following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Pentobarbital	2270	II

The company plans to import the listed controlled substance as bulk active pharmaceutical ingredient (API) for distribution to compounding pharmacies. It is intended for pharmacies who seek to compound the material into dosage units that will be distributed to terminally ill patients for ''medical aid in dying'' (MAID) in U.S. states where MAID is authorized. No other activity for this drug code is authorized for this registration.

Approval of permit applications can occur only when a registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–04926 Filed 3–8–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Oil Pollution Act

Notice is hereby given that the United States of America, on behalf of the Department of the Interior (''DOI'') acting through the U.S. Fish and Wildlife Service, the State of Oregon represented by Oregon Department of Fish and Wildlife (''ODFW''), and the Confederated Tribes of the Siletz Indians (''Tribes''), (DOI, ODFW and Tribes collectively, the ''Trustees''), are providing an opportunity for public comment on a proposed Settlement Agreement (''Settlement Agreement'') among the Trustees and Blue Line Transportation Company, Inc. (''Blue Line'') .

The settlement resolves the civil claims of the Trustees against Blue Line arising by virtue of their natural resource trustee authority under the Oil Pollution Act of 1990, 33 U.S.C. 2702 for injury to, impairment of, destruction of, and loss of, diminution of value of and/or loss of use of natural resources resulting from the January 27, 2001 discharge of approximately 5,800 gallons of No. 6 fuel oil from a fuel tanker, owned by Blue Line, on U.S. Highway 20, near Toledo, Oregon. Under the proposed Settlement Agreement, Blue Line agrees to pay $175,000 to the DOI Natural Resource Damage Assessment and Restoration Fund, $25,000 to compensate for past assessment costs and $150,000 will be used for restoration activities to compensate the public for recreational and aquatic injuries. Blue Line will receive from the Trustees a covenant not to sue for the claims resolved by the settlement.

The publication of this notice opens a period for public comment on the proposed Settlement Agreement. Comments on the proposed Settlement Agreement should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to the CP Settlement Agreement, DJ No. 90–5–1–1–12115. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $2.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–04960 Filed 3–8–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If granted, these proposed exemptions allow designated parties to engage in transactions that would otherwise be prohibited provided the conditions stated there in are met. This notice includes the following proposed exemptions: D–12031, Midlands Management Corporation 401(k) Plan; D–12012, The DISH Network Corporation 401(k) Plan and the EchoStar 401(k) Plan; D–12048, The Children's Hospital of Philadelphia Pension Plan for Union-Represented Employees.

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, by April 25, 2022.

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, Attention: Application No., stated in each Notice of Proposed Exemption via email to *e-OED@dol.gov* or online through *http://www.regulations.gov* by the end of the scheduled comment period. Any such comments or requests should be sent 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 Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

SUPPLEMENTARY INFORMATION:

Comments:

In light of the current circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (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; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *http://www.regulations.gov* website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

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, unless otherwise stated in the Notice of Proposed Exemption, within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

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

Midlands Management Corporation 401(k) Plan

Oklahoma City, OK

[Application No. D–12031]

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), in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011). The proposed exemption relates to lawsuits and a Chapter 7 Bankruptcy Claim (together, the Lawsuits) filed on behalf of the Midlands Management Corporation 401(k) Plan (the Plan) against former Plan service providers and related parties.[2] The exemption would permit the payment of $8,292,189 to the Plan on December 18, 2018, by Safety National Casualty Corporation (Safety National), the corporate parent of Midlands Management Corporation (Midlands or the Applicant),[3] the Plan sponsor, in exchange for the Plan's assignment to Midlands of the Plan's right to proceeds from the Lawsuits (the Assigned Interests).

The proposed exemption also would permit the potential additional cash payment(s) by Midlands to the Plan if the amount(s) Midlands recovers from the Assigned Interests exceeds $8,292,189. Midlands would be required to immediately transfer the difference to the Plan (*i.e.,* an amount equal to the excess between the Assigned Interest proceeds and $8,292,189 (the Excess Recovery Amount)).[4] If Midlands receives less than $8,292,189 in proceeds from the Assigned Interests, then Midlands would be required to automatically forgive any unrecovered shortfall amount. No Plan assets may be transferred to Midlands in connection with this exemption, if granted, and Midlands would not be permitted to receive or retain any proceeds from the Lawsuits other than from the Assigned Interests. All of the transactions that are the subject of this exemption (the Covered Transactions) and their terms would have to be reviewed and monitored by a qualified, independent fiduciary, who, among other things, must complete and submit a report to the Department confirming that all of

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

[2] In proposing this exemption, the Department is not expressing an opinion regarding the merits of the Plan's lawsuits against its former Plan service providers and related parties, or whether Midlands or related parties met their fiduciary duties with respect to the Plan assets that are the subject of the lawsuit. Among other things, this exemption preserves any right, claim, demand and/or cause of action the Plan may have against: (a) Any fiduciary of the Plan; (b) Midlands; and/or (c) any person or entity related to a person or entity described in (a)–(b).

[3] As described in more detail below, the Restorative Payment was remitted directly to the Plan by Safety National as part of Safety National's 2018 acquisition of Midlands.

[4] However, if there is an excess amount, Midlands may reduce the amount of the excess paid to the plan by the amount of reasonable attorney's fees that Midlands incurred in pursuing the Lawsuits, if the fees were paid to unrelated third parties.

the requirements of this exemption, if granted, have been met.[5]

Summary of Facts and Representations[6]

Background

1. *Midlands.* Midlands is a managing general agent, wholesale broker, program administrator and insurance services provider located in Oklahoma City, Oklahoma.

2. *The Plan.* Midlands sponsors the Plan, which is an individual account defined contribution plan. Plan participants may contribute to their individual Plan accounts through either pretax or Roth deferrals. The Plan is administered by the Retirement Plan Committee (the Committee), which is appointed by Midland's board of directors. As of December 31, 2020, the Plan covered 147 participants and held $15,088,875 in total assets.

3. *Vantage Benefit Administrators.* Up until November 30, 2017, Vantage Benefit Administrators (Vantage) served as the Plan's recordkeeper and third-party administrator. In this capacity, Vantage's responsibilities included providing periodic statements to Plan participants and maintaining records of participant account balances.

4. *The Unauthorized Transfers.* The Applicant represents that, beginning as early as 2013, and continuing through 2017, Vantage caused the unauthorized transfers of Plan assets directly to an account that Vantage used to operate its own business. Vantage caused 180 such unauthorized transfers that totaled in excess of $5.5 million. Vantage concealed the transfers via false account statements and reports.

5. *RSM and the Failure to Monitor.* Beginning in 2013 and continuing through 2016, Midlands retained RSM US, LLP (RSM), an audit, tax, and consulting firm, to audit the Plan on a regular basis. In this capacity, RSM completed annual audit reports of the Plan for the years 2013 through 2016. The Applicant represents that the Committee relied upon RSM's audit findings as a ''critical means'' to monitor Vantage's administration of the Plan. The Applicant further represents that RSM's audit reports ultimately failed to detect the unauthorized withdrawals of Plan assets by Vantage. By Nov. 1, 2017, Vantage's unauthorized withdrawals had reduced total Plan assets to $2,406,654.94, an amount that was approximately $8 million less than the total reported by RSM in an audit report dated two weeks prior (Oct. 13, 2017).

6. *Beasley and the Calculation of Plan Losses.* The Applicant represents that Midlands first became aware of Vantage's unauthorized withdrawals on October 25, 2017. At that time, Midlands engaged Beasley & Company of Tulsa, Oklahoma (Beasley) to investigate and assess Plan losses incurred in connection with Vantage's unauthorized withdrawals. The Applicant represents that Beasley is not affiliated with Midlands, Safety National, or the Plan. Beasley ultimately concluded that the Plan's total losses incurred in connection with Vantage's unauthorized withdrawals was $9,292,189, an amount which includes the principal amount misappropriated by Vantage, plus associated lost interest.[7]

7. *ERISA Lawsuit, Judgment and Bankruptcy.* On December 20, 2017, the Plan and Midlands filed suit against Vantage and its principals, Jeffrey and Wendy Richie, in the United States District Court for the Northern District of Texas in Case No.: 3:17–cv–03459. The complaint alleges that Vantage improperly transferred assets from the Plan. On March 18, 2018, Midlands and the Plan obtained a final judgment (the Judgment) against Vantage and the Richies that awarded $10,170,452.00, plus post judgment interest, including an award of $297,836.75 in attorneys' fees.

On April 19, 2018, an involuntary Chapter 7 bankruptcy petition was filed against Vantage by certain of its creditors in the Northern District of Texas (the Vantage Bankruptcy). The Plan and Midlands have filed a creditor claim against the bankruptcy estate of Vantage. The Vantage Bankruptcy is ongoing.

8. *Other Claims.* In addition to the Claims against Vantage and the Richies, the Plan and Midlands filed Claims against the following entities: (a) Matrix Trust Company (Matrix Trust), formerly known as MG Trust, the Plan's custodian; and (b) RSM and Cole & Reed, P.C. (Cole & Reed), the Plan's former auditors, for misrepresentation, breach of contract, breach of fiduciary duties, violations of state law, aiding and abetting, failure to supervise, and common law fraud. Collectively, the claims against these parties, as well as against Vantage and the Richies, are hereinafter referred to as the Lawsuits.

