

DEPARTMENT OF LABOR**Employee Benefits Security Administration**

[Prohibited Transaction Exemption (PTE) 2003-26, Exemption Application Numbers D-11137, 11138, and 11139]

Northwest Airlines Pension Plan for Salaried Employees (Salaried Plan), the Northwest Airlines Pension Plan for Pilot Employees (Pilot Plan), and the Northwest Airlines Pension Plan for Contract Employees (Contract Plan) (Collectively, the Plans), Located in Eagan, MN

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains a final exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code).

The exemption permits: (1) The in-kind contribution(s) of the common stock of Pinnacle Airlines Corp.¹ (Pinnacle Stock) to the Plans by Northwest Airlines, Inc. (Northwest), a party in interest with respect to such Plans; (2) the holding of the Pinnacle Stock by the Plans; (3) the sale of the Pinnacle Stock by the Plans to Northwest; (4) the acquisition, holding, and exercise by the Plans of a put option (the Put Option) granted to the Plans by Northwest; and (5) the guaranty to the Plans by Northwest Airlines Corporation (NWA Corp.) of Northwest's obligation to honor the Put Option (the Exemption Transactions). The exemption affects participants and beneficiaries of, and fiduciaries with respect to, the Plans.

DATES: This exemption is effective as of January 15, 2003.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough of the Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 17, 2003, the Department published a notice in the **Federal Register** (68 FR 2578) of a proposed individual exemption (the Proposed Exemption). The Proposed Exemption was requested in an application filed on

¹ Pinnacle Airlines Corp. is the holding company of Pinnacle Airlines, Inc.

behalf of Northwest pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1, 1995) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is issued solely by the Department.

The notice set forth a summary of the facts and representations contained in Northwest's November 6, 2002 application for exemptive relief (Application) and referred interested persons to the Application for a complete statement of the facts and representations. The Application has been available for public inspection at the Department in Washington, DC.

The notice also invited interested persons to submit comments on the proposed exemption and/or to request that a public hearing be held. In response to the solicitation of comments from interested persons, the Department received over 1,700 letters, e-mails, faxes and phone calls, of which more than 1,000 requested that a public hearing be held on the Proposed Exemption. Many of the commenters expressed concern about the effect of the Proposed Exemption on the Plans. The concerns expressed generally related to the proposed contribution of Pinnacle Stock instead of a cash contribution to the Plans; the value and method of valuation of the Pinnacle Stock; the effects of the proposed transactions on the Plans; and the adequacy of the proposed safeguards that are intended to protect the Plans' interests. In view of the comments requesting a hearing, on March 11, 2003, the Department published in the **Federal Register** (68 FR 11589) a notice of hearing on the Proposed Exemption. The hearing on the Proposed Exemption was held on May 5 and 6, 2003 at the Department of Labor (the Hearing). Upon consideration of all of the comments received and testimony offered at the Hearing, the Department has determined to grant the proposed exemption subject to certain modifications. These modifications and the major comments are discussed below.

Discussion of the Comments

Northwest March 3, 2003 Comment

By letter dated March 3, 2003, Northwest described the Northwest contribution of Pinnacle Stock made to the Contract Plan on January 15, 2003

(the March 3 Comment). Northwest represents that the contribution was effected after the date on which the Department had completed work on the Proposed Exemption. The details of the Pinnacle Stock contribution were provided in the March 3, 2003 letter. Northwest also provided more detail about the final terms of the transactions as agreed to by Northwest and the Plans' independent fiduciary, Aon Fiduciary Counselors, Inc. (Fiduciary Counselors or Independent Fiduciary). Northwest states that, in this regard, some refinements were made to the provisions of the "Term Sheet" when the parties negotiated and entered into the final "Omnibus Agreement" (executed on January 15, 2003). The changes incorporated into the Omnibus Agreement were requested and approved by Fiduciary Counselors. In this regard, Northwest believes that this provided even more favorable terms for the Plans than those reflected in the Term Sheet.²

Contribution of Pinnacle Stock

Northwest reported that the Omnibus Agreement was executed between Pinnacle Airlines Corporation (Pinnacle), Northwest Airlines, Inc. (Northwest), Northwest Airlines Corporation (NWA Corp.) and Aon Fiduciary Counselors, Inc (Fiduciary Counselors). Pursuant to the terms of the Omnibus Agreement, Northwest contributed Pinnacle Stock to the Contract Plan. The Omnibus Agreement provided for two contributions to be made to the Contract Plan on January 15, 2003. An "Initial Contribution" was made in the amount of \$41,149,911. The Initial Contribution was comprised of 1,819,833 shares valued at \$22.61 per share.³ The amount of the Initial Contribution is equal to the amount that was required to meet the quarterly funding requirements under ERISA section 302 and Code section 412(l) for the Contract Plan due on January 15, 2003. The Omnibus Agreement also provided for an "Additional Initial Contribution" to the Contract Plan in

² Northwest notes that the Omnibus Agreement, while consistent with the Term Sheet, provides specific terms for: the contribution transactions; transferability of Pinnacle Stock; corporate governance; voting rights; the Put Option; representations and warranties; and a number of other matters.

³ Northwest represents that the amount of shares necessary to satisfy the required contribution was based upon a final valuation of Pinnacle by Fiduciary Counselors, relying on a valuation report prepared by Eclat Consulting. Northwest notes that, while Fiduciary Counselors received and reviewed valuation information provided by Morgan Stanley & Co. Inc. (Morgan Stanley), Fiduciary Counselors retained Eclat to provide valuation services.

the amount of \$2,671,983 (118,167 shares valued at \$22.61 per share).

The Term Sheet did not provide for the Additional Initial Contribution. This additional contribution was agreed upon as a result of a technical concern raised by Fiduciary Counselors regarding covenants in Northwest's \$1.125 billion Credit and Guarantee Agreement dated October 24, 2000, as amended under which Northwest is the borrower (the Credit Agreement), with Northwest's bank lenders. The Additional Initial Contribution served to provide the Plans with added protection until Northwest obtained written assurances from the bank lenders that the Put Option does not violate the Credit Agreement. On February 14, 2003, Northwest obtained formal written confirmation from the bank lenders that none of the rights afforded to the Plans in the Omnibus Agreement nor the exercise of such rights would violate the Credit Agreement. Accordingly, Northwest notes that, consistent with the Omnibus Agreement's terms, the Additional Initial Contribution will be treated as a credit balance and be applied toward future contributions to the Contract Plan.

The total value of the Initial Contribution and Additional Initial Contributions made to the Contract Plan was \$43,821,894. Pinnacle Stock in that amount was transferred to State Street Bank, the trustee for the Northwest Master Trust for Defined Benefit Plans that holds the assets of all of the Northwest Plans (the Master Trust). Northwest instructed State Street Bank to establish an "Investment Fund" in connection with the Plans' Master Trust. The Investment Fund holds Pinnacle Stock on behalf of the Contract Plan and the Salaried Plan. As a result of instructions given to State Street, after the contribution was made to the Investment Fund, the Contract Plan owns 83.5% of the Investment Fund, while the Salaried Plan owns 16.5% of the Investment Fund. Each Plan's percentage ownership reflects the relative size of each Plan to each other. At that time, the Pilot Plan did not participate in the Pinnacle Stock Investment Fund.⁴

⁴ Northwest states, as noted in the Proposed Exemption, that the Master Trust is established in a manner such that all Plans hold an undivided and commingled interest in the assets of the Trust. Since Northwest was prohibited from investing the Pilot Plan's assets in employer stock, the Pilot Plan at that time, did not participate in the investment fund. However, Northwest notes that it has received the consent of the Air Line Pilots Association (ALPA), the union representing Northwest pilots, to permit the Pilot Plan to hold Pinnacle Stock (see

Description of the Put Option

Northwest noted that the description of the Put Option in the first and second columns at 68 FR 2580 of the **Federal Register** notice accurately describes the structure of the Put Option as described in Northwest's Application. However, as noted in Northwest's Application, the final terms of the Put Option were subject to negotiation with Fiduciary Counselors. Northwest believes that the final terms for the Put Option, which are more favorable to the Plans, are more completely and accurately stated in the description of the Put Option contained in the description of the Term Sheet as set forth at 68 FR 2587.

Fair Market Value of Pinnacle Stock

Northwest noted that, as reflected in the Term Sheet, Fiduciary Counselors will determine the fair market value of the Pinnacle Stock contributed to the Plans on an annual basis and in advance of each contribution to the Plans. Fiduciary Counselors will also determine fair market value at the time it exercises the Put Option so long as the shares of Pinnacle Stock are not publicly traded. Accordingly, the reference in the first column at 68 FR 2585 to quarterly valuations is no longer correct. Northwest notes that quarterly valuations were contemplated in the Application, but a change to annual valuations was made when Northwest and Fiduciary Counselors agreed to the Term Sheet.

Corporate Governance Rights

Northwest explained that the Omnibus Agreement granted the Plans additional rights in order to protect their interest in the Pinnacle Stock. Omnibus Agreement at section 7.2, Certain Approval Rights. In this regard, beginning at such time as the Plans hold more than 50% of the issued and outstanding Pinnacle Stock, and until the earlier of (i) the date the Plans hold less than 25% of such shares or (ii) the Put Option with respect to such shares has terminated, the affirmative vote of the Plans director will be required to (1) approve the election, appointment and compensation of any new Chief Executive Officer (CEO), (2) approve any modification or other changes to the Note Pinnacle has issued to Northwest (3) approve any amendment to Pinnacle's bylaws that affects the Plans shares of Pinnacle Stock in a manner different from other shares of Pinnacle Stock or otherwise amends the Series A Preferred Stock, and (4) unless Pinnacle is publicly traded, approve the issuance of

below for discussion of the Northwest and ALPA Letter Agreement).

shares of capital stock of Pinnacle or otherwise effect changes in the capital structure of Pinnacle. Thus, the fourth bullet point in the second column at 68 FR 2585 (describing certain voting rights) should be modified accordingly.

The requirement (detailed in the last bullet point in the second column of the Proposed Exemption at 68 FR 2585) that Plan shares of Pinnacle Stock be voted in favor of certain corporate actions is now set to expire upon the occurrence of an Early Termination Event. See Omnibus Agreement at section 7.3.

Independent Directors

Northwest noted that the second bullet point in the third column at 68 FR 2585 (respecting the obtainment of fairness opinions) has been revised. In this regard, section 11.3(b) of the Omnibus Agreement now provides that at the request of a majority of Pinnacle's independent directors, a fairness opinion will be obtained from an investment bank respecting certain Affiliate Transactions. The Term Sheet originally placed the right to request this fairness opinion solely on the Plans' director, who asked that this duty be placed on the independent directors of which the Plans' director is a member.

Valuation in Connection With the Right of First Refusal

Northwest noted that the Omnibus Agreement added certain valuation details that expand the discussion of the Right of First Refusal at 68 FR 2586. The description of Northwest's right of first refusal with respect to Pinnacle Stock is accurate; however, if the Plans negotiate the sale of Pinnacle Stock to a third party for non-cash consideration, the Omnibus Agreement includes a specific valuation mechanism with respect to such consideration. See Omnibus Agreement at section 6.2. First, the Plans must provide Northwest with an "Offer Notice" which shall contain an independent valuation of the consideration by a nationally recognized valuation expert acceptable to Fiduciary Counselors and Northwest. If Fiduciary Counselors and Northwest are unable to agree on the valuation expert, the Omnibus Agreement sets forth a dispute mechanism to arrive at a final determination. In this process, Northwest and Fiduciary Counselors each select their own nationally recognized valuation expert (Principals' Experts), which experts submit their appraisals to a third expert chosen by the Principals' Experts. The third expert then determines which of the two assessed values should be assigned to such non-cash consideration.

