

**July 1, 2013**

## **NOTICE TO INTERESTED PERSONS**

You are hereby notified that a written submission has been filed on behalf of Archer Daniels Midland Company (ADM) and Agrinational Insurance Company (AIC) (collectively the Applicants) with the United States Department of Labor (the Department) seeking authorization, pursuant to class exemption 96-62 (PTE 96-62), 61 FR 39988, July 31, 1996, **as amended**, 67 FR 44622, July 3, 2002, for relief from the prohibitions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) to the proposed transactions (the Proposed Transactions), as described below, if the conditions, described below, are satisfied.

It is represented that the submission has met the requirement for tentative authorization under PTE 96-62.

If authorized by the Department, pursuant to PTE 96-62, the restrictions of sections 406(a) and 406(b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by AIC, an affiliate of ADM, in connection with employee-paid supplemental life insurance sold by Minnesota Life Insurance Company (MNLife) or any successor insurance company which is unrelated to ADM, to participants in the ADM Omnibus Health & Welfare Plan for Hourly Employees (the Hourly Plan) and to the ADM Omnibus Health & Welfare Plan for Salaried Employees (the Salaried Plan) (collectively, the Plans).

### **Background**

The Plans are employee welfare benefit plans under the Act with offices located in Decatur, Illinois. The Plans were established on January 1, 1947. The Hourly Plan and the Salaried Plan have total assets, respectively, of \$7,181,261, and \$7,735,479, as of December 31, 2011. The audits of the Plans for 2011 were completed on October 15, 2012. The Hourly Plan and the Salaried Plan have, respectively, 8,538 and 7,957 participants. The plan numbers for the Hourly Plan and the Salaried Plan, respectively, are 506 and 503.

Among other benefits, the Plans provide employer-paid basic life insurance and employee-paid supplemental life insurance to eligible employees who work for participating employers. Eligible employees under the Hourly Plan include full-time hourly employees who are not members of a collective bargaining unit, as well as those hourly employees who are covered by a collective bargaining agreement. Eligible employees under the Salaried Plan include full-time regular salaried employees.

The participating employers which are subsidiaries of ADM include the following companies: ADM Malting Company, Inc., American River Transportation Co., ADM Investor Services, Inc., ADM Milling Co., ADM Trucking, Inc., ADM/Growmark River System, Inc.,

ADM Derivatives, Inc., Terminal Stevedores, Inc., ADM Expatriate Services, Inc., ADM Polymer Corporation, ADM Export Co., ADM-ACTI Trade Resources, Inc., Southern Cellulose Products, Inc., ADM Alliance Nutrition, Inc. (formerly, Moorman, Inc.), ADM Edible Bean Specialties, Inc., (formerly, Agri Sales, Inc.), ADM Crop Risk Services (formerly, AgriServe, Inc.).

The Plans currently provide employer-paid basic life insurance and employee-paid supplemental life insurance to eligible employees under an insurance policy issued by MNLife. Incorporated in the State of Minnesota, MNLife is an unrelated third party insurer with offices in St. Paul. MNLife is licensed to conduct life insurance business. Further, it is represented that MNLife has an "A +" (Superior) rating from A.M. Best Company (A.M. Best). It is represented that MNLife has assets in excess of \$28 billion.

ADM, with offices in Decatur, Illinois, is the sponsor and administrator of the Plans and a party in interest with respect to the Plans. ADM is a Fortune 500 company engaged in the business of procuring, transporting, storing, processing, and merchandising agricultural commodities and products. ADM has a worldwide network of affiliates engaged in such businesses. ADM was incorporated in Delaware in 1923 as successor to the Daniels Linseed Company, which was founded in 1902.

AIC, with offices in Burlington, Vermont, is a wholly-owned subsidiary of ADM. AIC is a party in interest with respect to the Plans. AIC was incorporated in Vermont on September 10, 1987, and has been in good standing since that time. AIC was formed as a captive insurance company to provide insurance coverage to ADM and its subsidiaries and to participate in certain unrelated reinsurance arrangements. On September 21, 1987, the Commissioner of Banking and Insurance for the State of Vermont granted AIC a Certificate of Authority to transact business as a captive insurance company in the State of Vermont.

AIC requested approval by the Vermont Department of Financial Regulation (the Vermont Department) for the expansion of its reinsurance of the life insurance benefits to include the supplemental life insurance program which is 100% employee paid and can go up to eight (8) times salary. The request was approved on January 24, 2012.

At the end of 2011, AIC's audited financial statements showed total capital and surplus in the amount of \$172 million, which included unassigned funds in the amount of \$37 million. Also, at the end of 2011, AIC had net earned premiums for the year of \$154 million. The audited financial statements were prepared by the independent certified public accounting firm of Saslow, Lifkin & Buggy, LLP (SLB), which has served as AIC's auditor since 2004. SLB will continue to examine, on an annual basis, AIC's loss and loss adjustment expense reserves, inclusive of those reserves associated with the employee benefit business to be reinsured by AIC, and ensure that appropriate reserve levels are maintained and for the financial soundness of AIC. In 2013, AIC expects to derive a majority of its premiums from insurance or reinsurance

coverage sold to entities other than ADM and its subsidiaries, including insurance or reinsurance coverage for crop, crop hail, general liability, marine cargo, and owner controlled insurance programs. It is represented that, for each taxable year of AIC, the gross premiums and annuity considerations received in that taxable year by AIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which AIC is a party in interest by reason of a relationship to such employer described in section 3(14)(G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by AIC. It is represented that based on premiums reported to the National Association of Insurance Commissioners for 2012, the numerator of the above fraction will be \$11,758 million, and the denominator will be \$464,514 million, with the result that the percentage is 2.5%.