9. *Plan's Payment from Federal Insurance Company.* On November 5, 2018, the Plan received a $1,000,000 insurance settlement payment in connection with the unauthorized transfers. This settlement payment came via the Plan's crime policy with Federal Insurance Company and was subsequently allocated to participant accounts and reported as ''other contributions'' in the Plan's statement of changes in net assets available for benefits for the year ended December 31, 2018.

10. *Safety National Acquires Midlands.* Before December 18, 2018, Midlands was owned by Caldwell & Partners, Inc. (CAP) and certain individual shareholders of Caldwell Partners, Inc. (the CAP Shareholders). On December 18, 2018, Midlands was acquired by Safety National. Under the Stock Purchase Agreement governing the acquisition, CAP and Midlands merged, with Midlands surviving the merger. Safety National acquired Midlands for a base purchase price of $33 million, minus certain itemized expenses. Among these itemized expenses was an $8,292,189 restorative payment to the Plan to restore losses caused by the unauthorized withdrawals of Plan assets by Vantage (the Restorative Payment). This $8,292,189 Restorative Payment was remitted directly to the Plan by Safety National as part of Safety National's acquisition of Midlands. Midlands currently is a wholly-owned subsidiary of Safety National.

Restitution Made to the Plan

11. *The Restorative Payment.* The Applicant represents that the $8,292,189 Restorative Payment addresses the $9,292,189 in aggregate losses incurred by the Plan, as calculated by the Plan's Independent Fiduciary, minus the $1,000,000 settlement payment that the Plan received from Federal Insurance Company.

12. *The Recovery Rights Agreement.* In exchange for the Restorative

[5] For purposes of this proposed exemption reference to specific provisions of Title I of the ERISA, unless otherwise specified, should be read to refer as well to the corresponding Code provisions.

[6] The Department notes that availability of this exemption would be subject to the express condition that the material facts and representations contained in application D–12031 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there were any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption would cease to apply as of the date of the change.

[7] To calculate lost earnings, Beasley applied the higher of the Plan's actual rate of return as a whole, or the rate of return for the highest performing fund in the Plan's lineup. Beasley represents that, because of market volatility, the Plan's rate of return was negative for the 4th quarter of 2018. Beasley therefore used the fund with the highest rate of return which was the T. Rowe Price Blue Chip Growth fund which had returned 5.32% year-to-date. In addition, Beasley represents that it calculated lost dividends on participant accounts and that the average lost dividends calculation was 4.28%.

Payment, the Plan transferred the Assigned Interests to Midlands pursuant to a Recovery Rights Agreement. As discussed throughout this exemption, the Assigned Interests represent the Plan's rights to receive proceeds from the Lawsuits, with the limitations described below. The Recovery Rights Agreement provides that the Assigned Interests consist of the Plan's rights, title, and interests in and to all financial recoveries payable with respect to the claims underlying the Lawsuits. Under the terms of this proposed exemption, Midlands could not receive or retain any proceeds from the Lawsuits other than from the Assigned Interests.

If Midlands recovers more than $8,292,189 (*i.e.,* the Restorative Payment amount) from the Assigned Interests, Midlands would be required to immediately transfer that excess to the Plan. However, Midlands may reduce the excess amount (but not the Restorative Payment Amount) by the amount of reasonable attorney's fees that Midlands paid to unrelated third parties while pursuing the Assigned Interests. Any amount transferred to the Plan must be accurately and properly allocated to Plan participants' accounts. Conversely, if Midlands recovers less than $8,292,189 from the Assigned Interests (a) the Plan would not be required to repay any amount of the Restorative Payment back to Midlands, and (b) Midlands would be solely responsible for all costs and expenses associated with pursuing the Assigned Interests.

As required under this exemption and as noted above, in entering into the Recovery Rights Agreement, or for any other reason, the Plan did not release any claims, demands, and/or causes of action which it may have or have had against any fiduciary of the Plan, Midland and/or any person or entity related to the Plan or to Midlands. As required under this exemption and as the Applicant represents, the Plan has not and will not incur any expenses or bear any costs in connection with the assignment of its rights under the Recovery Rights Agreement, the Lawsuits, or the exemption request submitted on behalf of the Plan. As required by this exemption and as stated in the Recovery Rights Agreement, the Plan has not and will not pay any interest with respect to the Restorative Payment, and no Plan assets were pledged to secure the Restorative Payment. Finally, this exemption requires the Covered Transactions not to involve any risk of loss to either the Plan or the participants and beneficiaries of the Plan.

13. *Efforts to Recover from Vantage and Other Responsible Parties.* In its initial application for exemptive relief, the Applicant estimated that the ultimate recovery amounts from the Assigned Interests would be as follows: (a) $1.3 million from Matrix Trust; (b) $2.8 million from RSM LLP and Cole & Reed; and (c) between $500,000 and $2 million from the Chapter 7 Estate of Vantage. The Applicant has since supplemented this information and represents that it anticipates recovering up to $4 million total, or approximately 49 percent of the Restorative Payment amount. The Applicant represents that the only remaining claim is the creditor claim against the bankruptcy estate of Vantage, which is not expected to result in any recovery.

Independent Fiduciary Oversight

14. *The Independent Fiduciary.* Midlands retained Prudent Fiduciary Services, LLC (PFS) of West Covina, California, to serve as the independent fiduciary to the Plan with respect to the Covered Transactions. The Applicant represents that the selection of PFS was based solely on PFS's qualifications to serve as a qualified independent fiduciary, and was made after a prudent process, and without regard to whether PFS's views were likely to favor the interests of Midlands, or related parties. PFS provides Independent Fiduciary, ERISA compliance consulting, and expert witness services related to employee benefit plans. PFS represents that its duties and obligations as the Plan's Independent Fiduciary are being carried out by Miguel Paredes. Mr. Paredes is the founder of PFS.

PFS represents and certifies that neither PFS nor Mr. Paredes has, or has had, any material connection or relationship with either Midlands or the Plan that would create a conflict of interest or prevent PFS or Mr. Paredes from carrying out the duties and obligations required of him as Independent Fiduciary to the Plan for the purposes of the Covered Transactions. PFS also represents that the total revenue it has received in each year, from all parties in interest to this exemption, including Midlands and the Plan, represents approximately 0.25% of PFS's total revenue from its prior tax year.

15. In connection with its engagement as Independent Fiduciary, PFS represents the following: (a) No party related to this exemption has, or will, indemnify PFS in whole or in part for negligence and/or for any violation of state or federal law that may be attributable to PFS in performing its duties as Independent Fiduciary on behalf of the Plan; (b) no contract or instrument that PFS enters into with respect to the Covered Transactions that are the subject of the exemption purports to waive any liability under state or federal law for any such violation by PFS; (c) neither PFS, nor any parties related to PFS, have performed any prior work on behalf of Midlands, or on behalf of any party related to Midlands; (d) neither PFS, nor any parties related to PFS, have any financial interest with respect to PFS's work as Independent Fiduciary, apart from the express fees and reimbursement for reasonable expenses paid to PFS to represent the Plan with respect to the Covered Transactions that are the subject of this exemption; (e) neither PFS, nor any parties related to PFS, have received any compensation or entered into any financial or compensation arrangements with Midlands, or any parties related to Midlands; and (f) that PFS has not and will not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations Section 2509.75–4.[8] The Department notes that PFS's continued compliance with each of these representations is a condition of the exemption.

16. *Independent Fiduciary Duties.* As Independent Fiduciary, PFS must: (a) Review the terms and conditions of the Restorative Payment, the Recovery Rights Agreement, and the proposed and final exemption; (b) determine that the Covered Transactions are prudent, in the interest of, and protective of the Plan and its participants and beneficiaries; (c) confirm that the Restorative Payment amount has been made to the Plan and appropriately allocated; (d) continually monitor the Lawsuits and the Assigned Interests on an ongoing basis to determine whether any excess recovery amount should be remitted to and retained by the Plan; and (e) represent that it has not and will not enter into any agreement or instrument that violates ERISA Section 410 or the Department's Regulations Section 2509.75–4.

Additionally, not later than 90 days after the resolution of Midland's efforts to collect proceeds from the Assigned Interests, the Independent Fiduciary must submit a written statement to the Department demonstrating that all of the

[8] ERISA Section 410 provides, in part, that ''except as provided in ERISA sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning ERISA Section 410(a)] shall be void as against public policy.''

terms and conditions of the exemption have been met.

17. *The Independent Fiduciary Report.* On September 4, 2020, Mr. Paredes completed his Independent Fiduciary Report (the Independent Fiduciary Report), wherein he determined that the Covered Transactions were prudent, in the interest of, and protective of the Plan and its participants and beneficiaries. In developing his Independent Fiduciary Report, Mr. Paredes represents that he: (a) Conducted a review of documents related to the litigation involving the Plan, as well as the Assigned Interests; (b) reviewed documents related to the terms and conditions of the Recovery Rights Agreement; (c) conducted discussions with Midland's counsel; and (d) reviewed applicable laws and guidance.

In the Independent Fiduciary Report, Mr. Paredes states that the Covered Transactions are reasonable, prudent, and in the best interest of the Plan and its participants and beneficiaries. Mr. Paredes states that the Recovery Rights Agreement presents a recovery scenario that appears to come with no risk of loss to the Plan and its participants and appears overall to be fair and reasonable from the Plan's perspective. Mr. Paredes states that the Plan will not be responsible for, nor bear any of the expenses or costs associated with, the litigation to recover on the Assigned Interests. Mr. Paredes states that the Covered Transactions benefit the Plan's participants and beneficiaries by allowing them to immediately receive the benefit of the Restorative Payment amount, as opposed to having to wait for the Lawsuits to run their normal course, which could be quite lengthy.

