currently retained separate independent fiduciaries with respect to the GM and Ford Separate Retiree Accounts. As noted, however, it is conceivable that at some future date any or all three Independent Fiduciary engagements may be consolidated and the foregoing conditions would then come into play. In such event, the Committee argues that the requirement for different investment banks for each Separate Retiree Account would not be in the interest of the New Chrysler VEBA Plan and would not advance the goal of reducing potential fiduciary conflicts. The Committee contends that the need to retain multiple investment banks should be at the discretion of the Independent Fiduciary and the investment banks themselves, or that such requirement should be limited to investment banks performing a traditional underwriting role and being paid on a transactional basis, not those retained for ongoing valuation or investment consulting services.[8]

The Committee points out that, as a threshold matter, the term "investment bank" or "investment banker" is not a precise term, but refers to a range of services including investment valuation, investment consulting and advice, and brokerage or underwriting performed under the authority and supervision of one or more regulators (including, but not limited to the Federal Reserve and/or the Securities and Exchange Commission). The Committee maintains that typically, though not necessarily, an investment bank engaged to provide a regular valuation will not be the same as an investment bank engaged to assist the Independent Fiduciary in connection with a large private sale or an initial public offering, and even in the latter event, different investment banks may be employed for different markets (public versus private, international versus domestic, institutional versus retail).

The Committee suggests that, particularly in the case of an investment bank engaged only to provide valuation or investment advice, the Independent Fiduciary may conclude that there is no potential conflict in retaining a single investment bank with respect to two or more Separate Retiree Accounts. Furthermore, the Committee believes that retaining a single investment bank may in fact provide potential benefits in the form of experience, cost savings, and communication.

According to the Committee, Chrysler, Ford, and GM are at vastly different stages of marketability, are competing for capital in different markets (including public versus private), and are not competing against each other so much as they are part of a huge global automobile market with many other competitors.[9] The Committee notes that a conflict could arise in the unlikely event that the Independent Fiduciary proposes to sell large blocks of stock of two or more car companies in the same market at the exact same time. In that case, the Committee suggests that the Independent Fiduciary would probably (though not necessarily) engage separate investment bankers at that time to underwrite the sales. Furthermore, the Committee contends that it would maintain safeguards to mitigate the risk

[7] Assets held under the Internal VEBA plus the earnings thereon. These assets are in addition to the Shares and Note issued by Chrysler, which were contributed on June 10, 2009.

[8] The Committee suggests that an investment bank performing valuation or investment consulting and advisory services will often be paid a flat or asset-based fee, while an investment bank performing underwriting and brokerage services will be paid a transaction-based fee as a percentage of the overall sale. Additionally, the Committee notes that it is not anticipated that the Independent Fiduciary likely would retain a separate consulting and advisory firm for day-to-day advice (unless appropriate).

[9] According to the Committee, the most likely reason that an investment bank would propose going to market under this scenario is if the overall market itself is booming, such that there is ample appetite for the securities. In the event that a plan needs liquidity in a falling market, the Committee is more likely to explore other options, including reducing benefits or seeking alternative sources of capital such as through borrowing.

of conflicts. For example, the Committee notes that it would still appoint a conflicts monitor and perform its own monitoring of the Independent Fiduciary, and it would continue to raise any questions about potential conflicts.

Accordingly, the Committee proposes that, in the middle column on page 51190 of the proposed exemption, the aforementioned Representation should be revised, to replace the text, as follows:

> In the event that a single Independent Fiduciary is retained to represent two or more plan Accounts, and it proposes to sell Securities from two or more such Accounts at the same time, a separate investment bank (if any) will be retained for each Account with respect to the marketing or underwriting of the Securities. For this purpose, an investment bank will be considered as having been retained to market or underwrite securities if it is compensated on the success of the offering and/or as a percentage of the offering or sales proceeds. The foregoing does not preclude the engagement of a single investment bank to provide valuation services or long-term investment consulting on behalf of two or more plan Accounts, provided that (1) the fees of the investment bank are not contingent upon the success or size of an offering or sale, and (2) for each plan Account, the investment bank's recommendations are made solely with the goal of maximizing the returns for such Account.

In addition, the Committee explains that there may be some confusion as to whether two different Independent Fiduciaries may retain the same investment bank. The Committee states that there should be no limitations on the number of investment banks that the Independent Fiduciary must retain other than general fiduciary principles. According to the Committee, although it is unlikely that an Independent Fiduciary would consider, or that an investment bank would accept, an engagement that might involve marketing securities of two different companies in the same market at the same time, it would not be unusual, for instance, to retain the same investment bank to make a private offering of securities in the domestic market and a public offering of different securities in a foreign market, where such investment bank is best qualified to do so.

Accordingly, the Committee suggests that, on page 51190 of the proposed exemption, the representation be modified to contain the following:

> To the extent that two Accounts are represented by different Independent Fiduciaries, nothing herein shall prohibit the Independent Fiduciaries from retaining the same investment bank with respect to the Accounts which they manage if they determine that it is in the interest of their respective Accounts to do so.

The Committee also requests that the Department clarify that, in all circumstances, the restrictions applicable to investment banks would not apply in the event that the Independent Fiduciary elects to participate in a broader offering of Securities by New Chrysler and such offering is underwritten by an investment bank selected by New Chrysler (*see, e.g.,* Section 3.1(h) of the Registration Rights Agreement), rather than by the Independent Fiduciary.