Modification of Final Deferral Rule

Northwest observed that the Term Sheet, as reflected in the Proposed Exemption, allows Northwest to defer the closing date with respect to Pinnacle Stock repurchased pursuant to the Put Option (such delay, a "Deferral"). The length of the Deferral varies based upon a function of (1) the "liquidity" of Northwest (as defined in the Omnibus Agreement) and (2) the value of Pinnacle Stock contributed to the Plans. In the Proposed Exemption, it was noted that the length of the Deferral would be shortened if Pinnacle Stock was publicly traded at the time that the Put Option is exercised. As with the Term Sheet, the final Omnibus Agreement provides that the Deferral shall be shortened if Pinnacle Stock is publicly traded. However, the Omnibus Agreement revises this provision to provide that, if Pinnacle Stock is publicly traded, the Deferral will be reduced, in each case, by thirty days except that in no event shall Northwest have less than a 30 day Deferral in which to close the transactions contemplated by the Put Option. This change generally reduces the length of the available Deferral when the Plans hold more than \$325 million in Pinnacle Stock (measured as of the date of each contribution). See Omnibus Agreement at section 8.2.

Fiduciary Counselors March 5, 2003 Comment

On March 5, 2003, Jones Day submitted comments on behalf of Fiduciary Counselors, the Independent Fiduciary (the March 5 Comment).

Restrictions on Transfer and Voting

The Independent Fiduciary notes that the Proposed Exemption, in the first column of 68 FR 2580 (first full paragraph), makes reference to voting restrictions and limits on the ability of the Plans to dispose of the Pinnacle Stock, except pursuant to an initial public offering (IPO) initiated by Northwest or by exercise of the Put Option. In addition, as reflected in the Omnibus Agreement, the Independent Fiduciary has negotiated a lapse of all transfer restrictions on the Pinnacle Stock held by the Plans on July 1, 2006, and upon an "Early Termination Event" (including a breach of the Omnibus Agreement by Northwest or Pinnacle or Northwest's failure to honor its Put Option obligations, but excluding violations of the "scope clause" limitations in certain of Northwest's collective bargaining agreements⁵). A

⁵ Section 1C of the Northwest Pilots Agreement, the Collective Bargaining Agreement between

breach of the Omnibus Agreement by Pinnacle constitutes an Early Termination Event if such breach continues because Northwest fails to exercise its rights as a stockholder to cause the Pinnacle directors to cure the breach or to replace such directors. See Omnibus Agreement, Definition of "Early Termination Event" at section 1.1.

Eclat Consulting Valuation

The Independent Fiduciary represents that the description of the valuation by Eclat Consulting (Eclat) of Pinnacle in the Proposed Exemption commencing in the second column of 68 FR 2580 (the Eclat Report) should be updated to reflect Eclat's valuation of Pinnacle as of January 15, 2003. The January 15, 2003 Eclat valuation report (January 15, 2003 Valuation) was attached to the Independent Fiduciary's report submitted to the Department on April 25, 2003 (see below for a discussion of these documents).

Put Option

As previously mentioned in the March 3 Comment, the changes to the description of the Put Option in the Proposed Exemption are noted by the Independent Fiduciary who adds that the Proposed Exemption should be revised in accordance with the definition of "Market Value" in section 1.1 and the language of section 8.3 of the Omnibus Agreement. In particular, subparagraph (i) at 68 FR 2580 of the Proposed Exemption should reflect that, prior to an IPO, the Plans will be entitled to the greatest of (1) the value of the stock when contributed, (2) the fair market value of the stock on the date that the determination of fair market value is made (e.g., with respect to the Put Option, the date the Put Option is exercised), or, if greater, (3) the value as of the closing date of the Put Option.

Similarly, subparagraph (iii) at 68 FR 2580 should reflect that, after an IPO, the Plans will be entitled to the greatest of the value of the stock at the time of the contribution, or the average of the closing price for the Pinnacle Stock on the public market for the 10 trading days (or such other number if fewer than 10) preceding the exercise date, or

Northwest and the Air Line Pilots Association dated as of September 13, 1998, as amended, or any successor agreement. This Section requires that all "revenue flying" for Northwest and its affiliates must be performed by pilots on the integrated Pilots System Seniority List in accordance with the collective bargaining agreement, except for revenue flying by an airline that at all times operates only aircraft that are certified with a maximum passenger capacity of 60, and a maximum gross takeoff weight of less than 70,000 pounds.

as of the last trading day before the closing date of the Put Option.

In addition, in the paragraph immediately following subparagraph (iii) in the second column of 68 FR 2580, the reference to the price of Pinnacle Stock being determined as of the exercise date should be expanded to reflect these concepts. Similarly, in the second column of 68 FR 2588 (third full paragraph), the reference in subclause (II) to the closing price of Pinnacle shares on the closing date should refer to the last trading day before the closing date.

Plan Director

As also mentioned in the March 3 Comment, the Independent Fiduciary notes that at the fifth paragraph of the "Voting Provisions" section in the Proposed Exemption at column 2 of 68 FR 2585, the description of the required affirmative vote of the director designated by the Plans should be expanded to include the approval of: amending the Note, amending Pinnacle's charter or by-laws in certain respects, implementing certain changes in Pinnacle's capital structure, or issuing capital stock prior to an IPO, as set forth in the Omnibus Agreement. See Omnibus Agreement at section 7.2. Additionally, the Independent Fiduciary corrects language in the fifth paragraph of the "Voting Provisions" of the Proposed Exemption that states a majority of Pinnacle's board is needed for the approval of compensation of Pinnacle's CEO. Section 7.2(b) of the Omnibus Agreement requires only that the appointment of a new CEO be approved by a majority of Pinnacle's board (excluding the Northwest Director), and does not make reference to the compensation of Pinnacle's CEO.

Additional Comments

The Independent Fiduciary reports that it negotiated the following additional requirements.

1. A comprehensive set of representations and warranties relating to both Pinnacle, Northwest and its affiliates. See Omnibus Agreement at sections 5.1 and 5.2.
2. An additional provision that would prohibit Northwest from using its rights under the Series A Preferred Share to block a Transfer of Pinnacle Stock following an Early Termination Event. See Omnibus Agreement at section 6.3.
3. Northwest Airlines Corporation (NWA Corp.) will guarantee Northwest's obligations under the Omnibus Agreement, including the Put Option. See Omnibus Agreement at section 8.8.
4. The right to engage an investment banker on behalf of the Plans in an IPO,

at Northwest's expense. See Omnibus Agreement at section 9.1(d).

5. A provision providing that the exercise price of any options on Pinnacle Stock granted to its executive employees under its stock incentive plan at the time of an IPO would be at the greater of the value of the stock at the time it was contributed to the Plans or the IPO price. See Omnibus Agreement at section 11.2.

Finally, Fiduciary Counselors requests that in Section III. Definitions at (a) of the Proposed Exemption in column 1 of 68 FR 2590, the reference to "5 percent (5%) of such fiduciary's gross income, for Federal income tax purposes, in its prior tax year, will be paid by Northwest" should read "5 percent (5%) of such fiduciary's annual gross revenue in the year of its engagement, will be paid by Northwest."

The Department has determined that it would be appropriate to modify the definition of independent fiduciary as follows:

"(3) the annual gross revenue received by such fiduciary, during any year of its engagement, from Northwest and its affiliates exceeds 5 percent (5%) of the independent fiduciary's annual gross revenue from all sources for its prior tax year."

Fiduciary Counselors and Eclat April 25, 2003 Submissions

On April 25, 2003, Fiduciary Counselors provided to the Department the Independent Fiduciary Report on Contribution of Pinnacle Airlines Corp. Stock to the Northwest Airlines Pension Plan For Contract Employees dated March 16, 2003 (the IF Report), the January 15, 2003 Eclat valuation of Pinnacle (the January 15, 2003 Valuation), and an explanation of the valuation of the Put Option.

The Independent Fiduciary Report

The Independent Fiduciary represents that after extensive negotiations during November and December, 2002, and January, 2003, Fiduciary Counselors and Northwest, along with Pinnacle and NWA Corp., Northwest's ultimate parent company, entered into an Omnibus Agreement, dated January 15, 2003, which sets forth the terms and conditions pursuant to which Fiduciary Counselors will accept the Pinnacle Stock (the Contribution).⁶

⁶ Fiduciary Counselors notes that immediately prior to the transaction, NWA Inc. (NWA1), an affiliate of Northwest, owned 86,842 shares of common stock, par value \$0.01 per share, of Pinnacle Airlines, Inc., a Georgia corporation, constituting all of the issued and outstanding

The IF Report states that on January 15, 2003, Fiduciary Counselors determined that the Master Trust could accept a contribution by Northwest of 1,938,000 shares of Pinnacle Stock, valued at \$43,821,894.00, on behalf of the Contract Plan on terms and conditions set forth in the Omnibus Agreement. Pursuant to its engagement letter with Northwest, the scope of Fiduciary Counselors' engagement includes determining whether to accept the Contribution on behalf of the Plans, and if so, to value the Pinnacle Stock for Plan funding purposes. Fiduciary Counselors' duties also include the discretionary authority to manage the Pinnacle Stock as investment manager.

The IF Report notes that the Independent Fiduciary drew upon the resources of its affiliate, Aon Investment Counseling, Inc. (AIC), to assist it in its financial analysis and valuation of the Pinnacle Stock. The Independent Fiduciary also engaged the law firm of Jones Day as legal counsel to advise it in connection with its negotiations with Northwest regarding its engagement and Eclat, to provide financial expertise and to value the Pinnacle Stock. Eclat furnished to the Independent Fiduciary its report and opinion as to the value of the contributed Pinnacle Stock at the time of the Initial Contribution on January 15, 2003 (January 15, 2003 Valuation). Eclat will furnish a similar valuation report with respect to each subsequent contribution. In negotiating the terms of the Contributions and determining whether to accept the Initial Contribution, the Independent Fiduciary, with its financial advisors and legal counsel, reviewed those documents that it deemed relevant, participated in meetings and telephone conferences with officers and other representatives of Northwest, and considered aspects of the Contribution that it deemed pertinent to its engagement, including without limitation Northwest's current and future ability to honor the Put Option. Because the value of the Pinnacle Stock is based on the financial performance of

capital stock of Pinnacle Airlines, Inc. Pursuant to the transaction, Pinnacle Airlines, Inc. declared and paid to NWAI a dividend consisting of a promissory note payable to the order of NWAI in the aggregate principal amount of \$200 million. NWAI then transferred the shares of Pinnacle Airlines, Inc. to Pinnacle in exchange for its issuance to NWAI of (i) 15,000,000 shares of Pinnacle's common stock, par value \$0.01 per share (Pinnacle Stock), and one share of Series A Preferred Stock, par value \$0.01 per share, of Pinnacle (the "Series A Preferred Share"), which, upon issuance and together with the Pinnacle Stock, constitutes all of the issued and outstanding capital stock of Pinnacle. NWAI then transferred the Pinnacle Shares and the Series A Preferred Share to Northwest as a contribution to the capital of Northwest.

Pinnacle, the Independent Fiduciary reviewed and considered the business of Pinnacle, and the contractual relationship between Pinnacle and Northwest. The Independent Fiduciary and its advisors also met with the senior officers of Pinnacle.