Mr. Paredes states that the Plan and its participants and beneficiaries will benefit from provisions in the Recovery Rights Agreement that would protect them if the actual recovery amounts obtained from the Assigned Interests were different than the Restorative Payment amount received by the Plan. In this regard, Mr. Paredes explains that if the actual recovery amount obtained by Midlands from the Assigned Interests were less than the Restorative Payment amount, Midlands would automatically forgive any unrecovered shortfall amount. However, if the actual recovery amount received were more than the Restorative Payment amount, the Plan would receive and retain any such excess recovery amount. As noted above, this proposed exemption would require the Independent Fiduciary to continually monitor the Lawsuits and the Assigned Interests on an ongoing basis to determine whether there is an excess recovery amount that would be remitted to and retained by the Plan.

In sum, Mr. Paredes concludes that, under the terms of the Recovery Rights Agreement, the Covered Transactions allow the Plan to receive the immediate benefit of the Restorative Payment while preserving the right to retain any excess recovery amounts associated with the Assigned Interests. Mr. Paredes states that the terms and conditions of the Recovery Rights Agreement are at least equivalent to, and for all intents and purposes, more favorable than the terms and conditions the Plan would have been able to obtain in an arm's length transaction with an unrelated party. Mr. Paredes further states that, as a result of the Covered Transactions, the Plan's participants and beneficiaries, would not lose any benefits, and the Plan would not be harmed or legally or financially impaired.

ERISA Analysis

18. ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale or exchange of any property between the plan and a party-in-interest. Midlands, as an employer whose employees are covered by the Plan, is a party-in-interest with respect to the Plan under ERISA Section 3(14)(C). Midlands's contribution of the Restorative Payments to the Plan and the Plan's potential repayment to Midlands with litigation or settlement proceeds would constitute impermissible exchanges between the Plan and a party-in-interest in violation of ERISA Section 406(a)(1)(A).

ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or an indirect transfer to, or use by or for the benefit of, a party-in-interest, of the income or assets of the plan. The Committee is a party-in-interest with respect to the Plan under ERISA Section 3(14)(A), because it is plan fiduciary. The Restorative Payment to the Plan and the Plan's corresponding assignment of Lawsuit proceeds to Midlands pursuant to the Recovery Rights Agreement violate ERISA Section 406(a)(1)(D).

Statutory Findings

19. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for the Department to make the following findings to grant an exemption under ERISA Section 408(a).

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible. In this regard the Department notes that the Independent Fiduciary must represent the interests of the Plan for all purposes with respect to the Covered Transactions. Further, not later than 90 days after the resolution of Midland's efforts to collect proceeds from the Assigned Interests, the Independent Fiduciary must submit a written statement to the Department demonstrating that the Covered Transactions have met all of the terms and conditions of the exemption.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interests of the Plan and its participants. The Restorative Payment immediately provided the Plan with $8,292,189 in cash. If the Plan did not receive the immediate Restorative Payment, the individual account balances of Plan participants would have remained underfunded in the aggregate by $8,292,189 until the Lawsuits were resolved.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of Plan participants and beneficiaries. Among other things, if Midlands ultimately receives more than $8,292,189 from the Assigned Interests, Midlands must immediately transfer the excess between the Assigned Interest proceeds and $8,292,189 to the Plan. If Midlands receives less than $8,292,189 from the Assigned Interest, then Midlands must automatically forgive any unrecovered shortfall amount.

Summary

20. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

Proposed Exemption

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

Section I. Definitions

(a) The term ''Assigned Interests'' means the Plan's right to proceeds from the Lawsuits, which were transferred to Midlands in return for the Restorative Payment.

(b) The term ''Independent Fiduciary'' means Prudent Fiduciary Services, LLC or a successor Independent Fiduciary, to the extent PFS or the successor Independent Fiduciary continues to serve in such capacity, and who:

(1) Is not an affiliate of Midlands and does not hold an ownership interest in Midlands or affiliates of Midlands;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) Is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA Section 410 or the Department's regulation relating to indemnification of fiduciaries at 29 CFR 2509.75–4;

(5) Has not received gross income from Midlands or affiliates of Midlands for that fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from Midlands or from affiliates of Midlands while serving as an Independent Fiduciary. This prohibition will continue for a period of six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(c) The term ''Lawsuits'' means the suit filed by the Plan and Midlands against Vantage and its principals, Jeffrey and Wendy Richie in Case No.: 3:17–cv–03459, the bankruptcy claims filed against the Chapter 7 Estate of Vantage, and the claims filed against Matrix Trust, RSM and Cole & Reed, for misrepresentation, breach of contract, breach of fiduciary duties, violations of state law, aiding and abetting, failure to supervise, and common law fraud.

(d) The term ''Midlands'' includes the following entities: (i) Midlands Management Corporation, (ii) the CAP Shareholders, and (iii) Cap Managers, LLC.

(e) The ''Plan'' means the Midlands Management Corporation 401(k) Plan.

(f) The term ''Recovery Rights Agreement'' means the written agreement under which the Plan agreed to transfer its rights to the Assigned Interests in exchange for the Restorative Payment.

(g) The term ''Restorative Payment'' means the $8,292,189 payment that was remitted to the Plan by Safety National as part of Safety National's acquisition of Midlands.

Section II. Covered Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A) and (D) shall not apply to: (1) The December 18, 2018 Restorative payment of $8,292,189 to the Plan by Safety National in exchange for the Plan's assignment to Midlands of the Assigned Interests; and (2) the potential additional cash payment(s) by Midlands to the Plan if the amount(s) Midlands receives from the Assigned Interests exceeds $8,292,189, provided the conditions described below are met.

Section III. Conditions

(a) The Restorative Payment and any Excess Recovery Amount payment, described below, are properly allocated to the Plan's participants' accounts;

(b) If Midlands receives more than $8,292,189 from the Assigned Interests, Midlands must immediately transfer to the Plan the Excess Recovery Amount, which is the difference between the amount of Assigned Interest proceeds and $8,292,189. Midlands may reduce the Excess Recovery Amount (but not the Restorative Payment amount) paid to the Plan only by the amount of reasonable attorney's fees that Midlands incurred in pursuing the Assigned Interests, if the fees were paid to unrelated third parties;

(c) If Midlands receives less than $8,292,189 from the Assigned Interests, then Midlands must automatically forgive any unrecovered shortfall amount, with no Plan assets transferred to Midlands;

(d) In connection with its receipt of the Restorative Payment, the Plan has not and will not release any claims, demands and/or causes of action it may have against: (1) Any fiduciary of the Plan; (2) Midlands; and/or (3) any person or entity related to a person or entity identified in (1)–(2) of this paragraph;

(e) A qualified, independent fiduciary (the Independent Fiduciary), which is unrelated to Midlands and/or its affiliates and is acting solely on behalf of the Plan in full accordance with its obligations of prudence and loyalty under ERISA sections 404(a)(1)(A) and (B):

(1) Reviewed the terms and conditions of the Restorative Payment, the Recovery Rights Agreement, the proposed exemption and final exemption;

(2) Determined that the Covered Transactions were prudent, in the interest of, and protective of the Plan and its participants and beneficiaries;

(3) Confirms that the Restorative Payment amount was properly made to the Plan and appropriately allocated;

(4) Monitors the Plan's Assigned Interests on an ongoing basis to ensure that all recovery amounts due the Plan were immediately and properly remitted to the Plan;

(5) Monitors and ensures that legal fees paid in connection with the Assigned Interests and the Lawsuits are limited to reasonable attorney's fees paid to unrelated third parties that Midlands incurred in pursuing recoveries from the Assigned Interests and the Lawsuits;

(6) Has not entered into any agreement or instrument that violates ERISA section 410 or Department's Regulations codified at 29 CFR Section 2509.75–4;

(f) No party associated with this exemption has or will indemnify the Independent Fiduciary and the Independent Fiduciary will not request indemnification from any party associated with this exemption, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties to the Plan with respect to the Proposed Transactions. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation;

(g) Not later than 90 days after the resolution of Midlands' collection efforts with respect to the Assigned

Interests, the Independent Fiduciary must submit a written statement to the Department confirming and demonstrating that all of the requirements of the exemption have been met;

(h) If an Independent Fiduciary resigns, is removed, or is unable to serve as an Independent Fiduciary for any reason, the Independent Fiduciary must be replaced by a successor entity that: (1) Meets the definition of Independent Fiduciary detailed above in Section II(b); and (2) otherwise meets all of the qualification, independence, prudence and diligence requirements set out in this exemption. Further, any such successor Independent Fiduciary must assume all of the duties of the outgoing Independent Fiduciary. As soon as possible before the appointment of a successor Independent Fiduciary, the Applicant must notify the Department's Office of Exemption Determinations of the change in Independent Fiduciary and such notification must contain all material information including the qualifications of the successor Independent Fiduciary;

(i) Neither the Independent Fiduciary, nor any parties related to the Independent Fiduciary, have performed any prior work on behalf of Midlands, or on behalf of any party related to Midlands;

(j) Neither the Independent Fiduciary, nor any parties related to the Independent Fiduciary, have any financial interest with respect to the Independent Fiduciary's work as Independent Fiduciary, apart from the express fees and reimbursement for reasonable expenses paid to the Independent Fiduciary to represent the Plan with respect to the Covered Transactions that are the subject of this exemption;

(k) Neither the Independent Fiduciary, nor any parties related to the Independent Fiduciary, have received any compensation or entered into any financial or compensation arrangements with Midlands, or any parties related to Midlands;

(l) The Plan pays no interest in connection with the Restorative Payment;

(m) No Plan assets are pledged to secure the Restorative Payment;

(n) The Covered Transactions do not involve any risk of loss to either the Plan or its participants and beneficiaries;

(o) The Plan has no liability for the Restorative Payment, even in the event that the amount recovered by Midlands with respect to the Assigned Interests is less than $8,292,189;

(p) The Plan does not incur any expenses, commissions or transaction costs in connection with the Covered Transactions and this exemption;

(q) Midlands may not receive or retain any proceeds from the Lawsuits other than from the Assigned Interests;

(r) All terms of the Covered Transactions are and will remain at least as favorable to the Plan as the terms and conditions the Plan could obtain in a similar transaction negotiated at arm's-length with unrelated third parties; and

(s) All of the material facts and representations set forth in the Summary of Facts and Representation are true and accurate.