The Department concurs with the Committee that, in the event that one Independent Fiduciary represents two or more (Separate Retiree) Accounts, and it proposes to sell Securities from two or more such Separate Retiree Accounts at the same time, then a separate investment bank (if any) will be retained for each Separate Retiree Account with respect to the marketing or underwriting of the Securities. Notwithstanding the above, nothing in the final exemption would preclude the Independent Fiduciary of two or more Separate Retiree Accounts from retaining the same investment banker to provide valuation services or long-term investment consulting on behalf of two or more of such Separate Retiree Accounts.[10] Furthermore, with respect to the Committee's suggestion that, to the extent that two Separate Retiree Accounts are represented by different Independent Fiduciaries, nothing herein shall prohibit the Independent Fiduciaries from retaining the same investment bank with respect to the Separate Retiree Accounts which they manage if they determine that it is in the interest of their respective Separate Retiree Accounts to do so, the Department is of the view that a separate investment bank (if any) must be retained to represent each such Separate Retiree Account with respect to the marketing or underwriting of the Securities.

Lastly, the Department concurs with the Committee that the restrictions applicable to investment banks would not apply in the event that the Independent Fiduciary elects to participate in a broader offering of Securities by New Chrysler and such offering is underwritten by an investment bank selected by New Chrysler (*see, e.g.,* Section 3.1(h) of the Registration Rights Agreement), rather than by the Independent Fiduciary. In the Department's view, the likelihood of conflicts is lower than in a situation where an offering of New Chrysler Securities is underwritten by an investment bank retained to sell the securities of one or more of the other Separate Retiree Accounts, because the interests of the New Chrysler VEBA Plan appear to align more closely with the interests of New Chrysler in the marketing and selling of the underwritten securities. Therefore, subject to the limitations above, the Department concurs with the Committee's requested clarifications.

2. *Reporting Deviations From an Investment Bank's Recommendations.* If a single Independent Fiduciary is retained with respect to more than one Separate Retiree Account, in the middle column on page 51190 of the proposed exemption, the preamble provides that the Independent Fiduciary shall report each instance in which it proposes to "deviate" from a "recommendation" of the investment bank. The Committee initially represented to the Department that such arrangement would help to minimize the likelihood of a conflict inherent in retaining one Independent Fiduciary to manage the securities of more than one Separate Retiree Account.

However, the Committee now proffers that this requirement may not be practical, in light of information gained during the process of interviewing and selecting the Independent Fiduciaries in connection with the Ford, GM, and Chrysler exemption applications. The Committee notes that, typically, an investment bank will not "recommend" a single, specific course of action, but through a dialogue with the Independent Fiduciary will present, discuss, modify and refine various options and scenarios that the Independent Fiduciary ultimately will use in making its decisions as a fiduciary. Thus, the Committee argues that it would not be feasible for the Independent Fiduciary to report back to the Committee when it proposes to deviate from a specific recommendation, given that interactions between the Independent Fiduciary and an investment bank generally lack a single, identifiable "recommendation" (either orally or in writing) that the Independent Fiduciary does or does not intend to follow.

Moreover, the Committee contends that some investment banker recommendations are unlikely ever to

[10] In reaching the Department's conclusion, it is our understanding, based on the Committee's representations, that the fees paid to a single investment bank to provide valuation services or long-term investment consulting on behalf of two or more Separate Retiree Accounts will not be contingent upon the success or size of an offering or sale, and for each Separate Retiree Account, the investment bank's recommendations are made solely with the goal of maximizing the returns for such Account.

raise conflict issues. For instance, the Committee notes that an investment bank may recommend that the VEBA Trust sell stock of New Chrysler in the market on a particular day, but the Independent Fiduciary determines that it would be more convenient to wait 24 hours. According to the Committee, it is questionable whether the Independent Fiduciary's decision constitutes a deviation. Similarly, the Committee notes that an investment bank may develop a preliminary valuation of certain New Chrysler Securities of $xx, and after thorough consideration, the Independent Fiduciary may determine that such securities are actually worth $yy. In such event, the Committee suggests that the Independent Fiduciary's valuation might be viewed as a "deviation" from the initial recommendation but is unlikely to raise any conflict vis-à-vis any Securities held by the VEBA Trust.

The Committee is also concerned that the requirement for the Committee to review the reported deviations will cause the Committee to interpose itself between the two parties before such parties have reached a consensus. In this event, the Committee explains that it may have an implied obligation to substitute its judgment for that of the Independent Fiduciary.

The Department concurs with the Committee's comment that their initial representation that the Independent Fiduciary would report any deviations from the recommendation of the investment bank raises operational issues. Nevertheless, the Department notes that the Independent Fiduciary and the Committee are not relieved from their fiduciary duties under the Act in carrying out their respective responsibilities. There may be circumstances where the Independent Fiduciary has a responsibility under the Act to inform the conflicts monitor or the Committee of a deviation from the investment bank's recommendations, and the Committee, as part of its oversight responsibility, may need to take appropriate action based on such disclosure. Subject to the caveat above, the Department takes note of these clarifications and updates to the Summary of Facts and Representations of the proposed exemption.

*B. Requests for Confirmation*

1. *Conditions Applicable in the Event That the Committee Appoints a Single Independent Fiduciary.* The Committee's comment requested confirmation that certain terms and conditions described in the Representations, in the middle column on page 51190, and incorporated into Sections II(b)(i) through (iii) on page 51192 of the proposed exemption, would apply only if and to the extent that the same Independent Fiduciary is appointed to represent two or more Separate Retiree Accounts.

Sections II(b)(i) through (iii) of the proposed exemption provide that the Committee will take certain steps to mitigate potential conflicts of interest, including the appointment of a conflicts monitor, the adoption of procedures to facilitate prompt replacement of the Independent Fiduciary due to a conflict of interest, the adoption of a written policy by the Independent Fiduciary regarding conflicts, and the periodic reporting of actual or potential conflicts. Additionally, in the middle column on page 51190 of the proposed exemption, the Representations provide that a separate investment bank will be retained with respect to each Separate Retiree Account, and in the event that the Independent Fiduciary deviates from the "initial recommendations" of an investment bank, "it would find it necessary to explain why it deviated from a recommendation."

