

by a plan fiduciary who is independent of Peoples and Commonwealth and any affiliates of such entities (the Independent Fiduciary).

2. Prior to a plan's investment in the Group Annuity Contract, the Independent Fiduciary for such plan receives full and detailed written disclosures of all features of the Group Annuity Contract including all applicable premium charges.

3. Neither Peoples nor Commonwealth or any of their affiliates has discretionary authority or control with respect to the decision to invest plan assets in the investment product described herein or renders investment advice (within the meaning of 29 CFR 2510.3-21(a)) with respect to those assets.

4. Neither Peoples nor Commonwealth or any of their affiliates exercises any discretion or renders investment advice on behalf of a plan with respect to the ongoing acquisition, management or disposition of Custodian Account assets.

5. For all transactions that occur after the date of publication of the proposed and final exemptions, Peoples and Commonwealth provide copies of the proposed and final exemptions as published in the **Federal Register** to each plan which invests in a Group Annuity Contract.

6. The premiums charged by Peoples and Commonwealth for the GAC (including early termination charges assessed in the event of early contract termination) will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act and will constitute the only fees charged by Peoples or Commonwealth in connection with such contract other than accrued interest on unreimbursed benefit payments.

7. Peoples and Commonwealth maintain or cause to be maintained, for a period of six years, the records necessary to enable the persons described in paragraph (8) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Peoples or Commonwealth or its agents, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than Peoples or Commonwealth shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for

examination as required by paragraph (8) below.

8(a). Except as provided in section (b) of the paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph 7 of this section shall be unconditionally available at their customary location during normal business hours by:

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

(2) Any fiduciary of an investing Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to an investing Plan or any duly authorized employee or representative of such employer; and

(4) Any participant or beneficiary of an investing Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraph (2)-(4) of this paragraph 8 shall be authorized to examine the trade secrets of Peoples or Commonwealth or its affiliates or commercial or financial information which is privileged or confidential.

For purposes of this exemption, affiliate means:

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

(b) Any officer, director or partner, in such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments on the proposed exemption within 45 days from the date of publication of the Notice in the **Federal Register**. All written comments were to have been received by the Department by December 29, 1994. The Department received one written comment submitted by the Applicants. The issue addressed in the comment and the Department's response are summarized as follows:

The application for exemption submitted by the Applicants requested a March 1, 1992 effective date for the requested exemption. The effective date was not specified in the notice of proposed exemption published in the

Federal Register on November 14, 1994 (59 FR 5655). Accordingly, the Applicants request that the Department clarify that the final exemption is effective as of March 1, 1992.

The Department concurs with the Applicants' comment and notes that, in order for the exemption to apply to a covered transaction, all of the conditions in the exemption except condition 5 (relating to the provision of copies of the proposed and final exemption to plan investors) must have been met.

FOR FURTHER INFORMATION CONTACT:

Lyssa E. Hall of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

CNA Employees' Retirement Trust (the Trust) Located in Chicago, Illinois

[Prohibited Transaction Exemption 95-10; Exemption Application Nos. D-09539 through D-09544]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 17, 1992, to fifteen past sales and purchases by the Trust of twelve issues of short-term commercial paper (the CNA Transactions), as identified in the Notice of Proposed Exemption, involving the Continental Casualty Company, the Continental Assurance Company, the Continental Assurance Company Guaranteed Investment Fund, the Valley Forge Life Insurance Company, Valley Forge Insurance Company, and the American Casualty Company of Reading, Pennsylvania (collectively, the CNA Companies), each of which is a party in interest with respect to the CNA Employees' Retirement Plan, whose assets are held by the Trust; provided that the following conditions are satisfied:

(A) In each of the CNA Transactions, the Trust paid no more, or received no less, than the fair market value of the commercial paper involved in the transaction;

(B) The CNA Transactions constituted, in the aggregate, less than four percent of all commercial paper transactions of the Trust during 1992; and

(C) The CNA Companies have undertaken efforts to prevent any recurrence of direct or indirect transactions involving the Trust and the CNA Companies, including the appointment of an independent investment manager of all the Trust's commercial paper investments.

EFFECTIVE DATE: This exemption is effective as of January 17, 1992.

For a more complete statement of the facts and representations supporting the