Effective Date: If granted, the exemption will be in effect as of December 18, 2018.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the notice of proposed exemption (the Notice) include participants and beneficiaries of the Plan. The Applicant will provide notification to interested persons, and to representatives of all the parties to the litigation described above, by electronic mail and first-class mail within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. The mailing will include a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise interested persons of their right to comment and/or to request a hearing.

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

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as a name, address, Social Security number, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

Further Information Contact: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

The DISH Network Corporation 401(k) Plan and the EchoStar 401(k) Plan

Located in Englewood, CO

[Application No. D–12012]

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, as amended (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). The proposed exemption would permit the acquisition and holding by the DISH Network Corporation 401(k) Plan (the DISH Plan) and the EchoStar 401(k) Plan (the EchoStar Plan) of subscription rights that were issued on November 26, 2019, by the DISH Network Corporation (DISH or the Applicant), a party in interest with respect to the Plans.[9]

Summary of Facts and Representations[10]

The Parties

1. *DISH and EchoStar.* DISH is a live-linear television programming provider. Charles W. Ergen is the Chairman and controlling shareholder of DISH. In addition, Mr. Ergen beneficially owns greater than 50% of the total combined voting power of EchoStar Corporation (EchoStar). EchoStar is a global provider of satellite communications solutions.

2. *The DISH Plan.* The DISH Plan is a defined contribution 401(k) plan, with $683,135,811.95 in total assets and 18,936 participants, as of November 25, 2019. In the past, DISH made discretionary employer profit sharing contributions to the DISH Plan, in the form of DISH common stock. The DISH common stock (DISH Stock) is held within a DISH Stock fund (the DISH Stock Fund) in the DISH Plan. Each

[9] For purposes of this proposed exemption, references to the provisions of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code Section 4975.

[10] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in application D–12012 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change.

participant eligible to receive a discretionary profit-sharing contribution under the terms of the DISH Plan is allocated a balance in the DISH Stock Fund when the contribution is made. As of November 25, 2019, the DISH Plan held 3,333,185.696 shares of Class A DISH common stock, with a fair market value of $118,261,428.49, representing approximately 1.3% of DISH's 254,626,165 outstanding shares of Class A common stock.

3. *The EchoStar Plan.* The EchoStar Plan is a defined contribution 401(k) Plan, with $496,363,649.64 in total assets and 2,572 participants, as of November 25, 2019. As of that same date, the EchoStar Plan held 167,634.586 shares of Class A DISH common stock within the DISH Stock Fund of the EchoStar Plan, with a fair market value of $5,938,915.24. The DISH Stock held by the EchoStar Plan, represented approximately 0.03% of DISH's 254,626,165 outstanding shares of Class A common stock.

The Rights Offering

4. On November 7, 2019, DISH announced its intent to conduct a rights offering (the Offering), for general corporate purposes, including investments in DISH's wireless business. Under the Offering, all holders of record of DISH's Class A and B common stock and outstanding convertible notes (as of November 17, 2019 (the Record Date)), would automatically receive certain rights (the Rights), at no charge. Specifically, each holder would receive one (1) Right for every 18.475 shares of DISH Class A or B common stock, or Class A common stock equivalent (as applicable). [11] Fractional Rights were not issued. If an eligible holder would have received a fractional Right, DISH rounded down to the nearest whole number.

5. A total of 29,834,992 Rights to purchase 29,834,992 Class A shares of DISH common stock were issued in the Offering. Each Right entitled the holder to purchase one share of DISH's Class A Common Stock for $33.52 per whole share of Class A Common Stock.[12] Rights could only be exercised in aggregate for whole numbers of shares of DISH's Class A Common Stock. DISH did not include an oversubscription offer to purchase additional shares of Class A Common Stock that may have remained unsubscribed as a result of any unexercised Rights after the expiration of the Offering.

6. On November 22, 2019, DISH distributed the Rights to registered holders of eligible securities. According to the Applicant, the National Association of Securities Dealer Automated Quotation system (NASDAQ) determined that shares of DISH Class A common stock would continue to trade with the right to receive the Rights until November 25, 2019 (the Ex-Date).[13]

7. The Applicant states that all eligible holders held the Rights until the Rights expired, were exercised, or were sold. A holder had the right to exercise some, all, or none of its Rights. The Rights could be exercised commencing on November 22, 2019, and elections to exercise the Rights had to be received by the subscription agent (Computershare Trust Company, N.A.) by 5:00 p.m., Eastern Time, on December 9, 2019. All exercises of the Rights by Rights holders were irrevocable.

8. The Rights were transferable, and they began to trade on the NASDAQ Global Select Market on a ''when-issued'' basis under the symbol ''DISHV'' beginning on November 22, 2019, and on a ''regular way'' basis under the symbol ''DISHR'' beginning on November 25, 2019, the Ex-Date.[14] The Rights continued to trade until the trading deadline at the close of business on December 9, 2019. According to data reported by FactSet, the volume-weighted average price was $0.33 per Right, based on the sale of 15,237,856 Rights during the trading period.

9. The Applicant represents that approximately 81% of the 29,834,992 Rights to purchase 29,834,992 Class A shares of DISH common stock issued in the Offering were exercised and all shareholders of DISH and EchoStar, including the Plans, were treated exactly the same. In addition, the Applicant represents that DISH received gross proceeds of approximately $1 billion from the Offering, and DISH used or will use these proceeds for general corporate purposes.

10. The Applicant represents that each Plan was amended to: (a) Allow for the temporary acquisition and holding of the Rights, pending their orderly disposition; (b) confirm that participants were not entitled to direct the holding, exercise, sale or other disposition of the Rights; and (c) authorize the designated independent fiduciary to exercise discretionary authority with respect to the holding, exercise, sale or other disposition of the Rights.

11. The DISH Plan received 180,084 Rights in connection with the Offering, and the EchoStar Plan received 9,073 rights in connection with the Offering. All decisions regarding the holding and disposition of the Rights by each Plan were made in accordance with the Plan provisions, by a qualified independent fiduciary acting solely in the interest of Plan participants.

The Independent Fiduciary

12. Under the terms of an agreement, dated November 15, 2019 (the Independent Fiduciary Agreement), the DISH Plan's 401(k) Committee and the Investment Committee for the EchoStar Plan, appointed Newport Trust Company (Newport) to act as the independent fiduciary (the Independent Fiduciary) on behalf of the Plans, in connection with the Offering and with respect to the subject exemption request. Newport's responsibilities included determining whether and when to exercise or sell each Right held by the DISH Plan and the EchoStar Plan.

13. Newport is a New Hampshire state-chartered trust company with $90 billion in assets under management and administration as of September 30, 2019. Newport represents that it understands and acknowledges its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plans in connection with the Offering.

14. Further, Newport represents that it is independent of and unrelated to DISH and EchoStar, and that it has not directly or indirectly received any compensation or other consideration for its own account in connection with the Offering, except for compensation from DISH in accordance with and for performing services described in the Independent Fiduciary Agreement. Newport represents that the revenue it has received (or expected to receive) did not exceed 1% of its 2018 annual revenue.

15. Newport was chosen to act as Independent Fiduciary by the 401(k) Committee with respect to the DISH Network Corporation 401(k) Plan, and the 401(k) Investment Committee for the EchoStar 401(k) Plan with respect to the EchoStar 401(k) Plan (the Committees),

[11] According to the Applicant, DISH has no other classes of stock with outstanding shares. DISH's certificate of incorporation authorizes the issuance of Class C shares and preferred shares of stock in addition to Class A and Class B shares, but there are no outstanding shares of Class C common stock or preferred stock.

[12] The Applicant represents that the closing price of DISH Stock on November 21, 2019 was $35.91.

[13] The Applicant represents that if Holder A sold shares of Class A DISH common stock on November 24 to Holder B, who retained the shares through the end of the Offering, then Holder B would receive the Rights. Holder A would not receive Rights because it sold the shares before the Ex-Date for the Offering.

[14] According to the Applicant, the term ''when-issued'' refers to transactions involving securities that have been announced but not yet issued. The transactions only settle after the security has been issued. The Applicant also states that ''regular-way'' trading is conducted on the normal timeframe for purchases and sales of securities on an exchange.

the Plan fiduciaries responsible for making such decisions. According to the Committees, Newport's selection was based solely on its qualifications to serve as an independent fiduciary after a prudent process, and without regard to whether Newport's views were likely to favor the interests of DISH Network and EchoStar, or related parties.