The Department concurs with the Committee, that the terms and conditions described above will apply only if and to the extent that the same Independent Fiduciary is appointed to represent two or more Separate Retiree Accounts. Notwithstanding the above, nothing in the final exemption would preclude the Committee from adopting procedures similar to those described in Sections II(b)(i) through (iii) of the proposed exemption in furtherance of its oversight responsibilities. However, the Department believes that the requirement that the Independent Fiduciary retain separate investment banks with respect to each Separate Retiree Account, subject to the limitations described above, applies regardless of how many Separate Retiree Accounts are represented by the same Independent Fiduciary.

2. *Investment Bank's Acknowledgement that the VEBA Trust is its Ultimate Client.* On page 51193 of the proposed exemption, Section II(e) provides that "any contract between the Independent Fiduciary and an investment banker includes an acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA Plan." In assisting the Department in formulating the conditions of the proposed exemption, the Committee represented to the Department that such acknowledgement would be helpful in the event that the Committee is forced to replace the Independent Fiduciary (such as in the event of an irreconcilable conflict). The Committee reasoned that this requirement would ensure that, in the event the Independent Fiduciary was replaced, the investment banker would continue to represent the plan and work with the replacement Independent Fiduciary.

After conducting interviews and consulting with numerous parties in its search for an independent fiduciary to manage the Securities received by the New Chrysler VEBA Plan, the Committee has raised concerns regarding such condition. The Committee has requested that the Department confirm that this condition will not cause the investment bank to become a fiduciary or otherwise obligate the investment bank or the Independent Fiduciary to provide to the Committee any of the investment bank's work product except upon request, nor will it obligate the Committee to request or review any such work product. The Committee contends that the Independent Fiduciary is both a named fiduciary and an investment manager, thus it should be free within the parameters of its contract to determine what information it shares with the Committee.

The Department confirms that the requirement that the investment banker acknowledge that its ultimate client is the New Chrysler VEBA Plan will not, by itself, make the investment banker a fiduciary of the New Chrysler VEBA Plan. Rather, whether an investment banker referred to in Section II of the proposed exemption becomes a fiduciary as a result of its provision of services depends on whether it meets the definition of a "fiduciary" as set forth in section 3(21) of the Act and the regulations promulgated thereunder.

3. *Obligation of the Committee to Review the Investment Banker Reports.* As described in the middle column on page 51190 of the proposed exemption, the Representations describe several safeguards that are provided to reduce the risk of conflict in the event that a single independent fiduciary is retained with respect to more than one Separate Retiree Account. Specifically, in assisting the Department to formulate these procedures, the Committee had suggested that a "conflicts monitor" would develop a process for identifying potential conflicts. As a result, the Department added Section II(b)(i)(2) of the proposed exemption, which provides that a conflicts monitor appointed by the Committee "regularly review the * * * investment banker reports * * * to identify the presence of factors that could lead to a conflict."

After conducting interviews with candidates for the Independent

Fiduciary position, the Committee has raised a concern regarding the conflicts monitor's duties. The Committee has requested confirmation that Section II(b)(i)(2) does not independently impose any obligation on the Committee to provide (or request) "investment banker reports" as a matter of course (i.e., beyond the Act's general fiduciary requirements). In its comment letter, the Committee notes that it may be appropriate for the conflicts monitor or the Committee (or any subcommittee with delegated authority) to review investment banker reports when provided to them by the Independent Fiduciary, or to request such reports under certain circumstances. However, the Committee maintains that such reports may contain information that is confidential or proprietary, or preliminary, or simply irrelevant to its responsibilities. Furthermore, according to the Committee, it is not clear what constitutes a "report," with the result that informal notes and/or emails may fall under the definition.

The Department concurs with the Committee that Section II(b)(i)(2) of the proposed exemption does not independently impose an affirmative obligation on the Committee to provide (or request) "investment banker reports" as a matter of course beyond the Act's general fiduciary requirements.

*The Independent Fiduciary's Comment*

The Independent Fiduciary, Brock, submitted a written comment that was supportive of the proposed exemption, and suggests certain modifications to the operative language of the proposed exemption and the Representations. Brock's comment relates to the effects of a potential corporate transaction involving New Chrysler, including a change in corporate structure of the company and the VEBA Trust's potential acquisition of additional employer securities pursuant to future corporate reorganizations and other ministerial changes to certain definitions in Section VI of the proposed exemption. In addition, Brock suggests certain revisions to the Representations meant to correct or clarify information presented in the proposed exemption.

A. Clarifications to the Operative Language

1. *Change in New Chrysler's Corporate Structure.* As described in the Representations, in the far right column on page 51184 of the proposed exemption, New Chrysler is a Delaware limited liability company that was formed by Fiat North America LLC, a subsidiary of Fiat, in order to receive the assets of Chrysler LLC, generally free and clear from all liens in connection with the Section 363 Sale. Brock notes that, in the event of consolidation, merger, sale, conveyance or public offering of New Chrysler, the company may no longer take the form of a Delaware limited liability company. Therefore, Brock suggests that Section VI(i), on page 51195 of the proposed exemption, should be amended to read in its entirety as follows:

> The term "New Chrysler" shall mean a Delaware Limited Liability Company formed by Fiat North America LLC, a subsidiary of Fiat S.p.A., a manufacturer of automobiles and automotive parts in Turin, Italy, and its successors and assigns. New Chrysler is the Company that acquired certain assets and liabilities from Chrysler LLC pursuant to the Section 363 Sale.

The Department concurs with Brock that in the event of a consolidation, merger, sale, conveyance or public offering of New Chrysler, the company may no longer take the form of a Delaware limited liability company. Accordingly, the Department has made changes to the Definitions in Section VI(j) of the final exemption to clarify that the term "New Chrysler" includes such entity's successors and assigns in the event of a reorganization, restructuring, recapitalization, merger, or similar corporate transaction.