The Independent Fiduciary and its advisors reviewed various documents relevant to the Contribution, including without limitation, Northwest's certificate of incorporation; Northwest's corporate bylaws; the certificate of incorporation of Pinnacle; the Master Trust agreement pursuant to which the Plan assets are currently held and managed; audited financial statements of the Plans for 2000 and 2001; the current Plan documents; the Plans' annual reports on Forms 5500 for 2000 and 2001; other information provided by Northwest regarding the Plans' assets (including the Plans' investment guidelines and portfolio composition); a statement prepared by the Plans' actuaries of the Plans' liquidity needs to pay benefits and administrative expenses in the near future and the sources of funds (other than the Pinnacle Stock) available to satisfy such liquidity needs; and certain of Pinnacle's collective bargaining agreements. In addition, the Independent Fiduciary reviewed a number of other documents, including SEC Form S-1 filed with the Securities Exchange Commission on February 25, 2002 registering shares of Pinnacle Stock for an IPO and the Airline Services Agreement dated March 1, 2002. As a result of its review, certain changes were incorporated in the new Airline Services Agreement entered into on January 14, 2003 (ASA).

The IF Report provides that the Independent Fiduciary and its advisors participated in numerous telephone conferences with representatives of Northwest and Pinnacle through November, December and early January concerning the Independent Fiduciary's engagement, the proposed Contribution, the status of Northwest's minimum funding waiver applications to the Internal Revenue Service and the Proposed Exemption. On January 11, 2003, the Independent Fiduciary and its advisors conducted a telephone interview with Pinnacle's chief executive officer and chief financial officer as part of its due diligence.

The Independent Fiduciary and its advisors analyzed the voting, transfer and put right features of the Pinnacle Stock and engaged in significant negotiations on those features with Northwest. The Independent Fiduciary was also advised on the requirements of the U.S. Department of Transportation

regarding restrictions on directors of airlines. In its determinations, the Independent Fiduciary has also taken into account Northwest's request for a minimum funding waiver with respect to Plan contributions in 2003 and 2004, and considered the likelihood that such waiver will be granted.

The IF Report states that under the ASA, Northwest has committed 95 regional jet aircraft financed by Bombardier to be delivered to Pinnacle by December 31, 2004. As of December 31, 2002, the carrier had taken possession of 51 regional jets. The addition of the regional jets has more than doubled the size of the airline. According to the IF Report, Eclat estimates that Pinnacle's value to the Northwest domestic system is between \$520 million and \$540 million annually as the carrier exists today. Pinnacle itself had revenues of approximately \$345.2 million for 2002.

The IF Report explains that, because Pinnacle's operations are so entwined with Northwest's, Eclat evaluated Northwest as well as Pinnacle in its November 27, 2002 report to the PBGC (The Eclat Report). Despite the turmoil in the industry in recent years, Eclat felt that Northwest has emerged as, perhaps, the most stable airline in the industry. While all of the "Big 6" network airlines are losing money, Northwest has suffered the smallest loss of any carrier. Northwest reported a net loss of \$46 million, with operating income of \$8 million in the 3rd quarter of 2002. Northwest ended the 3rd quarter with over \$2.5 billion in cash and short-term receivables.

The IF Report notes that Northwest is a global carrier through its alliance with KLM and its Amsterdam hub, and its own hub in Tokyo. While the U.S. market has suffered tremendous losses due to the slowdown in the U.S. economy and the terrorist attacks of 9/11, the global market has rebounded much quicker. Northwest's presence in international markets has helped offset the losses in the U.S. domestic market. As with all domestic U.S. carriers, Northwest has been hit by the drop in revenue due to lower overall yields and depressed passenger levels. The drop-off in premium passenger traffic, the weak U.S. economy, and the increased presence of low-cost carriers has impacted the ability of the network carriers to generate high yield revenue. Through reduced employment levels and other cost-cutting measures, Northwest has been able to minimize the ongoing impact of reduced revenue levels, which the Independent Fiduciary believes are likely a permanent change in the industry. The labor situation is

stable. One of the strengths of the Northwest network is that the airline has the least exposure of any major carrier to low-cost carriers in the industry. This is primarily due to the fact that Southwest Airlines does not serve 2 of the 3 Northwest hubs—Memphis (Pinnacle's largest market) and Minneapolis. Southwest has a small operation in Detroit with only 2 gates. The IF Report states that Eclat expects that low-cost carriers will expand and gain share in the future but feels that Northwest is in the best shape of any network carrier to compete.

The Eclat Report and the January 15, 2003 Valuation

Fiduciary Counselors and Eclat represent that Eclat was originally retained by PBGC to value Pinnacle and to evaluate the financial viability of Northwest. Eclat is an aviation-consulting firm that specializes in detailed analysis of the economic and financial issues that surround the industry. The IF Report states that Eclat's clients come from almost every sector of the aviation industry—airports, airlines, labor organizations and aerospace/aeronautics corporations. With PBGC's consent, Eclat was subsequently retained by the Independent Fiduciary to value the Pinnacle Common Stock.

Eclat states in the January 15, 2003 Valuation that the valuation includes competitive, operational and financial elements essential to validating Pinnacle's current market viability as a Northwest regional partner and as a stand-alone airline and that the valuation describes the state of the regional airline industry, delves into some of the more important issues surrounding Pinnacle specifically, provides a brief financial review of the carrier, explains the valuation methodology, compares Pinnacle to Continental Express, and comments on the stability of Northwest. Appendices were attached that illustrate the valuation model used and highlight some of the additional information used to conduct the analysis.

The IF Report summarizes that, in order to determine the value of Pinnacle, Eclat created a model based on the Three-Stage Free Cash Flow to Equity valuation technique. This model is designed to value firms, like Pinnacle, that are expected to go through three phases of growth—an initial phase of high growth, a transitional period where the growth rate declines, and a steady-state period where growth is stable. Once these growth assumptions are made, the present value of expected free cash flow is calculated.

The IF Report notes that in the Eclat Report, Eclat's valuation of the Pinnacle Common Stock was considerably lower than the value it ultimately determined for the Independent Fiduciary in the January 15, 2003 Valuation. Eclat's original valuation for PBGC was based on publicly available information, primarily a draft S-1 Registration Statement which contained financial information only for the first nine months of 2002. As a result of its engagement by the Independent Fiduciary, Eclat was given access to non-public information including the ASA, Pinnacle's full 2002 revenue figures and information concerning the delivery schedule for delivery of regional jets to Pinnacle. The IF Report represents that, in the January 15, 2003 Valuation, Eclat determined that the net equity value (before discounts) of Pinnacle was \$412,923,928.00. Based on input from AIC, Eclat then applied a 15 percent liquidity discount and a 5 percent minority discount. AIC valued the Put Option at \$20,680,684 using a Black-Scholes American option-pricing model. The value of the transaction was also adjusted for the period between the exercise of the put and the Plan's receipt of the funds. This period could range between 30 and 180 days depending on Northwest's liquidity position. The result was a net value of \$339,178,820.00 for the purposes of determining the value of the stock contributed on January 15, 2003.

Negotiation of the Term Sheet and Omnibus Agreement

The Independent Fiduciary recognizes that all aspects of its engagement involved fiduciary actions, and, for that reason, representatives of the Independent Fiduciary and its financial and legal advisors actively participated in the negotiations relating to the Omnibus Agreement and in the evaluation of the decision of whether to accept the Contribution. From a fiduciary standpoint, Independent Fiduciary was required to determine whether the terms it negotiated in the Omnibus Agreement and its decision whether to accept the Contribution were prudent, for the benefit of, and in the interest of, Plan participants and their beneficiaries. In this regard, the Independent Fiduciary represented that it negotiated terms that it determined were no less favorable to the Plans than terms negotiated at arm's length with an unrelated third party under similar circumstances.

The terms of the transaction negotiated between the Independent Fiduciary and Northwest were embodied in a Term Sheet, which was

provided to the Department on January 10, 2003. The Term Sheet formed the basis for the Omnibus Agreement, which was executed on January 15, 2003, after the Independent Fiduciary received confirmation from the Department that the Proposed Exemption had been issued.

Fiduciary Counselors states that the Omnibus Agreement provides:

- For purposes of the funding standard account of each Plan, the value of the shares of Pinnacle Stock contributed to each Plan will be determined by the Independent Fiduciary. In addition to determining the value of Pinnacle Stock at the time of a proposed contribution, the Independent Fiduciary will provide an annual written valuation of the per share value of all Pinnacle Stock held by the Plans as of each December 31 and at any time the Independent Fiduciary exercises the Put Option described below.

- Subject to the further conditions and restrictions set forth in the Omnibus Agreement, the Plans may transfer the Pinnacle Stock prior to July 1, 2006, (1) only in the event of an IPO or sale to a third party initiated by Northwest, (2) by exercise of the Put Option (as described below), or (3) because of an Early Termination Event (including a breach of the Omnibus Agreement by Northwest or Pinnacle which is not cured timely or Northwest's failure to honor the Put Option).

- The Plans will be granted a Put Option with respect to each share of Pinnacle Stock contributed to the Plans, which may be exercised by the Independent Fiduciary at any time. To exercise the Put Option, the Independent Fiduciary must provide written notice to Northwest of its election to put to Northwest any or all of the shares of Pinnacle Stock then held by the Plans. The closing date of the purchase and sale of shares with respect to which the Put Option has been exercised will be the 30th calendar day after such notice is given. However, if Pinnacle has not yet consummated the IPO by the date that would otherwise be the closing date, Northwest will have the right to defer such closing date for up to 150 days, depending on Northwest's liquidity. The closing date may be further deferred and deferred payments may be made by Northwest as agreed to by the Independent Fiduciary if Northwest posts collateral in an amount and on terms satisfactory to the Independent Fiduciary. Alternatively, Northwest may arrange for the stock to be purchased by a third party.

- If the Pinnacle Stock is not publicly traded, the Plans will receive the

greatest of (i) the initial contribution value (the "Floor Price"), (ii) the fair market value as determined by the Independent Fiduciary at the time of the exercise of the Put Option, or, if greater, at the closing date of the Put Option, and, (iii) if a third party sale is elected for the Plans (under the limited circumstances described above) and Northwest does not exercise its right of first refusal, the proceeds from the sale of Pinnacle Stock held by the Plans to such third party. If the Pinnacle Stock is publicly traded, the Plans will receive the greater of (i) the Floor Price, or (ii) the average closing price for the stock on the public market for the 10 trading days preceding the exercise date or, if greater, the closing price on the day before the Put Option closing date.

- Once Pinnacle Stock is publicly traded, the Put Option will be suspended if all of the remaining shares of Pinnacle Stock held by the Plans have a market value not less than 110% of the Floor Price and such shares are freely tradable. Fiduciary Counselors and its advisors negotiated with Northwest and Pinnacle concerning the ability of the Plans to transfer the Pinnacle Stock and the rights of the Plans to cause Northwest to register the shares of Pinnacle Stock under Federal and State securities laws for resale to third parties. In negotiating the rights and restrictions set forth in the transfer and registration rights provisions of the Omnibus Agreement, Fiduciary Counselors balanced the need of the Plans to achieve greater diversification in light of the anticipated holdings of shares of Pinnacle Stock with the need to maximize the value of the investment in such stock.

- In addition, the Independent Fiduciary negotiated that Northwest Airlines Corporation (NWA Corp), Northwest's ultimate parent company, will guarantee Northwest's obligations under the Omnibus Agreement, including the consummation of the Put Option.

- As a condition to any such contribution by Northwest, the Independent Fiduciary must determine on behalf of the Plans that the acceptance of the contributed shares is prudent and in the interests of the Plans' participants and beneficiaries and otherwise consistent with the fiduciary standards of ERISA. In addition, the Independent Fiduciary will monitor on an ongoing basis the prudence of the Plans' continued holding of Pinnacle Stock consistent with the fiduciary standards of ERISA. The appropriate fiduciary of the Plans (other than the Independent Fiduciary) will determine that such investment will not impair the

liquidity of the Plans such that the Plans would not be able to pay benefits and expenses when due. If such appropriate Plan fiduciary determines the liquidity of the Plans is impaired, such fiduciary shall direct the Independent Fiduciary to dispose of all or a portion of the Pinnacle Stock consistent with the terms of the Omnibus Agreement to the extent commercially reasonable.