Newport represents that: (a) Neither it nor any related parties have performed any work in connection with the Rights Offering on behalf of the DISH Network and/or its related parties; (b) it does not have any financial interest with respect to the work as the Independent Fiduciary for the Rights Offering, apart from its express fees for work as the Independent Fiduciary for the Plans; (c) neither it nor any related parties have received any compensation or entered into any financial or compensation arrangements with the DISH Network and related parties; and (d) it has not entered into any agreement or instrument regarding the Rights Offering that violates ERISA Section 410 or the Department's regulations at 29 CFR Section 2509.75–4.[15] Newport also represents that it has not been indemnified, in whole or in part for negligence of any kind, or for any violation of state or federal law in performing its duties and responsibilities to the Plans under the terms of the requested exemption, and that there is no cap or limitation on its liability for negligence of any kind in performing its duties as the independent fiduciary for the Plans.

16. As stated in Newport's independent fiduciary report, dated January 10, 2020 (the Independent Fiduciary Report), Newport conducted a due diligence process in evaluating the Offering on behalf of the Plans. This process included discussions and correspondence with representatives of the Plans, DISH, DISH's counsel, and representatives of the Plans' trustees of the Plans, that enabled Newport to better understand a number of important elements related to the Offering. Newport also reviewed publicly-available information and information provided by DISH.

17. With regard to the Offering, Newport represents that it considered four options on behalf of the Plans: (a) To continue holding the Rights within the DISH Stock Funds in the Plans; (b) to exercise all of the Rights to acquire DISH Stock; (c) to sell all of the Rights on the NASDAQ Global Select Market at the prevailing market price; or (d) to sell a portion of the Rights and use the proceeds to exercise the remaining Rights to purchase Class A shares of DISH common stock.

18. Newport represents that although it considered the advantages and disadvantages of these options, it determined that selling some of the Rights and exercising other Rights would expose the Plans to significant risk and uncertainty. Newport also determined that the process of exercising the Rights would have taken several days, during which the market price of the Rights and DISH Stock could have declined to a level below the $33.52 exercise price for the Rights. Therefore, Newport elected not to sell some of the Rights and exercise others.

19. Further, Newport represents that it could not exercise all of the Rights because, as with any participant-directed individual account plan, the Plans did not maintain significant pools of uninvested cash that could be used to purchase the additional shares of DISH Stock. Exercising all of the Rights, according to Newport, would have required the liquidation of other investments held within participant accounts to generate cash necessary for the purchase of the additional DISH Stock. Doing so, according to Newport, would have been: (a) Inconsistent with the provisions of the Plans calling for individually-directed investment of participant accounts; and (b) a time-consuming process that would have taken several days and exposed the Plans to the same risks and uncertainties that selling some of the Rights and exercising others would have imposed.

20. Newport represents that it ultimately decided to sell the Rights to capture their value quickly and then to redeploy the proceeds into the participants' accounts. Newport represents that although the Plans would incur some transaction costs through this option ($0.005 per Right traded), selling the Rights would be prudent given that the Plans did not have sufficient cash to exercise the Rights and the other options carried too many risks. Therefore, Newport concluded that selling the Rights was in the interests of the Plans and the Plans' participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the Plans.

Sale of the Rights

21. According to the Applicant, Fidelity informed Newport at 10:20 a.m. on November 26, 2019, that the Rights were available for trading. Newport sold the EchoStar Plan's 9,073 Rights in ''blind transactions'' on the NASDAQ Global Select Market on November 26, 2019, and realized an average selling price of $1.43 per Right.

22. Because of the amount of Rights the DISH Plan received, Newport directed the sale of the DISH Plan's Rights over the course of three days to avoid negatively impacting the market price of the Rights through sale activity. For the DISH Plan, Newport directed: (a) The sale of 17,110 Rights on November 26, 2019, at an average sale price of $1.41; (b) the sale of 122,799 Rights on November 27, 2019, at an average price of $1.25; and (c) the sale of 40,175 Rights on November 29, 2019, at an average price of $0.72. According to the Applicant, each of the DISH Plan's sales was conducted in blind transactions on the NASDAQ Global Select Market.

23. The Applicant represents that no brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights. With respect to the sale of the Rights, the DISH Plan paid $900.42 in commissions and $4.29 in SEC fees, and the EchoStar Plan paid $45.37 in brokerage commissions and $0.27 in SEC fees.

24. The Applicant represents that the total net proceeds generated in connection with the sale of the Rights was $205,319.79 for the DISH Plan, and $12,930.57 for the EchoStar Plan. According to the Applicant, the proceeds were invested in accordance with participants' elections for the investment of their contributions to the Plans, or to the extent the participants had not made investment elections, in the Plans' default investment vehicles.

ERISA Analysis

25. ERISA Section 406(a)(1)(E) provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if he or she knows or should know that such transaction constitutes the acquisition, on behalf of the plan, of any employer security in violation of ERISA Section 407(a). ERISA Section 407(a)(1)(A) provides that a plan may not acquire or hold any ''employer security'' which is not a ''qualifying employer security.'' Under ERISA Section 407(d)(1), ''employer securities'' are defined, in relevant part, as securities issued by an employer of employees covered by the plan, or by an

[15] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning ERISA Section 410(a)] shall be void as against public policy.''

affiliate of the employer. ERISA Section 407(d)(5) provides, in relevant part, that ''qualifying employer securities'' are stock or marketable obligations. ERISA Section 406(a)(2) provides that a fiduciary of a plan shall not permit the plan to hold any employer security if he or she knows or should know that holding such security violates ERISA Section 407(a).

26. The Applicant represents that the Rights would not be considered ''qualifying'' employer securities because they are not stock, marketable obligations, or interests in a publicly-traded partnership. Therefore, the Applicant requests retroactive exemptive relief from ERISA Sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) for the acquisition and holding of the Rights by the Plan in connection with the Rights Offering.

Statutory Findings

27. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible since, among other things, a qualified independent fiduciary, Newport, must represent the Plans for all purposes with respect to the acquisition, holding and sale of the Rights, and documented its findings in a written report to the Department. The Department notes that, under the terms of this proposed exemption, Newport may not be indemnified, in whole or in part, for an act of negligence by Newport in performing its duties and responsibilities to the Plans.

b. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of the Plans since, among other things: (a) The Rights were automatically issued to all holders of Class A and B DISH common stock (and holders of convertible notes convertible to Class A DISH common stock) as of the Ex- Date, including the Plans; and (b) the Plans held and disposed the Rights, and realized their fair market value in blind transactions on the open market.

c. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of participants and beneficiaries since, among other things: (a) The acquisition and holding of the Rights occurred as a result of the Rights Offering which was approved by the DISH Board of Directors, in which all shareholders of DISH and EchoStar, including their Plans, were treated exactly the same; (b) the acquisition of the Rights by the Plans occurred on the same terms available to other eligible holders of DISH Stock and convertible notes, and the Plans received the same proportionate number of Rights as such other eligible holders; (c) the Plans did not pay any fees or commissions in connection with the acquisition or holding of the Rights; (d) all decisions regarding the holding and disposition of the Rights by the Plans were made, in accordance with the provisions of the Plans, by Newport, the Independent Fiduciary, which concluded that the sales were in the interest of the Plans and their participants; and (e) Newport concluded that the Plans' holdings and participant accounts had increased. In this regard, net of brokerage and SEC fees, the DISH Plan received $205,319.79 and the EchoStar Plan $12,930.57, for a total of $218,250.36 between the Plans.

Summary

30. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

Proposed Exemption

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions imposed by ERISA section 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A), and Code sections 4975(c)(l)(A) and (E), by reason of section 4975(c)(1) of the Code, will not apply to the past acquisition and holding by the Plans of certain subscription rights (the Rights) that were issued by the DISH Network Corporation (DISH or the Applicant) to the individually-directed accounts of participants in the DISH Network Corporation 401(k) Plan (the DISH Plan) and the EchoStar 401(k) Plan (the EchoStar Plan; together, the Plans) during a rights offering (the Rights Offering) that occurred from November 26–29, 2019, provided that the conditions described in Section II below have been met.

Section II. Conditions

(a) The Plans acquired the Rights as a result of an independent act of DISH as a corporate entity, and without any participation on the part of the Plans;

(b) The acquisition and holding of the Rights occurred as a result of a rights offering approved by the DISH board of directors, in which all shareholders of DISH, including the Plans, were treated exactly the same;

(c) The acquisition of the Rights by the Plans occurred on the same terms made available to other eligible holders of DISH Stock and convertible notes, and the Plans received the same proportionate number of Rights as such other eligible holders;

(d) The Plans did not pay any fees or commission in connection with the acquisition or holding of the Rights. The Plans paid commissions and SEC fees to third parties solely in connection with the sale of the Rights;

(e) All decisions regarding the holding and disposition of the Rights by the Plans were made, in accordance with the provisions of the Plans, by Newport, acting solely in the interest of the participants of the Plans as the qualified independent fiduciary (the Independent Fiduciary);

(f) As the Independent Fiduciary, Newport:

(1) Has not been indemnified, in whole or in part, for negligence of any kind or for any violation of state or federal law in performing its duties and responsibilities to the Plans under the terms of this proposed exemption, and there is no cap or limitation on its liability for negligence of any kind in performing its duties as the Independent Fiduciary for the Plans;

(2) Has not entered into any agreement or instrument that violates ERISA Section 410 or the DOL's regulations at 29 CFR Section 2509.75–4; and

(3) Has acknowledged that there is no instrument or contractual arrangement that purports to waive or release it from liability for any violation of state or federal law; and

(g) All the facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: The proposed exemption, if granted, will be in effect from November 26, 2019, the date that the Plans received the Rights, until November 29, 2019, the last date the Rights were sold by the Plans on the NASDAQ Global Select Market.