2. *Effect of Corporate Transaction.* Section I(a), on page 51192 of the proposed exemption, provides exemptive relief for the acquisition, holding, and disposition by the New Chrysler VEBA Plan and the VEBA Trust of the Shares and the Note transferred by New Chrysler and deposited in the Chrysler Employer Security Sub-Account of the Chrysler Separate Retiree Account of the VEBA Trust.

Brock notes that, in the event of a consolidation, merger, sale or conveyance of New Chrysler, its corporate form may be reclassified and its equity interests may no longer fall under the current definition of "Shares" provided in Section VI(k) of the proposed exemption. In such event, the VEBA Trust may no longer hold "Shares," as defined by the proposed exemption. Furthermore, Brock notes that, pursuant to the Shareholders Agreement by and Among Fiat North America LLC, the U.S. Department of the Treasury, the VEBA Trust, 7169931 Canada Inc. (Canada), and the VEBA Holdcos Signatory Thereto (the Shareholders Rights Agreement), Brock, as the Independent Fiduciary, will have limited input in the terms and execution of any corporate transaction. Therefore, in order to continue to provide exemptive relief, Brock suggests that the definition of Shares should be modified to take into account the effect of a future change in New Chrysler's corporate form. Accordingly, Brock requests that Section VI(k) of the proposed exemption be amended in its entirety to read as follows:

> The term "Shares" means the membership interests issued by New Chrysler, including any membership interest, partnership interest, shares of stock or other equity resulting from an adjustment, substitution, conversion, or other modification of New Chrysler Shares in connection with a reorganization, restructuring, recapitalization, merger, or similar corporate transaction, provided that each holder of Shares is treated in an identical manner.

In response to the above referenced comment, the Department confirms that the proposed exemption provides exemptive relief for other equity acquired as a result of an adjustment, substitution, conversion, or other modification of Shares in connection with a restructuring, recapitalization, merger or similar corporate transaction involving New Chrysler. Accordingly, the Department has revised the definition of "Shares" in Section VI(o) of the final exemption, and takes note of the foregoing clarifications and updates to the Representations.

3. *Conforming Relief Requested.* Brock requests that, to the extent the final exemptive relief granted to the Ford or GM separate retiree accounts is equally applicable to the facts and circumstances covered by the proposed exemption for New Chrysler, any such relief be granted with respect to the exemption for New Chrysler as well.

The Department concurs with Brock's request to conform the exemptive relief granted to Ford or GM to the extent that such relief is equally applicable to the facts and circumstances covered by the proposed exemption for New Chrysler.

B. Modifications to Summary of Facts and Representations

1. *Dates of Call Option Exercise Period.* In the middle column on page 51186 of the proposed exemption, the Representations describe certain mechanisms for the VEBA Trust to sell the Shares to other parties prior to New Chrysler becoming a publicly traded company. The Representations provide that, in accordance with the Call Option Agreement, dated as of June 10, 2009, by and among Fiat, the VEBA Trust, Canada, and the Treasury Department (the Call Option Agreement), Fiat has the option to purchase from the VEBA Trust up to 40% of the VEBA Trust's equity interests in New Chrysler, between July 1, 2012 and June 1, 2016.

Brock suggests that, on page 51186 of the proposed exemption, "June 1, 2016" should be corrected to read "June 30, 2016", which is the date set forth in the definition of "Call Option Exercise Period" in the Call Option Agreement. The Department acknowledges the fact that the "Call Option Exercise Period" means that period beginning on July 1, 2012 and ending on June 30, 2016. As such, the Department takes note of the foregoing clarifications and updates to the Representations.

2. *Description of Equity Repurchase Rights.* The Representations, in the left column on page 51187 of the proposed exemption, provide that, in reference to the Treasury Department's repurchase right (a Repurchase Right) under the Equity Recapture Agreement, dated June 10, 2009 between the VEBA Trust and the Treasury Department (the Equity Recapture Agreement), "This right expires upon the earlier of its exercise and the VEBA Trust's surrender of all remaining New Chrysler interests held by the VEBA Trust to the Treasury Department."

However, Brock notes that, under Section III.B of the Equity Recapture Agreement, it is Fiat's Call Option, not the Treasury Department's, that expires "upon the earlier of the exercise of the Repurchase Right and the surrender to the Holder of all remaining VEBA Interests held by VEBA Holdco or VEBA, as applicable." To clarify the rights of the parties under the Equity Recapture Agreement, Brock proposes that the sentence from page 51187 of the proposed exemption quoted above, and the sentence preceding it, be amended to read as follows:

> In addition, the Treasury Department has the right, at any time, to purchase all outstanding Shares held by the VEBA Trust for an amount equal to the Threshold Amount less the amount of any proceeds already received by the VEBA Trust in respect of any of the Shares (the "Repurchase Right"). The Repurchase Right terminates following any payment on the December 31, 2018 interim settlement date, as described below, under the Equity Recapture Agreement, or upon the payment of the Threshold Amount Excess, if earlier. In addition, the Equity Recapture Agreement provides that the Fiat Call Option expires upon the earlier of the exercise of the Repurchase Right and the VEBA Trust's surrender of all remaining New Chrysler interests held by the VEBA Trust to the Treasury Department.

3. *Voting of Shares by the Independent Fiduciary.* On page 51189 of the proposed exemption, in the middle column, the Representations provide the following:

> Additionally, under the Shareholder Rights Agreement, the New Chrysler VEBA Plan must vote its Membership Interest in New Chrysler in accordance with the recommendations of the independent directors of New Chrysler, in proportion to those recommendations. Therefore, the Independent Fiduciary will have no responsibility for the voting of the Membership Interests.