- All transactions involving the Plans in connection with the contribution of Pinnacle shares will be no less favorable to the Plans than arm's length transactions involving unrelated parties.

- No commissions, fees, costs, charges or other expenses will be borne by the Independent Fiduciary or the Plans in connection with any acquisition, holding or disposition of Pinnacle shares to or from the Plans, other than the underwriters' discount or other broker-dealer fees or commissions charged in any sale of such shares. In addition, the Independent Fiduciary negotiated the right to engage an investment banker on behalf of the Plans in an IPO, at Northwest's expense.

- Northwest will provide at least quarterly notice to the Independent Fiduciary of its cash liquidity. More frequent notice will be required based on Northwest's liquidity and the value of the Pinnacle Stock contributed to the Plans. In addition, Northwest will provide the Independent Fiduciary with the information required to be provided to its lenders under its credit agreement. In addition, Northwest shall provide it with copies of any amendments to the credit agreement.

- The Independent Fiduciary negotiated a comprehensive set of governance rights accorded to the Plans as a condition of acceptance of Pinnacle Stock. In this regard, as long as the Plans hold at least 5 percent of the Pinnacle Stock, the Plans will have the right to designate one nominee to Pinnacle's board of directors, and Northwest will vote the Series A Preferred Share held by it in favor of such designee. The director designated by the Plans will have the right to serve on Pinnacle's audit committee to the extent permitted under applicable SEC and stock exchange rules. Once the Plans hold more than 50 percent of the Pinnacle Stock, the affirmative vote of the director designated by the Plans shall be required to approve the appointment of any new CEO of Pinnacle and compensation of any CEO, any amendments to the \$200 million Note of Pinnacle Airlines, Inc. held by Northwest, the amendment of Pinnacle's charter or by-laws in certain respects, or the implementation of certain changes in Pinnacle's capital structure or the

issuance of capital stock prior to an IPO. The Independent Fiduciary negotiated further powers with respect to the Plan director, including the right to object to Business Combinations involving Northwest's affiliates.

- Any change to the ASA, including any early termination of the ASA by Pinnacle, must be approved by a majority of Pinnacle's independent directors, which majority must include the director designated by the Plans. Any transaction involving Northwest outside the ordinary course of business that involves more than \$2 million and any ordinary course transaction that involves more than \$5 million must be approved by a majority of the independent directors. In this event, a majority of the independent directors may require a fairness opinion from a nationally recognized investment banking firm.

- The Independent Fiduciary negotiated a comprehensive set of representations and warranties relating to both Pinnacle Corp. and Northwest and its affiliates relating to Northwest's ability to honor the Put Option and to the value of Pinnacle Corp. The representations and warranties must be true at the time of any Contribution. The Independent Fiduciary negotiated the survival of the representations and warranties in general for 24 months after the Closing Date and indefinitely with respect to those relating to Northwest's ownership of the Pinnacle Stock and Pinnacle's ownership of the outstanding shares of Pinnacle Airlines, Inc. prior to the Initial Contribution; Northwest's ownership of the Pinnacle Stock prior to any subsequent Contribution; and Northwest's and NWA's representation that the contemplated transactions do not violate or result in a default under any of their material contracts, including without limitation, the Credit Agreement.

Valuation of the Put Option

Fiduciary Counselors stated that, in conjunction with Northwest's contribution of Pinnacle stock to the Plans, Northwest has provided the Plans with a Put Option to protect them from a possible decline in Pinnacle's shares' value. The value of the transaction is enhanced due to the downside protection that this Put Option provides. In valuing the Pinnacle shares, it was necessary to assign a value, not only to Pinnacle, but also to the Put Option.

Prior to valuing the put option, Eclat's estimate of the value of Pinnacle was \$333,436,072, after application of an illiquidity discount of 15% and a minority discount of 5%. This value was further discounted by 4.48%, to

\$318,498,136, to reflect Northwest's ability to delay payment on the put for up to 6 months. Although the Plan's option is exercisable at anytime, unlike a normal option, Northwest does not have to immediately settle. Northwest has from 30 to 180 days to settle the option. The 4.48% discount represents what Eclat used for Pinnacle's pre-tax cost of debt (9.6%) adjusted for a six-month period. Fiduciary Counselors assumed that since Northwest could take up to 180 days to settle the option that it would. Although Eclat cannot know what market conditions might be like during this settlement period, this rate also exceeds the Plan's assumed asset earnings rate.

The value was then increased to reflect the value of the put. The Put Option is exercisable at any time by the Plan. Eclat used the Black-Scholes option-pricing model to determine the value of the Put Option. Using the Black-Scholes American option pricing model, Eclat determined the value of the Put Option to be \$20,680,684.

The Independent Fiduciary's Determinations

Fiduciary Counselors notes that under section 404(a)(1) of ERISA, a fiduciary must discharge its duties with respect to a plan solely in the interest of plan participants and beneficiaries. In addition, a fiduciary must act for the exclusive purpose of providing benefits to participants and beneficiaries; must act prudently; and must diversify the investment of plan assets to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. For the reasons set forth below, the Independent Fiduciary has concluded that it is prudent for the Plans to accept the Contribution and that the Contribution is in the interest of the Plans and their participants and beneficiaries:

- Participants and beneficiaries of the Plans stand to benefit from an IPO of the Pinnacle Stock. The ASA provides a range of revenues to be paid by Northwest to Pinnacle, and Eclat valued the Company based on the minimum revenues, which would result from the ASA. If Pinnacle in fact achieves the maximum operating margin provided under the ASA, Eclat estimated that the value of Pinnacle would be approximately 20 percent greater than the value used for purposes of the contribution.

- In valuing Pinnacle Stock, the Independent Fiduciary specifically applied a 15% liquidity discount and a 5% discount to take into account that, for some period, the Plans would be a minority shareholder.

- The Independent Fiduciary negotiated the terms of the Put Option which provide downside protection by permitting the Plans to sell the Pinnacle Stock back to Northwest for the greater of the original value at which it was credited to the funding standard account or its fair market value at the time it is sold back to Northwest.

Transfer restrictions on Pinnacle Stock held by the Plans are reasonable in light of the Put Option. Specifically, the Independent Fiduciary negotiated a limited period for the transfer restrictions (until July 1, 2006) and the elimination of such restrictions upon the occurrence of an Early Termination Event.

- The Independent Fiduciary negotiated voting and governance rights to be accorded to the Plans that protect the interests of the Plans (*e.g.* protect the plans from adverse changes in the ASA, in Pinnacle's capital structure, *etc.*).

- Registration rights and Plan director's rights preserve the value of the Pinnacle Stock while held by the Plans.

- The Independent Fiduciary retained an independent, expert airlines valuation firm, Eclat, to provide valuation services. Eclat determined that Pinnacle and Northwest are healthy companies, even in light of current economic conditions in the airline industry.

- The terms of the ASA and related agreements are more favorable to Pinnacle than an arm's length transaction between unrelated parties, and substantially determine and enhance the value of Pinnacle. The requirement that the director nominated by the Plans approve any changes in the ASA will ensure that any modification of those terms is done only if the changes, taken as a whole, are favorable to Pinnacle and its shareholders, including the Plans.

- Participants and beneficiaries of the Plans benefit from Northwest's improved liquidity and continued viability and competitiveness in the current economic environment.

- The Independent Fiduciary considered, and determined, that the Plans' holding of Pinnacle Stock was consistent with the Plans' investment guidelines and would not impair the Plans' diversification. The Pension Investment Committee informed the Independent Fiduciary that the holding of Pinnacle Stock constituting the Initial Contribution to the Plans would not and was not expected in the foreseeable future to impair the liquidity of the Plans and that the Plans would be able to pay benefits and expenses when due.

- Based on the Eclat and AIC valuations, the Independent Fiduciary determined that the contribution of 1,938,000 shares of Pinnacle Stock should be valued at \$43,821,894 as of January 15, 2003, the date the contribution occurred.

Duties of the Independent Fiduciary

The Department notes that the appointment of an independent fiduciary to represent the interests of the Plans with respect to the transactions that are the subject of the exemption request was a material factor in its determination to propose exemptive relief. In response to the commenters' concerns about the role of the independent fiduciary, the Department believes that it would be helpful to provide its views on the responsibilities of an independent fiduciary in connection with the in-kind contribution of property to an employee benefit plan.

As noted in the Department's Interpretive Bulletin, 29 CFR 2509.94-3(d) (59 FR 66736, December 28 1994), apart from consideration of the prohibited transaction provisions, plan fiduciaries must determine that acceptance of an in-kind contribution is consistent with ERISA's general standards of fiduciary conduct. It is the view of the Department that acceptance of an in-kind contribution is a fiduciary act subject to section 404 of ERISA. In this regard, section 404(a)(1)(A) and (B) of ERISA requires that fiduciaries discharge their duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, section 404(a)(1)(C) requires that fiduciaries diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Accordingly, the fiduciaries of a plan must act "prudently," "solely in the interest" of the plan's participants and beneficiaries, and with a view to the need to diversify plan assets when deciding whether to accept an in-kind contribution. If accepting an in-kind contribution is not "prudently," not "solely in the interest" of the participants and beneficiaries of the plan, or would result in an improper lack of diversification of plan assets, the responsible fiduciaries of the plan

would be liable for any losses resulting from such a breach of fiduciary responsibility, even if a contribution in kind does not constitute a prohibited transaction under section 406 of ERISA.

The selection of an independent qualified appraiser to determine the value of an in-kind contribution and the acceptance of the resulting valuation are fiduciary decisions governed by the provisions of Part 4 of Title I ERISA. In discharging its obligations under section 404(a)(1), the independent fiduciary must take steps calculated to obtain the most accurate valuation available. In addition, the fiduciary obligation to act prudently requires, at a minimum, that the independent fiduciary conduct an objective, thorough, and analytical critique of the valuation. In conducting such verification, the independent fiduciary must evaluate a number of factors relating to the accuracy and methodology of the valuation and the expertise of the independent qualified appraiser. Reliance solely on the valuation provided by the appraiser would not be sufficient to meet this prudence requirement.

In considering whether to accept an in-kind contribution, the Independent Fiduciary's responsibilities include the following:

1. The Independent Fiduciary must prudently determine the fair market value of the Pinnacle Stock as of the date it is contributed to the Plans. In determining the fair market value of the stock, the Independent Fiduciary must obtain an appraisal by a qualified independent appraiser, and must ensure that the appraisal is consistent with sound principles of valuation.