Notice to Interested Persons

Notice of the proposed exemption (the Notice) will be given to all interested persons within 15 days of the date of publication of the Notice in the **Federal Register**, by first class U.S. mail to the last known address of all such individuals. It will contain a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due within 45 days of the publication of the Notice in the **Federal Register**. All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

Further Information Contact: Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

The Children's Hospital of Philadelphia Pension Plan for Union-Represented Employees

Located in Philadelphia, PA

[Application No. D–12048]

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, as amended (ERISA) and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011).[16] This proposed exemption permits the sale (the Sale) of certain illiquid private fund interests (the Interests) by the Children's Hospital of Philadelphia Pension Plan for Union-Represented Employees (the Plan or the Applicant) to the Children's Hospital of Philadelphia Foundation, provided certain conditions are met.

Summary of Facts and Representations[17]

Background

1. The Children's Hospital of Philadelphia (CHOP) is a hospital devoted exclusively to the care of children, with its primary campus located in Philadelphia, Pennsylvania. The Children's Hospital of Philadelphia Foundation (the Foundation) is the parent entity of CHOP and supports the activities of CHOP through fund-raising and endowment-management. CHOP and the Foundation are both Pennsylvania nonprofit corporations and Code Section 50l(c)(3) charitable organizations. They are separate legal entities but are related because the members of the Board of Trustees of each entity (together, the Boards of Trustees, and individually the CHOP Board and the Foundation Board) are comprised of the same individuals who meet and often act jointly.

2. The Plan is a noncontributory defined benefit plan that covers employees under a collective bargaining agreement between CHOP and the National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO District 1199C. As of August 31, 2021, the Plan covered 1,636 participants and held $102,000,000 in total assets.

3. The Plan is administered by the Members of the Administrative Committee of the Children's Hospital of Philadelphia (the Committee). The Committee is comprised of nine individual members who concurrently serve as officers and employees of CHOP. The Committee has responsibility for the operation and administration of the Plan, determines the appropriateness of the Plan's investment offerings, and monitors the Plan's investment performance.

The Interests

4. The Interests that are proposed to be sold consist of private fund limited partnership interests and one illiquid "side pocket" portion of an original hedge fund investment.[18] The Interests consist of 18 funds that are spread among 14 managers and have varying durations, ranging from "currently in liquidation" to December 2022. The 18 Funds can be further broken down into 24 Fund Vehicles. The Plan's investment duration in the Interests ranges from 7–18 years. As of December 31, 2019, the Interests represented approximately 8.5% of the Plan's assets. The Foundation also currently is invested in all of the same Interests, except for the Adams Street Interests.[19]

The following table provides a complete list of the Interests, including the fair market value of each Interest, as of May 21, 2021:

Interest	FMV
Adams Street U.S. Fund	$990,321
Adams Street Non U.S. Fund	440,058
Adams Street Direct Fund	275,554
Charterhouse IX	130,737
FORTRESS CREDIT OPPS	123,933
FORTRESS CREDIT OPPS II	344,955
Hellman & Friedman VII	136,119
H&F Shield	0.00
H&F Willis AV III	0.00
H&F Wand AIV III	35,218
H&F EFS AIV III	36,381
IDG–ACCEL CHINA CAP	771,450
IDG ACCEL CHINA II	601,354
IDG–ACCEL CHINA GRTH FD III	757,027
NORDIC CAPITAL VII	5,781
SANKATY COPS IV	16,899
SIGULER GUFF BRIC II	218,477
VARDE X	202,691
ENERGY CAPITAL PARTNERS II–B	42,297
BEP LEGACY C	4,404
LIME ROCK RESOURCES	0.00
LIQUID REALTY PARTNERS IV TOTAL	38,559
METROPOLITAN REAL ESTATE PARTNERS GLOBAL	45,034
VARDE INVESTMENT PARTNERS (VIP)	549,790

The Interests include investments in private equity funds, real estate funds, and natural resource funds. The Applicant represents that the Plan invested in the Interests because each Interest provided significant risk-adjusted rate of return potential and appropriate investment diversification.

As noted in the chart, it is possible that three of the twenty-four Interests will be appraised as having no value. However, this proposed exemption requires the Independent Fiduciary to separately consider the likelihood that one or more of these three Interests will receive trailing distributions, and to attribute a positive value as appropriate. The Independent Fiduciary's analysis regarding whether or not any positive value is attributable to each of these three Interests must be included in the Independent Fiduciary's written report to the Department, as described below.

[16] For purposes of this proposed exemption, references to the provisions of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code Section 4975. Further, this proposed exemption, if granted, does not provide relief from the requirements of, or specific sections of, any law not noted above. Accordingly, the Applicant is responsible for ensuring compliance with any other laws applicable to this transaction.

[17] The Summary of Facts and Representations is based on the Applicant's representations provided in its exemption application and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in Application D–12048 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change.

[18] As referenced below, Varde VIP represents the illiquid "side pocket" portion of an original hedge fund investment.

[19] The Department notes that a fiduciary to a plan must not rely upon or otherwise depend upon the participation of the plan in a particular investment in order for the fiduciary (or persons in which the fiduciary has an interest) to undertake, or to continue, his or her share in the same investment.

Prior Exemption Request

5. On October 1, 2018, the Plan, along with the Children's Hospital of Philadelphia Pension Account Plan (the Non-Union Plan) [20] submitted a request for exemptive relief that was substantially similar to the relief requested herein (the Prior Exemption Request). At the time the Prior Exemption Request was filed, the Board of Trustees had recently approved the termination of the Non-Union Plan. In connection with its planned termination, the Non-Union Plan sought to liquidate its noncash assets, including the Interests, as a means to increase liquidity and fund lump sum payments and annuity purchases for participants. At the time that the Prior Exemption Request was filed, the assets of the Plan and the Union Plan were both held in the Master Trust, where each Plan held a proportional ownership stake in the Interests.

The Department's Denial of the Prior Exemption Request

6. In a letter dated August 25, 2020, the Department denied the Prior Exemption Request (the Denial Letter). As stated in the Denial Letter, the Department was not able to find that the Prior Exemption request was in the interest of, and protective of, the participants and beneficiaries of the Plan and the Non-Union Plan. In this regard, the Denial Letter noted that the independent fiduciary, acting on behalf of the Plan and the Non-Union Plan, had engaged an independent appraiser pursuant to an agreement that limited the appraiser's liability for acts of negligence. The Denial Letter further stated that the appraiser's insistence on limiting its responsibility for negligent work, and the independent fiduciary's acceptance of this limitation, raised concerns regarding whether sufficient protections were in place to warrant the requested exemption.

7. In the context of a prohibited transaction exemption, the Department expects independent fiduciaries to exercise special care when hiring an appraiser to value hard-to-value assets, and those appraisers to perform their work in accordance with expert standards and without special releases from liability for work that fails to adhere to those standards. Adequate protection for the plan in this context requires an appraiser and its work product to adhere to a high standard of care, diligence, and accuracy. Liability releases and work limitations that fail to meet these standards do not support an expectation of competent services and the protection of plan participants and beneficiaries. Therefore, the independent fiduciary's decision to hire an expert that is unwilling to stand behind its work calls into question the prudence of the independent fiduciary's hiring decision, reduces the reliability of the appraisal report, and negates the purpose of requiring an independent appraisal of the subject assets.

New Exemption Request

8. On May 28, 2021, the Plan filed another exemption request, citing material developments that had occurred since the Department's Denial of the Prior Exemption Request. To address the issues raised in the Department's Denial Letter, Newport Trust Company (Newport), in its role as the qualified independent fiduciary (the Independent Fiduciary), engaged a new qualified independent appraiser, SB Advisors LLC (SB Advisors or the Independent Appraiser). The Applicant represents that Newport's engagement of SB Advisors is not subject to any provision that limits SB Advisor's liability for any acts of negligence, as more fully described below. The Applicant further notes that the Non-Union Plan no longer requires an exemption because it has been terminated and liquidated. Therefore, the exemption is now sought only by the Plan.

Loan to Master Trust

9. The Applicant states that, after the termination of the Non-Union Plan, the Foundation loaned $12 million to the Master Trust (the Loan). The Loan permitted the Master Trust to pay certain expenses, including expenses for the payment of ordinary operating expenses of the Plan, such as the purchase of annuity contracts for the benefit of Plan Participants, the lump sum payment of benefits to participants, and expenses incidental to the same.

10. The Applicant represents that the Loan is intended to comply with the applicable provisions of ERISA, including PTE 80–26, and the Code.[21] Among other things, the Foundation made the Loan without interest and without the Master Trust providing any security for the Loan. The Committee and the Foundation intend the Master Trust to repay the Loan as soon as reasonably possible after either the Foundation submits a written request for repayment or the exemption is granted and the Plan sells the Interests to the Foundation.