Brock notes that Section 2.4 of the Shareholders Rights Agreement provides that the VEBA Trust will vote its interests in New Chrysler in accordance with the recommendations of the independent directors, but subject to certain exceptions with respect to major decisions set forth in the Amended and Restated Limited Liability Company Operating Agreement of Chrysler Group LLC, dated and effective as of June 10, 2009 (the New Chrysler Operating Agreement). Brock points out that Section 10.7 of the New Chrysler Operating Agreement provides that if Fiat owns more than 50% of the membership interests of New Chrysler, the Board of Directors shall not take certain major decisions without the prior written consent of each non-Fiat member affected thereby, if such non-Fiat member would be adversely affected by such major decision disproportionately to Fiat. According to Brock, non-Fiat members would include the VEBA Trust.

As such, Brock recommends that the language from page 51189 of the proposed exemption quoted above, beginning with "Therefore, the Independent Fiduciary* * *" be replaced with the following, to reflect the exception with respect to major decisions:

> Therefore, the Independent Fiduciary will have no responsibility for the voting of the membership interests; provided, however, that with respect to certain major decisions, as discussed in Section 10.7 of the Operating Agreement, under certain circumstances New Chrysler will not take such major decisions without the prior written consent of non-Fiat holders once Fiat owns more than 50% of the membership interests in New Chrysler.

Brock also notes that in two instances in the proposed exemption, "membership interests" is capitalized and should be made lower case. The Department takes note of the foregoing clarifications and updates to the Representations.

4. *Fiat's Right of Appointment of Directors.* The Representations on page 51190 of the proposed exemption, in the right column, provide that "Fiat will have the right to appoint four (4) directors once it obtains an aggregate ownership interest of thirty-five percent (35%) or more in New Chrysler and the Final Director will resign once Fiat obtains the right to appoint a fourth director." Brock notes that, according to Section 5.3 of the New Chrysler Operating Agreement, "[f]or so long as Fiat remains a Member and the Fiat Group has a Total Interest exceeding fifty percent (50%), Fiat shall have the right to designate up to five Directors to the Board of Directors to serve as Directors." Accordingly, Brock recommends adding a more complete description of Fiat's rights under Section 5.3 of the New Chrysler Operating Agreement by inserting, after the sentence from the proposed exemption reproduced above, the following:

> Furthermore, Fiat will have the right to appoint five (5) directors once it obtains an aggregate ownership interest of fifty percent (50%) or more in New Chrysler, and the remaining director appointed by the Treasury Department who is not an independent director will resign once Fiat obtains the right to appoint a fifth director.

The Department takes note of the foregoing clarifications and updates to the Representations.

The Department has carefully considered the issues expressed by the commenters in their written comments, including the issues raised by the individuals who had telephoned the Department. After consideration of the commenters' concerns and documentation provided, the Department does not believe that any material factual issues have been raised which would require the convening of a public hearing. Further, after giving full consideration to the entire record, including the comments, the Department has determined to grant the exemption, subject to the modifications and clarifications described herein.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption that was published in the **Federal Register** on October 5, 2009 at 74 FR 51182. 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. L–11566) 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 Disclosure Room of the Employee Benefits Security Administration, Room N–1513, US Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The written comments may also be viewed online at *http://*

*www.regulations.gov,* at Docket ID Number: EBSA–2009–0025.

**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 does not relieve a fiduciary or other party in interest from certain other provisions of the Act, 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;

(2) In accordance with section 408(a) of the Act, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the New Chrysler VEBA Plan and of its participants and beneficiaries; and

(c) The exemption is protective of the rights of participants and beneficiaries participating in the New Chrysler VEBA Plan; and

(3) The exemption is supplemental to, and not in derogation of, any other provisions of the Act, 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.

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act 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 Transactions*

(a) The restrictions of sections 406(a)(1)(A), (B), and (E), 406(a)(2), 406(b)(1) and (2), and 407(a) of the Act shall not apply, effective June 10, 2009, to:

(1) The acquisition by the UAW Chrysler Retiree Medical Benefits Plan (New Chrysler VEBA Plan) and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust) of 676,924 New Chrysler Shares (the Shares) and a note issued by New Chrysler with a principal amount of $4,587,000,000 and an implicit interest rate of nine percent (9%) (the Note) transferred by New Chrysler and deposited in the Chrysler Employer Security Sub-Account of the Chrysler Separate Retiree Account of the VEBA Trust;

(2) The holding of the Shares and the Note by the New Chrysler VEBA Plan in the Chrysler Employer Security Sub-Account of the Chrysler Separate Retiree Account of the VEBA Trust;

(3) The disposition of the Shares and the Note; and

(4) The sale by the New Chrysler VEBA Plan to Fiat S.p.A (Fiat) of Shares pursuant to the exercise by Fiat of the Call Option Agreement and/or the First Offer Right described in the New Chrysler Operating Agreement;

(b) The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act shall not apply, effective June 10, 2009, to:

(1) The payment by New Chrysler, the Existing Internal VEBA, the New Chrysler VEBA Plan, or any affiliate of New Chrysler, of a benefit claim that was the responsibility and legal obligation, under the terms of the applicable plan documents, of one of the other parties listed in this paragraph; and

(2) The reimbursement by New Chrysler, the Existing Internal VEBA, the New Chrysler VEBA Plan, or any affiliate of New Chrysler, of a benefit claim that was paid by another party listed in this paragraph, which was not legally responsible for the payment of such claim, plus interest.

(c) The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act shall not apply, effective June 10, 2009, to the return to New Chrysler of assets deposited or transferred to the New Chrysler VEBA Plan by mistake, plus interest.

*Section II. Conditions Applicable to Section I(a)*

(a) The Committee appoints a qualified Independent Fiduciary to act on behalf of the New Chrysler VEBA Plan for all purposes related to the transfer of the Shares and Note to the Plan for the duration of the Plan's holding of the Shares and Note, except for the voting of the Shares. Such Independent Fiduciary will have sole discretionary responsibility relating to the holding, disposition and ongoing management of the Shares and the Note. The Independent Fiduciary will determine, before taking any of the actions regarding the Shares and the Note, that each such action or transaction is in the interest of the New Chrysler VEBA Plan.