2. The Independent Fiduciary must ensure that each appraisal, at a minimum, includes the following elements:

(a) A summary of the appraiser's qualifications to evaluate Pinnacle Stock,

(b) A statement that the appraiser is independent of Pinnacle and Northwest, and that the appraiser has no interest in the securities issued by Pinnacle or Northwest,

(c) A statement that the appraisal is being conducted to determine the fair market value of Pinnacle Stock, which is defined as the price at which the stock would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are well informed about the stock and the market for the stock,

(d) A statement of the stock's value, the methodologies used in determining

the value, the reasons for the valuation in light of the methodologies, and the reasons that the appraiser chose to apply particular valuation methods rather than others,

(e) A statement of the relevance or significance accorded to the valuation methodologies taken into account,

(f) The effective date of the valuation,

(g) A description of the nature of Pinnacle's business and history,

(h) A description of the economic outlook in general, and of the condition and outlook of Pinnacle's industry in particular,

(i) An analysis of Pinnacle's financial condition and earning capacity,

(j) A description of all of the factors taken into account in making the valuation, including any restrictions, understandings, agreements or obligations limiting the Plans' ability to dispose of the stock,

(k) A statement of past transactions involving Pinnacle Stock, including dates, amounts, price, and whether the transactions were at arms-length, as well as a description of any attempts to buy or sell Pinnacle Stock over the last five years, including a description of any previous plans for initial public offerings,

(l) An analysis of the market price of securities of corporations engaged in the same or similar lines of business as Pinnacle, which are actively traded on a recognized exchange or automated broker-dealer quotation system,

(m) An analysis of the marketability, or lack thereof of the Pinnacle Stock, with specific reference to any restrictions, understandings, agreements, or obligations limiting the Plans' ability to dispose of the Pinnacle Stock,

(n) An analysis of the degree to which actual control (both in form and in substance) will pass to any of the Plans as a result of any of the contemplated transactions,

(o) To the extent that Pinnacle's current or projected revenues and expenses are related to, or dependent upon, contracts, agreements, or understandings between Northwest and Pinnacle, an analysis of Northwest's financial condition, the likelihood of a Northwest bankruptcy, and the potential impact of a Northwest bankruptcy on those contracts, agreements, or understandings, and on the market value of Pinnacle Stock, and

(p) Any other factors necessary for a prudent determination of the market value of Pinnacle Stock.

3. The Independent Fiduciary must investigate the facts and assumptions underlying the appraisals to ensure that stock contributions are not valued at

more than fair market value. The Independent Fiduciary must not simply defer to the conclusions reached by the appraiser, but rather will take appropriate action to ensure:

(a) That the appraisal is based upon complete, accurate, and current data;

(b) That the appraiser is appropriately qualified to conduct the valuation;

(c) That the valuation methodologies are appropriate and adequately explained and that the appraiser has adequately justified its decision not to use alternative methodologies;

(d) That any variables used in the valuation analysis such as projected revenues, expenses, operating margins, depreciation, discount rates, capitalization rates, and multipliers are adequately supported by market data;

(e) That the stock's value is calculated with appropriate discounts for lack of marketability and control after a reasoned evaluation of the relevant market data concerning such discounts, as well as of each Plan's actual ability to effectively dispose of its stock or to control Pinnacle;

(f) That the appraisal's reasoning and assumptions are consistent, logical, and supported by appropriate financial and economic data and that any calculations are accurate;

(g) That the valuation is based on complete, accurate, and audited financial statements, which have been properly analyzed;

(h) That the assumptions underpinning the valuation are properly identified, and a careful analysis is performed of the impact of changes in those assumptions on the value of Pinnacle Stock;

(i) That the valuation has appropriately considered Northwest's financial condition in valuing Pinnacle Stock, as well as the impact of a Northwest bankruptcy on the value of Pinnacle Stock; and

(j) That the fair market value of the stock has been determined by way of a prudent investigation.

4. The Independent Fiduciary must ensure that all of the conditions above are satisfied with respect to any past contributions of Pinnacle Stock, as well as any future contributions. If previous valuations or analyses do not comport with these conditions, the Independent Fiduciary must perform any additional work necessary to make the valuations and analyses consistent with the conditions of this exemption. In no circumstance, however, may the parties treat Pinnacle Stock previously contributed to the Plans as if it had a higher value than was attributed to it at the time of the original contribution.

Northwest represents that, if the Independent Fiduciary determines that the Pinnacle Stock previously contributed to the Plans was worth less at the time of the contribution than the amount attributed to it at the time of the contribution, Northwest shall contribute additional Pinnacle Stock or cash in amounts sufficient to make up the shortfall.

Lastly, the Department notes that the above described responsibilities to be undertaken by the Independent Fiduciary are material factors in the Department's determination to grant a final exemption.

Additional Comments and Submissions

Northwest April 10, 2003 Submission

On April 10, 2003, Northwest submitted additional documentation to the Department in connection with the January 15, 2003 contribution of Pinnacle Stock to the Contract Plan (April 10 Submission Documents). Northwest noted that the Pinnacle Stock is being held in an Investment Fund established in connection with the Master Trust, and the amounts were allocated to the Contract Plan and Salaried Plan consistent with the provisions of the Master Trust, as described in the Proposed Exemption. Northwest appointed Fiduciary Counselors investment manager of the Investment Fund and Fiduciary Counselors has accepted this appointment.

Northwest April 26, 2003 Comment

By letter dated April 26, 2003, Northwest responded to many of the comments the Department had received concerning the Proposed Exemption (April 26 Comment). Northwest observed that the comments submitted to the Department raised several concerns regarding the contribution of Pinnacle Stock to the Plans, as contemplated by the Proposed Exemption. Because many of the comments raise common concerns, Northwest organized its responses to address these common concerns.

Airline Industry and Northwest Financial Condition

Comment: A number of comments noted that the airline industry is experiencing significant financial troubles and that some other airlines are in bankruptcy. The comments expressed concern that Northwest is exposed to bankruptcy risk and that the Pinnacle Stock would have greatly reduced value if Northwest were to file for bankruptcy, because Pinnacle serves Northwest.

Northwest Response: Northwest responded that Northwest recognizes

that it and the airline industry face significant financial challenges. Northwest sought the exemption to permit the Pinnacle Stock contribution as part of its overall strategy of managing the current economic uncertainty. By permitting the contribution of Pinnacle Stock, Northwest is able to preserve needed cash so that it can withstand several years of losses. Maintaining liquidity is key to Northwest's strategy for avoiding bankruptcy.

Northwest strongly believes that Pinnacle Stock has significant value and that the value of Pinnacle Stock will increase when the IPO market improves for regional airlines. Regional airlines play an indispensable role in providing major airlines with important access to passengers, largely from markets too small to be serviced by a major airline. Pinnacle contributed over \$500 million in revenue to Northwest in 2002 and is expected to grow its regional jet flying approximately 30 percent per year through 2005. As Pinnacle grows to 95 aircraft, the number of passengers and revenue will more than double.

Northwest has entered into a 10-year ASA with Pinnacle through 2012 that provides substantial value. Pinnacle's compensation formula within the ASA contractually provides for a target operating margin of 14 percent from 2003 through 2007, with a guaranteed floor of 12 to 13 percent during this period. In 2008, the target operating margin will be reset to a market-based percentage, but it will be no less than 10 percent and no higher than 14 percent. Northwest will no longer guarantee a minimum operating margin in 2008. The target margin will be reset after 2008 based on historical and expected operating costs.

Northwest asserts that its beliefs in this regard have been independently verified. In connection with the Exemption Transactions, Northwest does not determine the value of Pinnacle Stock. The value of Pinnacle Stock is determined by an independent fiduciary, Fiduciary Counselors, based on the valuation provided by their independent valuation firm, Eclat. The valuation prepared by Eclat took into consideration current industry conditions. If the markets return, substantial upside will benefit the Plans. Future contributions of Pinnacle Stock will continue to be subject to independent review and valuation.

Northwest adds that under ERISA sections 406 and 407, Northwest could have contributed the stock of its parent company (traded under the symbol NWAC) to satisfy its funding obligations without seeking an exemption.

However, Northwest has proposed to contribute Pinnacle Stock because it believes that it is a superior investment for the Plans. The stock has long term upside potential because of the planned IPO. Indeed, the January 15, 2003 Valuation indicates that the Plans could receive a 20 percent IPO premium in connection with the Pinnacle Stock investment.

Finally, Northwest notes that regional airline stocks have generally been less volatile and better performing than the stocks of major airlines. Since September 10, 2001, regional airlines have lost 48% of their value while the major airlines have lost 78% (excluding U.S. Airways and United that have filed for Chapter 11 bankruptcy protection). Northwest also believes that the value of Pinnacle Stock is less exposed to bankruptcy risk than Northwest stock. This is because a regional airline derives its value from the value of its ASA with the major carrier and the major carrier is unlikely to terminate the ASA in bankruptcy because it would severely disrupt the flow of high yield passengers. In the case of United Airlines, for example, the airline has not rejected the ASAs it has entered into with its regional airline partners Atlantic Coast Airlines, SkyWest and Air Wisconsin. Similarly, U.S. Airways did not reject its ASA with its regional airline partners Mesa and Chautauqua. In addition, U.S. Airways has recently signed an agreement with Mesa for more regional aircraft. Wall Street analysts also look favorably on ExpressJet, the Continental Airlines regional airline partner. However, Northwest understands that some of United's airline services agreements have been renegotiated and that it has been reported that the airline services agreement between United and Atlantic Coast Airlines is the subject of current negotiations. Moreover, in connection with the Omnibus Agreement entered into between Fiduciary Counselors and Northwest, Fiduciary Counselors negotiated for limitations on Northwest's ability to unilaterally amend or terminate the ASA.

Valuation of Pinnacle Stock

Comment: A number of comments expressed concerns that Pinnacle Stock is a risky and illiquid investment and hard to value because there is no established market for the security.

Northwest Response: Northwest represents that it did not value Pinnacle Airlines for purposes of the Exemption Transactions. As a condition of the Proposed Exemption, Fiduciary Counselors, using the services of its independent appraisal firm Eclat,

determined the value of Pinnacle Stock. In doing so, Fiduciary Counselors' legal obligations run exclusively to the Plans, not to Northwest. As the Plans' independent fiduciary, Fiduciary Counselors must act prudently and in the interests of the Plans and their participants.

Northwest asserts that in valuing Pinnacle Stock, there are well-established valuation methodologies available to the valuation experts to assess the value of non-public securities like Pinnacle Stock. Such techniques were employed by Fiduciary Counselors and Eclat in this circumstance. In particular, the risk and the liquidity of the Pinnacle Stock were taken into account and are explained in the reports issued by Fiduciary Counselors and Eclat. Equally important, Fiduciary Counselors negotiated for special rights associated with the Plans' acquisition of Pinnacle Stock that limit the risks associated with Pinnacle Stock. For example, the Plans obtained a Put Option, corporate governance rights, voting rights in Pinnacle and the right to initiate an IPO or sale of Pinnacle Stock.

Collateral for Pinnacle Stock Contribution

Comment: Some comments suggested that Northwest be required to post collateral in order to contribute Pinnacle Stock to the Plans.

Northwest Response: Northwest explains that, while the Proposed Exemption and the Omnibus Agreement negotiated with Fiduciary Counselors do not require collateral, the Proposed Exemption and the Omnibus Agreement include provisions designed to limit the need for collateral. The purpose of collateral would be to protect the Plans from declines in the value of Pinnacle Stock and secure the Put Option accorded to the Plans. In this case, the Omnibus Agreement provides the Plans with a Put Option that allows Fiduciary Counselors at any time to "put" Pinnacle Stock back to Northwest at the greater of the price at the time the stock was contributed or the price at the time of the put.⁷ The Omnibus Agreement

⁷ Northwest notes that specifically, if the Pinnacle Stock is not publicly traded, the Plans will receive the greatest of (i) the initial contribution value (the Floor Price), (ii) the fair market value as determined by the Independent Fiduciary at the time of the exercise of the Put Option, or, if greater, at the closing date of the Put Option, and, (iii) if a third party sale is elected by the Plans and Northwest does not exercise its right of first refusal, the proceeds from the sale of Pinnacle Stock held by the Plans to such third party. If the Pinnacle Stock is publicly traded, the Plans will receive the greater of (i) the Floor Price, or (ii) the average closing price for the stock on the public market for the 10 trading

further requires that Northwest provide regular notice of its liquidity to Fiduciary Counselors. Thus, the Put Option serves to protect the Plans from declines in the value of Pinnacle Stock and the liquidity notice feature ensures that the Independent Fiduciary has sufficient notice so that it may exercise the Put Option at a time when Northwest has sufficient financial resources to meet its obligation under the Put Option.