Proposed Sale of the Interests and ERISA Analysis

11. The requested exemption would permit the Plan to sell the Interests to the Foundation. ERISA Section 406(a)(1)(A) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale of any property between a plan and a party in interest. The Foundation is a party in interest with respect to the Plan under ERISA Section 3(14)(G) because it is an entity that has a 50% or greater ownership interest in CHOP, the Plan's Sponsor. ERISA Section 406(a)(1)(D) prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. The Committee is a party in interest with respect to the Plan under ERISA Section 3(14)(A) because it is a fiduciary to the Plan.

12. ERISA Section 406(b)(1) prohibits a plan fiduciary from dealing with the assets of the plan in his or her own interest or for his or her own account. ERISA Section 406(b)(2) prohibits a plan fiduciary, in his or her individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

13. The Sale by the Plan of the Interests to the Foundation would violate ERISA Section 406(b)(1) and 406(b)(2). The Committee shares common individuals with the Foundation's Investment Office, and the Foundation's Investment Office is responsible for approving the Foundation's purchase of the Interests from the Plan. Moreover, the CHOP Board and the Foundation Board are comprised of the same individuals. The CHOP Board may have residual authority over the Committee's decision, as a fiduciary, to sell the Interests on behalf of the Plan. Similarly, the Foundation's Board may have residual authority over the Foundation's decision to purchase the Interests from the Plan.

[20] At the time of the Prior Exemption Request, the Plan and the Non-Union Plan were related entities. In this regard, the two Plans shared the same plan sponsor (CHOP) and were administered by the Committee.

[21] PTE 80–26, as amended at 71 FR 17917, April 7, 2006, allows a party in interest to make an interest-free loan to a plan if the proceeds of the loan are used for the payment of the plan's ordinary operating expenses, including the payment of benefits, or for a purpose incidental to the ordinary operation of the plan. In addition, the loan must be unsecured and not made by an employee benefit plan. The Department expresses no opinion herein on whether the Loan satisfies the requirements of PTE 80–26.

The Qualified Independent Fiduciary

14. The Committee retained Newport of New York, NY to serve as the Plans' Independent Fiduciary. The Committee represents that it selected and engaged Newport based solely on Newport's qualifications to serve as Independent Fiduciary after a prudent process, and that the Committee made the selection without regard to whether Newport's views were likely to favor the interests of CHOP, the Foundation, or any parties related to CHOP or the Foundation. The Committee represents that it selected Newport following a robust Request for Proposal (RFP) process, because of Newport's qualifications, including its significant history of serving as independent fiduciary in past transactions and positive references.

15. Newport represents that it possesses the appropriate technical training and proficiency with Title I of ERISA to serve as the Plan's Independent Fiduciary, and that it has the specific experience necessary to evaluate the Sale of the Interests on behalf of the Plan. Newport represents that it understands, acknowledges, and accepts its duties and responsibilities under ERISA in acting as Independent Fiduciary on behalf of the Plan, and that it is required to act solely in the interest of the Plan's participants and beneficiaries while exercising care, skill, and prudence in discharging its duties.

16. Newport represents that it is independent of, does not control, is not controlled by, and is unrelated to any parties in interest to the Sale, and that it will not directly or indirectly receive any compensation or other consideration in connection with the Sale, except for compensation for performing Independent Fiduciary services on behalf of the Plan. Newport also represents that the sum of its annual compensation received pursuant to its engagement as Independent Fiduciary, and from parties in interest with respect to the Plan and affiliates of CHOP and/or the Foundation, would not exceed two percent (2%) of Newport's annual gross revenues. Newport further represents that the receipt of its fee is not contingent upon, nor in any way affected by, Newport's ultimate decisions on behalf of the Plan in connection with the Sale.

17. Newport represents: (a) That no party related to CHOP or the Foundation has, or will, indemnify Newport in whole or in part for negligence and/or for any violation of state or federal law that may be attributable to Newport in performing its duties as Independent Fiduciary on behalf of the Plan; (b) that it has not performed any prior work on behalf of CHOP or the Foundation, or on behalf of any party related to CHOP or the Foundation; (c) that it has no financial interest with respect to its work as Independent Fiduciary, apart from the express fees paid to Newport to represent the Plan with respect to the Sale; (d) that it has not received any compensation or entered into any financial or compensation arrangements with CHOP or the Foundation, or any parties related to CHOP or the Foundation; and (e) that it will not enter into any agreement or instrument regarding the Sale that violates ERISA Section 410 or the Department's regulations at 29 CFR Section 2509.75–4.[22]

18. As Independent Fiduciary, Newport is responsible for: (a) Representing the Plan's interests for all purposes with respect to the Sale; (b) determining that the Sale is in the interests of, and protective of, the Plan and the participants of the Plan; (c) reviewing and approving the terms and conditions of the Sale; (d) independently and prudently selecting and engaging the Independent Appraiser (described below) to value the Interests for the purposes of the Sale; (e) reviewing the Independent Appraisal Report, confirming that the underlying methodology is reasonable and accurate, and confirming that the Independent Appraiser has reasonably determined the fair market valuation of the Interests in accordance with professional standards; (f) ensuring that the independent appraiser renders an updated fair market valuation of the Interests as of the date of the Sale that includes a separate assessment regarding the likelihood that any Interest reported as having no value will receive trailing distributions, and the extent to which that likelihood affects the Interest's value; and (g) determining whether it is prudent for the Plan to proceed with the Sale. Additionally, not later than 90 days after the Sale is completed, the Independent Fiduciary must submit a written statement to the Department demonstrating that the Sale has met all the requirements of this exemption, which are described below.

The Qualified Independent Appraiser

19. On January 15, 2021, Newport engaged SB Advisors to appraise the Interests for purposes of the Sale. Newport represents that it: (a) Prudently selected SB Advisors to appraise the Interests on behalf of the Plan; (b) ensured SB Advisor's independence from CHOP, the Foundation, and any other related parties; and (c) confirmed that all information given to SB Advisors was complete, current, and accurate.

20. SB Advisors represents that it is independent of, and unrelated to, any party in interest to the Plan and that its revenues for 2021 from parties in interest and affiliates in connection with its engagement as Independent Appraiser would be less than two percent (2%) of its projected revenues for 2021. SB Advisors represents that it is qualified to serve as Independent Appraiser for purposes of the Sale, because of its comprehensive valuation experience specifically related to the valuation of alternative and illiquid investments for which there are no ''active market'' quotations. SB Advisors states that its principals have performed in-depth valuation analyses of various alternative and illiquid asset types, including limited partnership interests in private funds, intangible assets, direct loans, private debt securities, and preferred stock and common stock. Finally, SB Advisors represents that its principals have been retained to value limited partnership interests in funds for ERISA plans over the course of the past five years.

21. In connection with its engagement as Independent Appraiser, SB Advisors represents that: (a) No party related to this exemption request has, or will, indemnify SB Advisors in whole or in part for negligence and/or for any violation of state or federal law that may be attributable to SB Advisors in performing its duties as Independent Appraiser on behalf of the Plan; (b) no contract or instrument that SB Advisors enters into with respect to the transactions that are the subject of the exemption purports to waive any liability under state or federal law for any such violation by SB Advisors; (c) neither SB Advisors, nor any parties related to SB Advisors, have performed any prior work on behalf of CHOP or the Foundation, or on behalf of any party related to CHOP or the Foundation; (d) neither SB Advisors, nor any parties related to SB Advisors, have any financial interest with respect to SB Advisors' work as Independent Appraiser, apart from the express fees paid to SB Advisors to value the Interests; and (e) neither SB Advisors, nor any parties related to SB Advisors, have received any compensation or entered into any financial or compensation arrangements with CHOP

[22] ERISA Section 410 provides, in part, that ''except as provided in ERISA Sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning ERISA Section 410(a)] shall be void as against public policy.''

or the Foundation, or any parties related to CHOP or the Foundation.

The Independent Appraisal Report

22. In the Independent Appraisal Report, dated May 14, 2021, SB Advisors concludes that the Interests have a fair market value of $5,793,018, and a book value of $7,907,091. SB Advisors represents that it performed its appraisal of the Interests by gathering information about the Interests, reviewing each general partnership's valuation policy, determining the book value by subtracting distributions from the net asset value (NAV) and applying a price to NAV multiple to each of the Interests based on indicative secondary market pricing and comparable publicly traded funds. SB Advisors represents that it reviewed: (a) LPA and/or LLC agreements; (b) the private placement memorandum; (c) unaudited quarterly reports and financial statements; (d) general partner reports regarding capital accounts and holdings; (e) distribution notices; and (f) other internal documents relating to formation, history, current operations, and probable future outlook.

23. SB Advisors represents that it utilized two appraisal approaches: (a) Secondary market pricing indications; and (b) selected public funds price to NAV analysis. SB Advisors represents that it considered and eliminated other approaches deemed to be either unreliable or irrelevant based on the available information, including the income approach, market approach, and cost approach.

24. In addition to completing the Independent Appraisal Report described above, SB Advisors will issue a final Independent Appraisal Report to coincide with the date of the Sale.

The Independent Fiduciary Report

25. In the Independent Fiduciary Report, dated May 26, 2021, Newport concludes that the Sale is in the interest and protective of the Plan because it provides for immediate liquidity, favorable pricing, and the elimination of future cash liabilities. To reach its conclusions, Newport represents that it conducted a thorough and prudent process that involved numerous discussions and correspondence with personnel from the Committee, the Independent Appraiser, and its advisors.