(b) In the event that the same Independent Fiduciary is appointed to represent the interests of one or more of the other plans comprising the VEBA Trust (*i.e.,* the UAW General Motors Retiree Medical Benefits Plan and/or the UAW Ford Retiree Medical Benefits Plan) with respect to employer securities deposited into the Trust, the Committee takes the following steps to identify, monitor and address any conflict of interest that may arise with respect to the Independent Fiduciary's performance of its responsibilities:

(i) The Committee appoints a "conflicts monitor" to: (1) Develop a process for identifying potential conflicts; (2) regularly review the Independent Fiduciary reports, investment banker reports, and public information regarding the companies, to identify the presence of factors that could lead to a conflict; and (3) further question the Independent Fiduciary when appropriate.

(ii) The Committee adopts procedures to facilitate prompt replacement of the Independent Fiduciary if the Committee in its sole discretion determines such replacement is necessary due to a conflict of interest.

(iii) The Committee requires the Independent Fiduciary to adopt a written policy regarding conflicts of interest. Such policy shall require that, as part of the Independent Fiduciary's periodic reporting to the Committee, the Independent Fiduciary includes a discussion of actual or potential conflicts identified by the Independent Fiduciary and options for avoiding or resolving the conflict.

(c) The Independent Fiduciary authorizes the Trustee of the New Chrysler VEBA Plan to dispose of the Shares and the Note only after the Independent Fiduciary determines, at the time of the transaction, that the transaction is feasible, in the interest of the New Chrysler VEBA Plan, and protective of the participants and beneficiaries of the Plan.

(d) The Independent Fiduciary negotiates and approves on behalf of the New Chrysler VEBA Plan any transactions between the New Chrysler VEBA Plan and any party in interest involving the Shares or the Note that may be necessary in connection with the subject transactions (including but not limited to the registration of the securities contributed to the New Chrysler VEBA Plan).

(e) Any contract between the Independent Fiduciary and an investment banker includes an acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA plan.

(f) The Independent Fiduciary discharges its duties consistent with the terms of the New Chrysler VEBA Plan, the Trust Agreement, the Independent

Fiduciary Agreement, and any other documents governing the employer securities, such as the registration rights agreement.

(g) The New Chrysler VEBA Plan incurs no fees, costs or other charges (other than described in the VEBA Trust Agreement and the Modified Settlement Agreement) as a result of the transactions exempted herein.

(h) The terms of any transaction exempted herein are no less favorable to the New Chrysler VEBA Plan than the terms negotiated at arms' length under similar circumstances between unrelated parties.

*Section III. Conditions Applicable to Section I(b)*

(a) The Committee and the New Chrysler VEBA Plan's third party administrator will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the VEBA Trust's independent auditor. The results of this review will be made available to New Chrysler.

(b) New Chrysler and their respective plans' third party administrator(s) will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the respective plans' independent auditor. The results of this review will be made available to the Committee.

(c) Interest on any reimbursed mispayment will accrue from the date of the mispayment to the date of the reimbursement.

(d) Interest will be determined using the applicable OPEB discount rate.[11]

(e) If there is a dispute as to the amount of a reimbursement requested, the parties will enter into an alternative dispute resolution procedure as defined in section VI.(b) of this exemption.

*Section IV. Conditions Applicable to Section I(c)*

(a) New Chrysler must make a claim to the Committee regarding the specific deposit or transfer made in error or made in an amount greater than that to which the New Chrysler VEBA Plan was entitled.

(b) The claim is made within the Verification Time Period, as defined in Section VI(s) of this exemption.

(c) Interest on any mistaken deposit or transfer will accrue from the date of the mistaken payment to the date of the repayment.

(d) Interest will be determined using the applicable OPEB discount rate.

(e) If there is a dispute as to the amount of a mistaken payment, the parties will enter into an alternative dispute resolution procedure as defined in Section VI(b) of this exemption.

*Section V. Conditions Applicable to Section I(a),(b),(c)*

(a) The Committee and the Independent Fiduciary maintain for a period of six (6) years from the date the Note or any Shares are transferred to the New Chrysler VEBA Plan the records necessary to enable the persons described in paragraph (b) below to determine whether conditions of this exemption have been met, except that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Committee and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Committee or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (b) below; and

(b) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (a) above shall be unconditionally available at their customary location during normal business hours to:

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

(B) the UAW or any duly authorized representative of the UAW;

(C) New Chrysler or any duly authorized representative of New Chrysler; and

(D) Fiat or any duly authorized representative of Fiat; and

(E) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(F) the Committee or any duly authorized representative of the Committee; and

(G) any participant or beneficiary of the New Chrysler VEBA Plan, or any duly authorized representative of such participant or beneficiary.

(c) None of the persons described above in paragraphs (b)(B), (E)–(G) shall be authorized to examine trade secrets of New Chrysler, or commercial or financial information which is privileged or confidential, and should New Chrysler refuse to disclose information on the basis that such information is exempt from disclosure, New Chrysler 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 VI. Definitions*

(a) The term "affiliate" means: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; or (3) Any corporation, partnership or other entity of which such other person is an officer, director or partner. (For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual).

(b) The term "Alternative Dispute Resolution Procedure" shall mean, notwithstanding anything in Section 23 of the Modified Settlement Agreement to the contrary, the following process for the resolution of any dispute or controversy arising under Section 5 of the Modified Settlement Agreement for the reimbursement of benefit claims or in Section 9 of the Modified Settlement Agreement for the mistaken deposits. Such disputes shall be resolved in the following manner:

(i) While the parties agree that each of the disputes with respect to mistaken deposits and reimbursement of benefit claims referred to in the Settlement Agreement may be submitted to arbitration, they first shall endeavor to resolve the dispute through the following procedures:

(1) the aggrieved party shall provide the other party with written notice of such dispute;

(2) the written notice shall include a description of the alleged violation and identify the Section(s) of the Settlement Agreement allegedly violated;

(3) the party receiving the notice shall respond in writing within 21 calendar days of receipt of notice; and

(4) within 21 calendar days of that response the parties shall meet in an effort to resolve the dispute.