Northwest asserts that, while the Department has required collateral for some similar exemptions in the past, it has not required collateral in all cases. Here, they assert, the purpose of the exemption, to provide the Plans with a valuable security while maintaining Northwest's liquidity, would be undermined if assets were required to be used as collateral in connection with contributions of Pinnacle Stock. Moreover, to the extent that Northwest has assets to secure the contributions, such assets will be used to maintain the liquidity necessary for Northwest to weather the ongoing economic challenges.

Conflicts of Interest

Comments: Commenters expressed a concern that the contribution of Pinnacle Stock involves a conflict of interest on the part of Northwest.

Northwest Response: Northwest states that, because there is a potential for a conflict of interest, the Proposed Exemption required that Northwest appoint an independent fiduciary who is vested with the discretion to determine whether the Plans should acquire, hold or dispose of Pinnacle Stock. The Proposed Exemption included specific conditions that ensure that the independent fiduciary is free from conflicts of interest. The Proposed Exemption further required that the independent fiduciary obtain expert valuation advice from an independent valuation firm. Thus, to eliminate the potential for a conflict of interest, two parties completely independent of Northwest—Fiduciary Counselors and Eclat—represented the interests of the Plans in connection with the transaction.

Northwest represents that the final terms of the Omnibus Agreement reflect the fact that Fiduciary Counselors has represented the Plans' interests. In this regard, the Plans acquired Pinnacle Stock at a favorable price and the Plans obtained voting and management rights, anti-dilution rights, limits on

days preceding the exercise date or, if greater, the closing price on the day before the Put Option closing date.

Northwest's ability to terminate the ASA, rights to sell the Pinnacle Stock or dispose of it in an IPO in a variety of circumstances, and a protective Put Option. In addition, Pinnacle has an independent Board of Directors with one member appointed by Fiduciary Counselors, and the Fiduciary Counselors-appointed Board member is entitled to special voting rights on certain matters.

Exposure to Future Underfunding

Comment: Several commenters expressed concern that the exemption would expose the Plans to increased underfunding in the future.

Northwest Response: Northwest notes that it has never before sought a prohibited transaction exemption and has never missed a pension funding payment. Indeed, during the 1990's, Northwest contributed to its pension plans millions of dollars more than the required amount of contributions. As Northwest's track record demonstrates, Northwest agrees that the Plans need to be soundly funded. The Proposed Exemption is part of Northwest's strategy to achieve that goal. Through the contribution of Pinnacle Stock, Northwest will be able to meet up to \$330 million (based on the current valuation) in near term funding obligations while maintaining the airline's ability to weather difficult times, to the benefit of all concerned. Moreover, when the IPO of Pinnacle Stock occurs, the Plans may benefit from a potentially significant IPO premium with respect to their holdings of Pinnacle Stock. In the absence of the contribution of Pinnacle Stock, the Plans could suffer from increased underfunding. This is because a cash contribution is not a viable alternative given the company's liquidity needs.

Preference for Cash Contribution

Comment: A number of commenters expressed a preference that pension contributions be made with cash rather than Pinnacle Stock.

Northwest Response: Northwest notes that like other major airlines, Northwest is in a temporary period of extraordinary airline revenue weakness and volatility. In this environment, it is necessary to maintain high liquidity reserves to ensure the viability of the airline and protect the long-term interests of the pension plans and plan participants.

Northwest asserts that, if its current cash needs were not so great, Northwest would make its pension contributions in cash as it has in the past. However, because of its liquidity needs, a cash contribution is not a viable alternative.

Northwest stated “[i]n the absence of an exemption, Northwest would have to consider the contribution of NWA Corp. stock or an IRS waiver. Alternatively, Northwest could consider filing for bankruptcy, which would suspend most pension contributions, and could result in termination of some or all of the Plans.”

The goal of the Pinnacle Stock contribution is to (1) provide the Plans with a valuable security, (2) meet near term pension funding obligations, and (3) allow Northwest to preserve cash to withstand the current economic

environment. Northwest believes this is the best outcome for all Plan participants and beneficiaries.

Eclat May 16, 2003 Response

On May 16, 2003, Mr. William S. Swelbar, Managing Director of Eclat, responded to the Department concerning questions on the two valuations of Pinnacle. Eclat provided additional information in support of its view that the discount rates, and other factors used in determining the fair market value of the Pinnacle Stock were reasonable and theoretically sound.

Northwest May 20 and June 10, 2003 Comment Letters

On May 20 and June 10, 2003, Northwest responded to certain issues raised during the Hearing that were not responded to in the April 26 Comment.

1. During the Hearing, the Department asked Northwest to provide information concerning the funded status of the Pilot Plan, Contract Plan and Salaried Plan at the end of 2002. Northwest provided the funded status of each Plan as of 1/1/03 as shown in the following table.

NORTHWEST AIRLINES, INC.—CURRENT LIABILITY FUNDED STATUS AT JANUARY 1, 2003

	Pilots plan	Contract plan	Salaried plan
Current Liability using 6.65% interest rate (IRC § 412(l))	\$3,665,896,686	\$2,673,540,738	\$425,037,585
Market Value of Assets (with PY02 accrued contributions)	2,253,513,119	² 1,385,832,156	³ 254,670,253
Actuarial Value of Assets (with PY02 accrued contributions) ¹	2,704,215,743	² 1,662,998,587	³ 305,604,304

¹ Actuarial value of assets smoothes investment gains and losses over a five-year period.
² Accrued contribution of \$202,626,983 for PY02.
³ Accrued contribution of \$20,083,879 for PY02.

2. During the Hearing, employees of Northwest referenced an employee stock program that was established by the company in 1993. Northwest explained that, as part of labor agreements reached in 1993, Northwest’s parent company, NWA Corp., issued to trusts for the benefit of participating employees 9.1 million shares of a new class of Series C cumulative, voting, convertible, redeemable preferred stock, par value of \$.01 per share (the Series C Preferred Stock), and 17.5 million shares of Common Stock and provided the union groups with three positions on the Board of Directors. The Series C Preferred Stock ranks senior to Common Stock with respect to liquidation and certain dividend rights. As long as the Common Stock is publicly traded, no dividends accrue on the Series C Preferred Stock.

The Northwest Airlines Corporation Employee Stock Plan (Employee Stock Plan) was established in 1993. The Employee Stock Plan is a profit sharing plan that is tax qualified under section 401(a) of the Code and subject to ERISA.⁸ The Employee Stock Plan was

established through labor negotiations between Northwest and its unions in 1993 to hold contributions of Northwest Airlines Corporation Series C Preferred Stock. These negotiations resulted in agreements (Agreements) between Northwest and each of its unions under which Northwest would contribute to the Employee Stock Plan a newly created, special class of stock (the Series C Preferred Stock) in an amount that would equal the monetary value of certain wage and other concessions agreed to by the unions. Each of Northwest’s three main unions at the time of the Agreements also was granted the right to appoint one director to the Northwest board of directors.

The Employee Stock Plan covers in general terms Northwest’s employees employed from August 1, 1993 through 1996, including employees represented by Air Line Pilots Association (ALPA), International Association of Machinists and Aerospace Workers (IAM), International Brotherhood of Teamsters (IBT), Airline Technical Support Association (ATSA), Northwest Airlines Meteorologists Association (NAMA), Transport Workers Union of America (TWUA) and management employees. In 1994 through 1997, Northwest made annual contributions of Series C Preferred Stock to the Employee Stock Plan for the benefit of employees represented by the IAM and IBT (the other labor groups had converted their right to receive Series C Preferred Stock into Common Stock under the Special

Conversion Option described below). The shares were then allocated to individual accounts established on behalf of each eligible employee. A total of 9.1 million shares of Series C Preferred Stock were contributed to the Employee Stock Plan.

Each share of the Series C Preferred Stock is convertible at any time into 1.364 shares of NWA Corp. Common Stock (Common Stock). At the time a participant exercises conversion rights, the Series C Preferred Stock is converted to Common Stock, the Common Stock is sold and cash is allocated to participant accounts. In addition, under the Agreements, the trustee of each plan was given a one time Special Conversion Option that, if elected, resulted in the relevant trusts receiving Common Stock at the rate of 1.9096 shares of Common Stock for each share of the Series C Preferred Stock that they would have otherwise received. The Special Conversion Option expired on February 9, 1994. On that day, ALPA, TWUA, NAMA, ATSA and the Company on behalf of its management and non-contract employees exercised the Special Conversion Option, with the IAM and IBT electing not to exercise the Special Conversion Option (63 shares are still owned by the ALPA trust). Thus, almost all of the Series C Preferred Stock that remains in the Employee Stock Plan is allocated to the accounts of employees represented by the IAM and IBT. As of December 31, 2002, 4.3 million shares of Series C Preferred Stock have been converted into Common Stock and the remaining

⁸ The original Employee Stock Plan was established in 1993. On December 2, 2002, the Employee Stock Plan was divided into three components, which were then merged into the existing Northwest Airlines Retirement Savings Plan for Pilot Employees, Northwest Airlines Retirement Savings Plan for Contract Employees and Northwest Airlines Retirement Savings Plan for Salaried Employees. Each of these plans is a Code section 401(k) plan that is tax qualified under section 401(a) of the Code and subject to ERISA. For ease of reference, Northwest refers to the Employee Stock Plan, but the factual discussion of the Series

C Preferred Stock remains accurate after the merger with the Northwest 401(k) plans.

4.8 million shares outstanding are convertible into 6.6 million shares of Common Stock.

The holders of outstanding Series C Preferred Stock have a "put right" in 2003 to require NWA Corp. to repurchase such shares for an amount equal to the actual wage savings achieved under the 1993 labor agreement (projected to be \$226 million at the August 1, 2003 put date). NWA Corp. has the option to repurchase such shares in cash, by the issuance of additional Common Stock, or by the use of cash and stock. A decision to issue only additional Common Stock must be approved by a majority of the three directors elected by the holders of the Series C Preferred Stock. If NWA Corp. decides not to repurchase the Series C Preferred Stock, quarterly dividends will accrue beginning August 1, 2003, at 12% per annum and the employee unions will receive three additional Board of Directors positions. If, on August 1, 2003, NWA Corp. decides not to repurchase the Series C Preferred Stock, beginning on August 1, 2003 and on each succeeding quarter end date, NWA Corp. must use all "Available Cash" (a defined term in the Agreements) to effect partial repurchases of the Series C Preferred Stock, but only if and to the extent NWA Corp. is not prohibited from making such repurchases under applicable Delaware corporate law or any loan agreement to which NWA Corp. is a party. Any decision not to use all Available Cash to effect such partial purchases must be approved by a majority of the directors elected by the holders of the Series C Preferred Stock.

On August 1, 2003, Northwest issued a press release that announced its decision on the Series C Preferred Stock. The Northwest board of directors determined that at this time the company could not legally redeem the 4.8 million shares of its Series C Preferred Stock still outstanding and made the following statement:

After a thorough review of the legal restrictions applicable to the company, the board concluded that Northwest was not able to buy back the Series C Preferred Stock, at this time. As a board, we recognize the valuable contributions our employees made to the company during the 1993-1996 wage reduction period and acknowledge the company's obligation to buy back the Series C Preferred Stock. We want to do so as soon as possible. We devoted substantial time and effort to this issue. We discussed the Series C Preferred Stock buy back at length in our regularly scheduled April and June board meetings, and held two special meetings in July devoted exclusively to the Series C issue * * *. At the conclusion of these deliberations, it was clear that the legal

restrictions applicable to stock buy backs under Delaware Law did not permit Northwest to proceed at this time with the buy back of the Series C Preferred Stock.

The board noted that the company's obligation to the holders of the Series C Preferred Stock continues until Northwest has the ability to repurchase the Series C Preferred Stock. Until the Series C stock is repurchased, each share will accrue a 12% per year dividend on the \$46.96 per share buy back price.