26. In the Independent Fiduciary Report, Newport concludes that SB Advisors' valuation methodology is consistent with sound valuation principles. Newport also concludes that, in accordance with fiduciary standards, it was reasonable to rely upon SB Advisor's Appraisal under the circumstances.

27. Newport states that SB Advisors applied its valuation methodology in a consistent and objective manner and exercised professional judgment to account for the specific characteristics of each of the Interests. In Newport's view, SB Advisor's employed reasonable underlying assumptions and market observations based on relevant third-party research.

28. To ensure that SB Advisors properly applied its appraisal methodology, Newport represents that it: (a) Reviewed the qualitative description of the methodology against calculations reflected in various tables included in the Appraisal Report; (b) confirmed that the concluded price to NAV multiple of each Interest was consistent with price to NAV figures stated in other areas of the Appraisal Report; (c) recalculated the concluded price to NAV multiple for the Interests based on the price to NAV results from both of the valuation techniques outlined in the Appraisal Report; (d) assessed the reasonableness of the underlying assumptions; (e) reviewed public fund pricing reports and calculations utilized by the Independent Appraiser; (f) confirmed that the discount to NAV for each of the Interests was appropriately determined; and (g) reviewed secondary market pricing reports.

29. Newport states that the Sale is favorable to the Plan because it provides immediate liquidity, favorable pricing, and eliminates future cash liabilities. Newport states that an all-cash transaction is in the interest of the Plan and its participants because it provides liquidity for the Plan to immediately reinvest in other assets that are aligned with the Plan's investment policy statement. Newport further states that the Plan will sell the Interests to the Foundation for their fair market value. The Plan will not be responsible for any commissions, fees, or other expenses associated with the Sale and will not bear any costs associated with the exemption request, including the professional fees of outside counsel, the Independent Fiduciary, and the Independent Appraiser, which amount to at least $315,000. Newport notes that transaction commission and other fees can be significant, ranging between $125,000 and $165,000, and would otherwise have reduced the net proceeds received by the Plan in any sale to an unrelated third party.

30. Newport states the Sale, in and of itself, does not constitute an agreement, arrangement, or understanding designed to benefit the Foundation, and that its analysis does not suggest that the Interests have significant upside that would be forfeited by the Plan because of the Sale.

31. Based on its analysis, Newport states that it has determined that the terms and conditions of the Sale are fair to the Plan and are no less favorable than terms the Plan would receive through arm's-length negotiations with an unrelated third party. Newport states that the terms and conditions of the Sale are in the interest of, and protective of, the participants and beneficiaries of the Plan. Therefore, Newport has determined that it is prudent to proceed with the Sale. Finally, within 90 days after the Sale is completed, Newport will submit a written report to the Department demonstrating that each exemption condition has been met.

Other Conditions of the Proposed Exemption

32. The Plan will receive cash for each Interest based on the fair market value of the Interests as of the date of the Sale based upon an appraisal report prepared by the Independent Appraiser. The terms and conditions of the Sale will be no less favorable to the Plan than the terms the Plan would have received under similar circumstances in an arm's-length transaction with an unrelated third party. Further, the Foundation will assume any remaining capital commitments in connection with the Interests, and the Plan will pay no commissions, fees, or other expenses in connection with the Sale. The Foundation will obtain written consent from each Fund manager to purchase the Interests from the Plan prior to engaging in the Sale of the Interests.

Statutory Findings

33. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria are discussed below.

34. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the Sale is administratively feasible because, among other things, an Independent Fiduciary will represent the interests of the Plan for all purposes with respect to the Sale and ensure that the Interests are sold for their full fair market value as of the date of the sale.

35. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined

that the proposed exemption is in the interest of the Plan. Among other things, the Sale would enable the Plan to sell an illiquid asset at its full fair market value for cash, which will provide added liquidity for the Plan.

36. *The Proposed Exemption Is* ''*Protective of the Plan.*'' The Department has tentatively determined that the proposed exemption is protective of the rights of the Plans' participants and beneficiaries. Among other things, Newport, as Independent Fiduciary, must prudently represent the Plan's interests for all purposes with respect to the Sale, and must ensure that the protective conditions that are mandated under this exemption are met. In addition, not later than 90 days after the Sale is completed, Newport must submit a written statement to the Department demonstrating that the Sale has met all of the exemption conditions.

Summary

34. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that it can find that the relief sought by the Applicant would satisfy the statutory requirements for the Department to grant an administrative exemption under ERISA Section 408(a).

Proposed Exemption

Section I. Proposed Transactions

If the proposed exemption is granted, the restrictions of ERISA Sections 406(a)(1)(A) and (D), and 406(b)(1) and (b)(2), and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A), (D) and (E), shall not apply to the Sale of the Interests by the Plan to the Foundation, provided the conditions set forth in Section II are met.

Section II. Conditions

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

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

(c) The Sale price for each Interest will be the fair market value of the Interest as of the date of the Sale, as determined by the Independent Fiduciary, based upon an updated Independent Appraisal Report prepared by the Independent Appraiser that values the Interest as of the date of the Sale;

(d) The Foundation assumes any remaining capital commitments in connection with the Interests;

(e) The Plan pays no commissions, fees, or other expenses in connection with the Sale;

(f) The Independent Fiduciary:

(1) Represents the Plan's interests for all purposes with respect to the Sale;

(2) Determines that the Sale is in the interests of, and protective of, the Plan and the participants of the Plan;

(3) Reviews and approves the terms and conditions of the Sale;

(4) Independently and prudently engages the Independent Appraiser for the Sale;

(5) Reviews the Independent Appraisal Report, confirms that the underlying methodology is reasonable and accurate, and confirms that the Independent Appraiser has reasonably determined the fair market valuation of the Interests in accordance with professional standards;

(6) Ensures that the Independent Appraiser renders an updated fair market valuation of the Interests as of the date of the Sale. The updated market valuation must include a separate assessment as to the likelihood that any Interest reported as having no value may nonetheless receive trailing distributions. The Independent Appraiser must consider this likelihood when valuing any Interest, and address the extent to which this likelihood affects the Interest's value;

(7) Determines whether it is prudent for the Plan to proceed with the Sale;

(8) Has not and will not enter into any agreement or instrument that violates ERISA Section 410;

(9) Confirms that each condition of the exemption has been met; and

(10) Submits a written report to the Department not later than 90 days after the Sale has been completed demonstrating that each exemption condition has been met. The written report must include the Independent Fiduciary's determinations regarding whether any Interest is likely to receive trailing distributions, and the extent to which to any anticipated trailing distributions increased the Interest's value.

(g) The Plan does not bear the costs of: (1) The exemption application; (2) obtaining the exemption; (3) the Independent Fiduciary; or (4) the Independent Appraiser;

(h) The Foundation receives written consent from each Fund manager to purchase the Interests from the Plan prior to engaging in the Sale of the respective Interests;

(i) The Sale is not part of an agreement, arrangement, or understanding designed to benefit CHOP or the Foundation; and

(j) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: If granted, the exemption will in effect as of the date the grant notice is published in the **Federal Register**.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice include participants in the Plans who are actively employed by CHOP or another employer participating in the Plans, participants in the Plans who are no longer actively employed by CHOP or other employers that have participated in a Plan, and Plan beneficiaries in pay status. The Applicant will provide notification to interested persons by electronic mail and first-class mail within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. The mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

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

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

Further Information Contact: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (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 3rd day of March 2022.

George Christopher Cosby,

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

[FR Doc. 2022–04954 Filed 3–8–22; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''National Dislocated Workers Emergency Grant Application and Reporting Procedures.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by May 9, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Ingrid Schonfield by telephone at 202–693–0269 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *schonfield.ingrid.n@dol.gov.*

Instructions: Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue NW, Washington, DC 20210; by email: *schonfield.ingrid.n@dol.gov;* or by fax 202–693–3817. To ensure proper consideration, include the Office of Management and Budget (OMB) control number 1205–0439.

Comments Under the PRA: In addition to filing comments with the Department, interested parties may submit comments concerning this ICR to OMB's Office of Information and Regulatory Affairs (OIRA) at *https://www.reginfo.gov/public/do/PRAMain.* Find the relevant information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Contact Ingrid Schonfield by telephone at 202–693–0269 (this is not a toll-free number) or by email at *schonfield.ingrid.n@dol.gov.*

SUPPLEMENTARY INFORMATION: National Dislocated Worker Grants (NDWGs) are discretionary grants awarded by the Secretary of Labor under Section 170 of the Workforce Innovation and Opportunity Act (WIOA). NDWGs provide states and other eligible applicants resources to respond to large, unexpected layoff events causing significant job losses. NDWG funds temporarily expand state, regional, and local workforce system capacity to serve dislocated workers, meet the increased demand for WIOA employment and training services, quickly reemploy laid-off workers, and enhance their employability and earnings. The NDWG legacy application and modification forms (ETA–9103, ETA–9105, ETA–9106, and ETA–9107) include project planning, employer, project summary, and project operator information. These legacy forms and application processes constitute the information collection request. ETA expects these forms to sunset shortly as all NDWG applications shift to the *grants.gov* application process associated with a different information collection.

DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This public comment process helps to ensure requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. To help ensure appropriate consideration, comments should mention OMB control number 1205–0439.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information,