All the time periods in this definition may be extended by agreement of the parties to the particular dispute.

(ii) Should the parties be unable to resolve the dispute within 30 calendar days from the date of the meeting set forth in this definition, either party may send written demand to the other party that the issue be resolved by arbitration.

[11] OPEB means Other Post-Employment Benefits, and typically includes retiree healthcare benefits, life insurance, tuition assistance, day care, legal services and the like. The OPEB discount rate is a rate used to discount projected future OPEB benefits payment cash flows to determine the present value of the OPEB obligation.

The failure to demand arbitration within 60 calendar days from the date of the meeting as set forth in this definition shall waive any right to such arbitration over the issue, absent mutual written agreement to the contrary by the parties. If a party fails to make a timely demand for arbitration pursuant to this definition, such party may not pursue the dispute in court, and the dispute will be resolved on the basis of the position taken by the opposing or answering party.

(iii) In the event that New Chrysler, the UAW, or the Committee proceed to arbitration in accordance with this definition, that dispute shall be submitted to an arbitrator (the Arbitrator) who will not have the authority to modify or amend the Modified Settlement Agreement, but only to apply the Modified Settlement Agreement, as written, to particular factual situations based on a preponderance of the evidence. The Arbitrator shall not have the authority to award punitive or exemplary damages. Interest shall be paid on any delayed payments as a result of the arbitration process. The interest will be calculated daily at a rate equal to the OPEB Discount Rate for each day that amounts remain outstanding. Such arbitration shall take place in Auburn Hills, Michigan unless otherwise agreed upon in writing by the parties. Any award shall be in writing and issued within 30 days from the close of the hearing, unless the parties otherwise agree. The award shall be final, conclusive and binding on New Chrysler, the UAW, and the Committee. The award may be reduced to judgment in any appropriate court having jurisdiction in accordance with the provisions of the applicable law.

(iv) In the event that a dispute arising under this definition is taken to arbitration, the Arbitrator shall be the arbitrator/umpire used by New Chrysler and the UAW for disputes arising under the then-applicable New Chrysler-UAW National Agreement; provided that, if within 15 days of receipt of the written arbitration demand referred to in (ii) above, the parties agree in writing that the dispute requires an arbitrator with actuarial expertise, then the Arbitrator shall be a person with actuarial expertise upon whom the parties mutually agree in writing, but failing such mutual agreement with 30 days of receipt of the written arbitration demand referred to in (ii) above, the arbitrator/umpire used by New Chrysler and the UAW for disputes arising under then-applicable Chrysler-UAW National Agreement shall select a person with actuarial expertise to serve as the Arbitrator.

(v) New Chrysler, the UAW, and the Committee shall cooperate in setting a hearing date for the arbitration as soon as possible following selection of the Arbitrator.

(c) The term ”Class” or “Class Members” shall mean all persons who are: (i) New Chrysler-UAW Represented Employees who, as of October 29, 2007, were retired from Chrysler LLC with eligibility for Retiree Medical Benefits under the Chrysler Plan, and their eligible spouses, surviving spouses and dependents; (ii) surviving spouses and dependents of any New Chrysler-UAW Represented Employees who attained seniority and died on or prior to October 29, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from New Chrysler and/or the Chrysler Plan; (iii) former New Chrysler-UAW Represented Employees or UAW-represented employees who, as of October 29, 2007, were retired from any previously sold, closed, divested or spun-off Chrysler LLC business unit with eligibility to receive Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan by virtue of any agreement(s) between Chrysler LLC and the UAW, and their eligible spouses, surviving spouses, and dependents; and (iv) surviving spouses and dependents of any former New Chrysler LLC-UAW Represented Employee or UAW-represented employee of a previously sold, closed, divested or spun-off Chrysler LLC business unit, who attained seniority and died on or prior to October 29, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan.

(d) The term “Committee” shall mean the eleven individuals consisting of six independent members and five UAW appointed members who will serve as the plan administrator and named fiduciary of the New Chrysler VEBA Plan.

(e) The term “Covered Group” shall mean: (i) All New Chrysler Active Employees who had attained seniority as of September 14, 2007, and who retire after October 29, 2007 under the Chrysler LLC-UAW National Agreements, or any other agreement(s) between Chrysler LLC and the UAW or New Chrysler and the UAW, and who upon retirement are eligible for Retiree Medical Benefits under the Chrysler Plan or the New Chrysler VEBA Plan, as applicable, and their eligible spouses, surviving spouses and dependents; (ii) all former New Chrysler-UAW Represented Employees and all UAW-represented employees who, as of October 29, 2007, remained employed in a previously sold, closed, divested, or spun-off Chrysler LLC business unit, and upon retirement are eligible for Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan or the New Chrysler VEBA Plan by virtue of any other agreement(s) between Chrysler LLC and the UAW or New Chrysler and the UAW, and their eligible spouses, surviving spouses and dependents; and (iii) all eligible surviving spouses and dependents of New Chrysler Active Employees, or of former New Chrysler-UAW Represented Employees or UAW-represented employees identified in (ii) above, who attained seniority on or prior to September 14, 2007 and die after October 29, 2007 but prior to retirement under circumstances where such employee's surviving spouse and/or dependents are eligible for Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan or the New Chrysler VEBA Plan, as applicable.

(f) The term “Existing Internal VEBA” shall mean the Chrysler VEBA Trust between Chrysler and State Street Bank and Trust Company, which has been maintained by New Chrysler as of June 10, 2009.

(g) The term “Implementation Date” shall mean the later of January 1, 2010 or (ii) the “Final Effective Date,” as defined in the Modified Settlement Agreement.