On August 1, 2003, in response to the Department's questions concerning the "legal restrictions" that prevented Northwest from repurchasing the Series C Preferred Stock and whether these legal restrictions were tied to Northwest's financial condition, Northwest explained that in making the Series C stock repurchase decision, the board of NWA Corp. was subject to a Delaware law that applies only to NWA Corp.'s repurchase of its own stock. The Delaware law does not apply to the repurchase of Pinnacle Stock, which is not treated as NWA Corp.'s own stock. The Delaware law applicable to the repurchase of the Series C stock requires the Board to make a finding that NWA Corp. has adequate surplus, defined as the net asset value of the corporation in excess of its capital. At the present time, the Board was unable to make this finding.

The Department also questioned whether such restrictions would similarly preclude Northwest from honoring the Put Option. Northwest responded that no similar legal restriction would apply to the repurchase of Pinnacle Stock pursuant to the exercise of the Put Option. Minnesota law would not restrict the repurchase of Pinnacle stock by Northwest, a Minnesota corporation, which issued the Put Option. In addition, Delaware law would not restrict NWA Corp., a Delaware corporation, from repurchasing the Pinnacle Stock as the guarantor of the Put Option. Both the Minnesota law and the Delaware law relate to the repurchase of the stock issued by Northwest Airlines, Inc. and NWA Corp., respectively, and would not apply to the repurchase of stock of Pinnacle (the Pinnacle Stock). Northwest notes that the board previously approved the Omnibus Agreement, which includes the Put Option, and no further action would be required of the board in the event that the Put Option is exercised by the Independent Fiduciary.

Northwest stated that the language at section 5.1(b) of the Omnibus Agreement contains a representation

that Northwest has the corporate and legal authority to meet its obligations under the agreement, including the Put Option. Northwest asserts that it couldn't make this representation if there were restrictions that limited its ability to honor the Put Option or other aspects of the Omnibus Agreement and this representation was the product of the negotiations between the Independent Fiduciary and Northwest (as noted above).

Fiduciary Counselors' July 11, 2003 Submission

Additional Information

Fiduciary Counselors sent additional information to the Department on July 11, 2003. The information addressed, among other issues, how the possibility of a Northwest bankruptcy was factored into the valuation, how the valuation was "stress" tested for other assumptions contained in the valuation, and the reasons for the selection of a 15% liquidity discount.

Fiduciary Counselors, AIC and Eclat represent that the ASA between Northwest and Pinnacle provided the framework for the final valuation. There were significant changes made to the original valuation performed for the PBGC (the Eclat Report) based on this agreement that proved to be more conservative with respect to the ultimate valuation. Fiduciary Counselors, AIC and Eclat also noted that some of the information used by Eclat for the January 15, 2003 Valuation was not available during the initial valuation in the Eclat Report.

Additionally, by letter dated July 15, 2003, Fiduciary Counselors represents that in preparing the valuation for subsequent contributions, Eclat will reexamine the assumptions used in preparing the initial valuation and will continue to stress test the assumptions in its valuation model to reflect the credit-worthiness of Northwest and changing conditions in the regional jet market.

Change of Affiliation of Fiduciary Counselors

On July 11, 2003, Fiduciary Counselors informed the Department that Fiduciary Counselors Inc. (formerly Aon Fiduciary Counselors, Inc.) (Fiduciary Counselors) is no longer a subsidiary of Aon Corporation. As of June 30, 2003, Fiduciary Counselors was acquired by Fiduciary Group, Inc., in a management-led buyout.

Fiduciary Counselors notes that there will be no change in its providing objective and independent investment management. Ellen A. Hennessy will

continue as President of Fiduciary Counselors and, as majority shareholder of Fiduciary Group, will continue to control management decisions with respect to Fiduciary Counselors. Ellen A. Hennessy will continue to be the primary person at Fiduciary Counselors handling its responsibilities as independent fiduciary to the Northwest Airlines defined benefit plans.

Fiduciary Counselors adds that AIC, which remains a subsidiary of Aon, will continue to act as advisor in connection with this engagement. There will be no change in their personnel assigned to this engagement or in the manner in which the fees are split between the two organizations.

As described in the Fiduciary Counselors letter to the Department on January 6, 2003, Northwest has agreed to pay Fiduciary Counselors an annual fee that covers both the independent fiduciary and investment management services provided by Fiduciary Counselors and the investment advisory services provided by AIC. The initial fee was remitted directly to Aon Consulting, Inc., then a parent company of both Fiduciary Counselors and AIC. Aon Consulting internally allocated 25% of the fee to Fiduciary Counselors, which comprised less than 5% of its annual gross revenue in 2002. In connection with the change in ownership of Fiduciary Counselors, Fiduciary Counselors and AIC have agreed that future payments will be allocated in the same proportions. Payment will be made to Fiduciary Counselors, which will remit 75% to AIC. Based on current client engagements, Fiduciary Counselors anticipates that the portion retained by it will comprise less than 5% of Fiduciary Counselors' gross revenue for 2003.

Fiduciary Counselors asserts that the sale of Fiduciary Counselors will, if anything, increase their independence. As reflected in the Proposed Exemption, another Aon affiliate does provide non-plan services to Northwest, albeit services representing less than 1% of Aon's total annual revenue. In contrast, under its new ownership, neither Fiduciary Counselors nor any affiliate will accept any other engagement from Northwest while it is independent fiduciary for the Plans.

Termination of the Independent Fiduciary Agreement

The Department notes that the Preamble to the Proposed Exemption stated that either party may terminate the Independent Fiduciary Agreement for any reason upon 60 days notice and that the Agreement may be terminated

immediately for cause. As further noted in the Preamble, the parties to the Agreement shall notify the Department within 30 days of any decision regarding the resignation, termination or change in control of the Independent Fiduciary. The Department wishes to clarify that any replacement Independent Fiduciary must be acceptable to the Department and must assume its responsibility prior to the effective date of the removal of the predecessor Independent Fiduciary.

Northwest and ALPA Agreement Regarding Pinnacle Stock

On June 27, 2003, ALPA and Northwest provided the Department with a Letter of Agreement between Northwest and the Northwest airline pilots represented by ALPA (the Letter Agreement) regarding the acquisition and holding of Pinnacle stock by the Northwest Pension Plan for Pilot Employees (the Pilot Plan). ALPA and Northwest informed the Department that the Letter Agreement will be executed by the parties in connection with a proposed voluntary contribution of Pinnacle Stock (described below).

The Letter Agreement provides that:

1. Northwest will make a voluntary contribution to the Pilot Plan on or before September 15, 2003 so that the funded current liability percentage for the Plan is at least 80% for the 2003 Plan Year. This voluntary contribution will eliminate the funding requirements under the Code and ERISA for the 2003 Plan Year that would otherwise be payable with respect to the Pilot Plan.

2. The voluntary contribution to the Pilot Plan will consist entirely of Pinnacle Stock. At the time the voluntary contribution is made to the Pilot Plan, Northwest also will contribute Pinnacle Stock to the Salaried Plan in an amount such that the amount of the Pinnacle Stock held by the Salaried Plan equals the required minimum funding contribution due under ERISA and the Code on September 15, 2003. Any remaining Pinnacle stock will then be contributed to the Contract Plan.

3. The Pinnacle Stock contributed to the Pilot Plan will be held in a separate, segregated subaccount of the Master Trust and held for the exclusive benefit of the Pilot Plan. Contributions of Pinnacle Stock to the Salaried Plan and the Contract Plan will likewise be held in a separate segregated subaccount of the Master Trust and held for the exclusive benefit of each respective plan.

4. Northwest will obtain an amendment of the Omnibus Agreement so that the Independent Fiduciary will

have first priority to sell Pinnacle Stock in an initial public offering, if certain conditions exist.

5. The Contract Plan, the Salaried Plan and the Pilot Plan will have the same registration rights provided in the Omnibus Agreement dated January 15, 2003 between Pinnacle Airlines Corp., Northwest and Fiduciary Counselors.

6. Northwest may not terminate Fiduciary Counselors as the Independent Fiduciary without the consent of ALPA and may not appoint a new Independent Fiduciary without the consent of ALPA. The Independent Fiduciary will have the sole responsibility to determine whether to acquire, hold or dispose of Pinnacle Stock on behalf of the Plans and whether to exercise the Put Option with respect to Pinnacle Stock.

7. The monthly contributions required to be made to the Pilot Plan pursuant to the pilot collective bargaining agreement are waived for the 2004 and 2005 Plan Year.

As described in the Proposed Exemption, the current provisions of the Pilot Plan and the pilot collective bargaining agreement prohibit the Pilot Plan from acquiring or holding employer securities. Without modifications to the pilot collective bargaining agreement, the Proposed Exemption contemplated that the other two Plans would receive a contribution of Pinnacle Stock in an amount equal to the maximum amount permitted under section 407(a)(2) of ERISA, while the Pilot Plan would receive no contributions of Pinnacle Stock.

ALPA represents that it recognizes the need for Northwest to preserve liquidity so ALPA has agreed to modify the collective bargaining agreement and the Pilot Plan to permit the Pilot Plan to acquire and hold employer securities through a voluntary contribution to the Pilot Plan. The Proposed Exemption contemplates both voluntary and required contributions to the Northwest Plans, as did the Application filed by Northwest on November 6, 2002 and the Omnibus Agreement.

Northwest and ALPA assert that the voluntary contribution gives Northwest the liquidity it needs, and thereby the ability to maintain all of its Plans, by eliminating the funding requirement for the Pilot Plan for the 2003 Plan Year, possibly reducing the funding requirements for future plan years, and by waiving the monthly contribution requirement under the pilot collective bargaining agreement for the 2004 and 2005 Plan Years. The Pilot Plan and its participants benefit from the voluntary contribution by providing an early contribution of an asset with significant

value to more adequately fund the benefits promised under the Pilot Plan.

The allocation method made pursuant to the Letter Agreement will result in a modest change in the percentage of the Contract and Salaried Plans' assets invested in Pinnacle Stock compared to the ratable allocation contemplated by the Proposed Exemption. Without modification to the pilot collective bargaining agreement, the Proposed Exemption contemplated that the Salaried and Contract Plans could hold Pinnacle Stock equal up to 10% of each Plan's assets. Under the Letter Agreement, the Salaried and Contract Plans will instead hold Pinnacle Stock with a value equal to approximately 8% of their respective assets.

Northwest and ALPA believe that the Letter Agreement also enhances protections for participants in all three Plans by giving the Independent Fiduciary first priority to sell Pinnacle Stock in an IPO where the number of shares sought to be sold exceeds the number that can be sold.

The Department asked whether Northwest intends to contribute cash or some other asset to satisfy the balance of the calendar year 2003 funding requirements of the Salaried and Contract Plans that will not be met by the Pinnacle Stock contribution as a result of the Letter Agreement. Northwest represents that it will make any such contributions in cash. Additionally, Northwest will maintain a subaccount for each Plan within the Master Trust for so long as that Plan holds Pinnacle Stock. Once all of the Pinnacle Stock in such an account has been liquidated, that subaccount may be dissolved.

As noted in the June 27, 2003 letter from Northwest and ALPA to the Department, Northwest states that the Letter Agreement will be executed in connection with the voluntary contribution. Thus, the ALPA agreement will be formally entered into and effective on the date of the voluntary contribution.

August 6, 2003 Northwest and Independent Fiduciary Response

Audited Financial Statements

The Department asked the Independent Fiduciary if the January 15, 2003 Valuation was based on audited financial statements.

Fiduciary Counselors stated that Eclat's valuation took into account a variety of financial data. Eclat was provided with Pinnacle's audited financial statements for the years 2000 and 2001. Eclat was also provided with unaudited interim and full year

financial information for 2002. However, audited 2002 financial statements were not available at the time of Eclat's valuation for the January 15, 2003 contribution.

Enhanced Communication with Plan Participants

Several commenters requested that Northwest provide for enhanced communication with the Plan participants concerning the Exemption Transactions. Additionally, ALPA requested that it be involved in the monitoring of the Independent Fiduciary.

In this regard, Fiduciary Counselors plans to hold periodic conference calls to report to the representatives of the participants covered by collective bargaining agreements on developments with respect to the Pinnacle Stock held by the plans. Additionally, Northwest notes that the Letter Agreement between Northwest and ALPA relating to a voluntary contribution of Pinnacle Stock would provide ALPA with a role in reviewing and approving the termination, and any replacement, of the independent fiduciary. This, together with the reporting planned by Fiduciary Counselors, will permit ALPA to monitor the Independent Fiduciary.

Plan Asset Investment Guidelines

A number of commenters asked, if Pinnacle Stock is contributed to the Plans, how would this affect the manner in which other Plan assets are invested?

Northwest noted that, as is the case for sponsors of defined benefit plans, Northwest has adopted investment guidelines and asset allocation strategies that guide the investment of the Plans' assets. These guidelines contemplate that a certain amount of assets will be allocated to securities with risk and return characteristics similar to Pinnacle Stock. Thus, Northwest notes that the holding of Pinnacle Stock by the Plans can fit within the overall investment strategy adopted for the Plans.

Fiduciary Counselors notes, as described in its report, in accepting the Pinnacle Stock contribution, Fiduciary Counselors determined that Pinnacle Stock fit within the Plans' investment guidelines and diversification needs. Fiduciary Counselors also obtained a determination from Northwest's Pension Investment Committee that the holding of Pinnacle Stock would not impair the liquidity of the Plans and that the Plans would be able to pay benefits and expenses when due. Similar considerations will be taken into account by Fiduciary Counselors in determining whether to accept any future contribution of Pinnacle Stock.

Minimum Rate of Return

Some commenters asked if Northwest would be willing to guarantee the Plans a minimum rate of return on the Pinnacle Stock such as a rate equal to the inflation rate.

Northwest stated that it would not. Northwest provided that the Omnibus Agreement guarantees that the Plans always receive the greater of the initial contribution value of Pinnacle Stock or the value of the stock at the time of an IPO or the exercise of the Put Option. Northwest guarantees the "principal" attributable to the investment in Pinnacle Stock. According to Northwest, the Omnibus Agreement provides the Plans substantial investment risk protection, protection that would not be available to the Plans when investing in securities with similar risk and return characteristics. Moreover, the Plans will receive all of any investment gains attributable to their shares of Pinnacle Stock at the time of an IPO. Northwest also noted that it assumes the investment risk associated with any investment by the Plans, including the investment in Pinnacle Stock, and must make up any investment losses through future contributions to the Plans.

The IPO

Several commenters asked whether the Plan trustees should decide when to initiate a public offering since the Plans will own a majority of Pinnacle Stock.

Northwest noted that under the terms of the Omnibus Agreement, Northwest is responsible for making up the difference, if any, between the IPO price and the original contribution value. As a result, Northwest has a strong interest in ensuring that maximum value is obtained in connection with an IPO and Northwest believes that it is appropriate for it to determine the timing of an IPO. Additionally, Fiduciary Counselors agreed only to a limited period during which Northwest has the exclusive right to cause an IPO. Under the Omnibus Agreement, Northwest controls the timing of the IPO until the earlier of July 1, 2006 or the occurrence of an early termination event. After that date, the Omnibus Agreement provides Fiduciary Counselors with the right to cause an IPO of Pinnacle Stock.

Pinnacle Management

Several commenters asked if Northwest would manage Pinnacle in a manner that maximizes its value.

Northwest replied that Northwest does not manage Pinnacle. Except for one director appointed by Northwest, Pinnacle's board is independent of Northwest. Northwest expects that the

board, like any board fulfilling its fiduciary duties, will seek to maximize the value of the enterprise. In addition, Fiduciary Counselors negotiated comprehensive voting and governance rights specifically for the Plans under the Omnibus Agreement. For example, Fiduciary Counselors appointed a director to Pinnacle's board who sits on the board's audit committee. Once the Plans own 50% of the Pinnacle Stock, the Plans' director will exercise additional approval rights relating to the company's bylaws and capital structure. In addition, changes to the ASA and other significant transactions must be approved by a majority of Pinnacle's directors, which majority must include the Plans' director.

Modifications to the ASA

On July 23, 2003, Northwest confirmed to the Department that the modifications to the ASA referred to in the Proposed Exemption have been made. The ASA was revised to provide that the acquisition or disposition of shares of Pinnacle Stock pursuant to the terms of the Omnibus Agreement does not constitute a Change of Control (as defined in the ASA). The ASA also was revised to eliminate the unilateral right of Northwest to terminate the ASA in the event of the bankruptcy of Northwest.

10% Limitation

In the March 5 Comment, Fiduciary Counselors corrected previous information provided to the Department in the Proposed Exemption with reference to "employer securities or employer real property" in the last sentence of paragraph 14 in column 1 of 68 FR 2584 (emphasis added) and each other place it occurs. This phrase should be changed to "employer securities and employer real property".

In this regard, the Department wishes to note that Northwest has not requested, and the Department is not providing, any relief for any contribution of Pinnacle Stock that, when aggregated with any employer securities and employer real property currently held by any of the Plans, represents more than 10 percent of the value of that Plan's assets.

Best Interest Standard

In the March 5 Comment, Fiduciary Counselors noted that, consistent with the statutory requirements of section 404(a) of ERISA, the reference in the Proposed Exemption to "the best interests of the Plans' participants and beneficiaries" (emphasis added) should be changed to "the interests of the Plans' participants and beneficiaries".

Entity References

In the March 3 Comment, Northwest observed that there are three references to NWA Inc. in the second column at 68 FR 2584 that should reference Northwest (Northwest Airlines, Inc.), the wholly-owned subsidiary corporation of NWA Inc. The references appear almost halfway down the column beginning in the fourth full paragraph, and in the last paragraph in the column.

Jones Day

The March 5 Comment noted that due to the firm's recent name change, the reference to "Jones, Day, Reavis & Pogue" in the first column of the Proposed Exemption at 68 FR 2584 should be changed to "Jones Day".

Determination of the Department

Accordingly, based upon the representations made by the Applicant, the written comments received in response to the Proposed Exemption, the record of the public hearing, and the analysis conducted by the Independent Fiduciary, the Department has determined to grant the exemption. The Department has, in transactions of this nature, placed emphasis on the need for an Independent Fiduciary and on such Independent Fiduciary's considered and objective evaluation of the transactions. In its deliberations, which included its analysis of all aspects of the transactions, the Independent Fiduciary has consistently represented for the record that no contribution of Pinnacle Stock will be accepted on behalf of the Plans unless such transactions are found by the Independent Fiduciary to be in the interests of the Plans. Finally, the Department notes that the Independent Fiduciary's satisfaction of its obligations in connection with the determination of the fair market value of the Pinnacle Stock as previously described by the Department in the Preamble to the final exemption is a critical factor in the Department's decision to grant a final exemption.

The Application pertaining to the exemption, the Proposed Exemption, the comments submitted to the Department and the responses to the comments, the transcript of the Hearing, and all other documents submitted to the Department concerning this exemption have been included as part of the public record of the Application. The complete Application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S.

Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the January 17, 2003 Notice of Proposed Exemption at 68 FR 2578.

General Information

The attention of interested person 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 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 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 require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of the plans;

(4) This exemption is 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

(5) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transactions, which are the subjects of the exemption.

Exemption

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

- (a) Administratively feasible;
- (b) In the interests of the plans and their participants and beneficiaries; and
- (c) Protective of the rights of the participants and beneficiaries of the plans.

Section I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(1) The transfer of the common shares of Pinnacle Airlines Corp. (Pinnacle Stock) to the Northwest Airlines Pension Plan for Salaried Employees, the Northwest Airlines Pension Plan for Pilot Employees, and the Northwest Airlines Pension Plan for Contract Employees (the Plans) through the in-kind contribution(s) of such shares by Northwest Airlines, Inc. (Northwest), a party in interest with respect to such Plans;

(2) The holding of the Pinnacle Stock by the Plans;

(3) The sale of the Pinnacle Stock by the Plans to Northwest;

(4) The acquisition, holding, and exercise by the Plans of a put option (the Put Option) granted by Northwest which permits the Plans to sell the Pinnacle Stock to Northwest; and

(5) The guaranty to the Plans by Northwest Airlines Corporation of Northwest's obligation to honor the Put Option.

Section II. Conditions

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a) The Plans acquire the Pinnacle Stock through one or more contributions by Northwest during the calendar years 2003 and 2004;

(b) An independent qualified fiduciary (the Independent Fiduciary), acting on behalf of the Plans, represents the Plans' interests for all purposes with respect to the Pinnacle Stock, and determines, prior to entering into any of the transactions described herein, that each such transaction, including the contribution of the Pinnacle Stock, is in the interests of the Plans;

(c) The Independent Fiduciary negotiates and approves the terms of any of the transactions between the Plans and Northwest that relate to the Pinnacle Stock;

(d) The Independent Fiduciary manages the holding and disposition of the Pinnacle Stock and takes whatever actions it deems necessary to protect the rights of the Plans with respect to the Pinnacle Stock;

(e) The terms of any transactions between the Plans and Northwest are no less favorable to the Plans than terms negotiated at arm's-length under similar circumstances between unrelated third parties;

(f) The Independent Fiduciary determines the fair market value of the Pinnacle Stock contributed to each plan as of the date of each such contribution. In determining the fair market value of the Pinnacle Stock, the Independent Fiduciary obtains an appraisal from an independent qualified appraiser selected by the Independent Fiduciary, and ensures that the appraisal and the Independent Fiduciary's analysis of the appraisal are consistent with sound principles of valuation and with the elements described by the Department in the Preamble to this final exemption in the section entitled Duties of the Independent Fiduciary;

(g) The terms of (1) the Put Option granted by Northwest; (2) any exercise of the Put Option by the Plans; and (3) any sale of the Pinnacle Stock by the Plans to Northwest other than through the exercise of the Put Option will be in accordance with the terms set forth in the Term Sheet and the Omnibus Agreement;

(h) Immediately after each contribution, employer securities and employer real property, including the Pinnacle Stock, will represent no more than 10 percent (10%) of the value of each Plan's assets. For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by, an employer any of whose employees are covered by the Plans or by an affiliate of such employer; and

(i) The Plans incur no fees, costs or other charges as a result of their participation in any of the transactions described herein.

Section III. Definitions

(a) The term "independent fiduciary" means a fiduciary who is: (1) independent of and unrelated to Northwest and its affiliates, and (2) appointed to act on behalf of the Plans for all purposes related to, but not limited to, (A) the in-kind contribution

of the Pinnacle Stock by Northwest to the Plans, (B) the holding of the Pinnacle Stock by the Plans; (C) the acquisition, holding, and exercise by the Plans of the Put Option, and (D) any sale of the Pinnacle Stock by the Plans. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Northwest if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Northwest, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation for acting as an independent fiduciary from Northwest in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, and (3) the annual gross revenue received by such fiduciary, during any year of its engagement, from Northwest and its affiliates exceeds 5 percent (5%) of the independent fiduciary's annual gross revenue from all sources for its prior tax year.

(b) The term "affiliate" means:

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

(2) any officer, director, employee, relative, or partner in any such person; and

(3) any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Date: This exemption is effective as of January 15, 2003.

Signed at Washington, DC this 14th day of August 2003.

Ivan L. Strasfeld,

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

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