(h) The term “Independent Fiduciary” means a fiduciary that is (i) independent of and unrelated to Chrysler LLC, New Chrysler, the UAW, the Committee, and their affiliates, and (ii) appointed to act on behalf of the New Chrysler VEBA Plan with respect to the holding, management and disposition of the Shares and the Note. In this regard, the fiduciary will not be deemed to be independent of and unrelated to Chrysler LLC, New Chrysler, the UAW, the Committee, and their affiliates if (1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with Chrysler LLC, New Chrysler, the UAW, the Committee or their affiliates, (2) such fiduciary directly or indirectly receives any compensation or other consideration from Chrysler LLC, New Chrysler, the UAW or any Committee member in his or her individual capacity in connection with any transaction contemplated in this exemption (except that an independent fiduciary may receive compensation from the Committee or the New Chrysler VEBA Plan for services provided to the New Chrysler

VEBA Plan in connection with the transactions discussed herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision), and (3) the annual gross revenue received by the fiduciary, in any fiscal year, from Chrysler LLC, New Chrysler, the UAW or a member of the Committee in his or her individual capacity, exceeds 3% of the fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year.

(i) The term "Modified Settlement Agreement" means the UAW Retiree Settlement Agreement between Chrysler LLC and the UAW dated June 10, 2009.

(j) The term "New Chrysler" shall mean a Delaware Limited Liability Company formed by Fiat North America LLC, a subsidiary of Fiat S.p.A., a manufacturer of automobiles and automotive parts in Turin, Italy, and its successors and assigns in the event of a reorganization, restructuring, recapitalization, merger, or similar corporate transaction. New Chrysler is the Company that acquired certain assets and liabilities from Chrysler LLC pursuant to the Section 363 Sale.

(k) The term "New Chrysler VEBA Plan" refers to the newly created retiree medical employee welfare benefit plan. The plan is an employee welfare benefit plan established and maintained by the Committee, and shall provide retiree medical benefits to the Class and the Covered Group established pursuant to the Modified Settlement Agreement.

(l) The term "Note" shall mean a note issued by New Chrysler with a principal amount of $4,587 billion and an implicit interest rate of nine (9%) payable in fixed annual installments pursuant to the Indenture Agreement. Payments, consisting of accrued and unpaid interest and amortized principal shall be due on July 15 of each year, commencing July 15, 2010 and ending on July 15, 2023.

(m) The term "Registration Rights Agreement" means the Equity Registration Rights Agreement by and among New Chrysler, the Treasury Department, Canada, the VEBA Trust and Chrysler LLC, entered into on June 10, 2009.

(n) The term "Section 363 Sale" means a sale under section 363 of Title 11 of the U.S. Code, by which on June 10, 2009, New Chrysler succeeded to certain assets and liabilities of Chrysler LLC.

(o) The term "Shares" means the membership interests issued by New Chrysler, including any membership interests, partnership interests, shares of stock, or other equity acquired pursuant to an adjustment, substitution, conversion, or other modification of Shares in connection with a reorganization, restructuring, recapitalization, merger or similar corporate transaction involving New Chrysler, provided that each holder of Shares is treated in an identical manner.

(p) The term "Treasury Department" shall mean the United States Department of the Treasury.

(q) The term "UAW" means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

(r) The term "VEBA" means the New Chrysler VEBA Plan and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust).

(s) The term "Verification Time Period" means: (i) With respect to all Shares, the period beginning on the date of publication of the final exemption in the **Federal Register** and ending 60 calendar days thereafter; (ii) with respect to each payment pursuant to the Note, the period beginning on the date of the payment and ending 90 calendar days thereafter; and (iii) with respect to the UAW-Related Account of the Existing Internal VEBA, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of the UAW-Related Account to the New Chrysler VEBA Plan) and ending 180 calendar days thereafter.

Signed at Washington, DC, this 21st day of April, 2010.

**Ivan Strasfeld,**

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

[FR Doc. 2010–9607 Filed 4–23–10; 8:45 am]

**BILLING CODE 4510–29–P**

## NATIONAL SCIENCE FOUNDATION

### Business and Operations Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Business and Operations Advisory Committee (9556).

*Date/Time:* May 18, 2009; 1 p.m. to 5:45 p.m. (EST). May 19, 2009; 8 a.m. to 12 p.m. (EST).

*Place:* National Science Foundation, 4201 Wilson Boulevard, Stafford I, Room 1235.

*Type of Meeting:* Open.

*Contact Person:* Joan Miller, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; (703) 292–8200.

*Purpose of Meeting:* To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

**Agenda**

*May 18, 2010*

Welcome/Introductions; OIRM/CIO/BFA Updates; Post Award/Policy Updates; Performance Evaluation Assessment; Open Government Initiative; NSF Workforce Management/Leadership Development.

*May 19, 2010*

NSF Strategic Plan Update—2010–2015; Future NSF–2013 Lease Expiration; Committee Discussion: Prepare for Meeting with NSF Deputy Director; Discussion with Deputy Director; Closing Committee Discussion/Wrap-Up.

Dated: April 21, 2010.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2010–9554 Filed 4–23–10; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–498 and 50–499; NRC–2010–0162]**

### STP Nuclear Operating Company South Texas Project, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 26.9, for Facility Operating Licenses numbered NPF–76 and NPF–80, issued to STP Nuclear Operating Company (the licensee), for operation of the South Texas Project (STP), Units 1 and 2, respectively, located in Matagorda County, Texas. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed action will have no significant environmental impact.

**Environmental Assessment**

*Identification of the Proposed Action:* The proposed action would consider approval of an exemption for STP, Units 1 and 2, from some of the requirements of 10 CFR Part 26, "Fitness for Duty Rule." Specifically, the licensee requests approval of an exemption from the requirements of 10 CFR 26.205(c), "Work hours scheduling," and (d), "Work hour controls."

The licensee states that during declaration of severe weather conditions such as tropical storm or hurricane force winds, adherence to all work hour controls requirements could impede the