AIC's reserves are reviewed annually by the actuarial firm of AMI Risk Consultants, Inc. In addition, AIC was last examined by the Vermont Department as of December 31, 2010, and was found to be financially sound. AIC is also reviewed by A.M. Best on an annual basis, and on July 17, 2012, its rating of "A-" (Excellent) was reaffirmed.

ADM fully insures the employee-paid supplemental life insurance program with MNLife. MNLife intends to enter into an arrangement with AIC, in which AIC will reinsure up to 100% of MNLife's risk under the insurance policy issued by MNLife which will provide employee-paid supplemental life insurance benefits to participants under the Plans. In order to have the flexibility to obtain the best pricing for the participants in the Plans, MNLife and AIC may in the future increase or decrease the portion of the risk reinsured by AIC. It is represented that the total premiums for the employee-paid supplemental life insurance program in 2012 was \$2.98 million for salaried employees and \$1.15 million for hourly employees. It is represented that MNLife will remain fully liable for the payment of employee-paid supplemental life insurance benefits under the policy.

The Applicants have applied to the Department in order to obtain authorization for the Proposed Transactions. If the authorization is granted by the Department, the Proposed Transactions will be subject to the following conditions:

1. AIC is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with ADM that is described in section 3(14)(G) of the Act;
2. AIC is licensed to sell insurance or conduct reinsurance operations in at least one State, as defined in section 3(10) of the Act.\* It is represented that AIC is currently licensed to sell insurance or conduct reinsurance operations in the State of Vermont;

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\* Section 3(10) of the Act defines "State" to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone.

3. AIC has obtained a Certificate of Authority from the insurance commissioner of its domiciliary state, the State of Vermont, to transact the business of a captive insurance company, which has neither been revoked nor suspended;

4. AIC has undergone and shall continue to undergo an examination by an independent certified public accounting firm for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction, or has undergone a financial examination (within the meaning of the law of its domiciliary state, Vermont) by the Insurance Commissioner of Vermont within five (5) years prior to the end of the year preceding the year in which the reinsurance transaction occurred;

5. AIC is licensed to conduct reinsurance transactions by a state whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

6. The Plans will pay no more than adequate consideration for the insurance contracts;

7. In subsequent years, the formula used to calculate premiums by MNLife or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

8. The Plans will only contract with insurers with a rating of "A" or better from A.M. Best or the equivalent rating from another rating agency. The reinsurance arrangement between the insurer and AIC will be indemnity reinsurance only (i.e., the insurer will not be relieved of liability to the Plans should AIC be unable or unwilling to cover any liability arising from the reinsurance arrangement);

9. No commissions, costs, or other expenses will be paid by the Plans with respect to the reinsurance of such contracts; and

10. For each taxable year of AIC, the gross premiums and annuity considerations received in that taxable year by AIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which AIC is a party in interest by reason of a relationship to such employer described in section 3(14)(G) of the Act will not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by AIC. For purposes of this condition 10:

(a) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance,

health insurance, or annuity contracts to such plans (and their employers) by AIC. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by AIC; and

(b) All premiums and annuity considerations written by AIC for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

If the authorization is granted, the Proposed Transactions will occur approximately 30 to 60 days following authorization by the Department, but in no event before the grant of final authorization by the Department. It is represented that 30 to 60 days will be needed to negotiate the reinsurance contract between AIC and MNLife. If the Proposed Transactions are not entered, as of the close of business on the 60<sup>th</sup> day following the final authorization by the Department, such final authorization will cease to be effective.

It is represented that the Proposed Transactions pose little, if any, risk of abuse or loss to the Plan. In this regard, ADM fully insures the employee-paid life insurance program with MNLife, which is rated "A+" (Superior) by A.M. Best. The Plans will only contract for coverage under the program with insurers with a rating of "A" or better from A.M. Best or the equivalent rating from another rating agency. The reinsurance arrangements between MNLife (or any successor) and AIC will be indemnity reinsurance only (*i.e.*, MNLife is not relieved of liability to the Plans should AIC be unable or unwilling to cover any liability arising from the reinsurance arrangement). AIC is also reviewed by A.M. Best on an annual basis, and on July 17, 2012, the rating of "A-" (Excellent) was reaffirmed for AIC.

Relying on PTE 96-62, the applicants have identified as substantially similar to the Proposed Transactions the following two (2) individual exemptions granted by the Department within the past 60 months:

**° Prohibited Transaction Exemption 2010-15, issued to Subaru of America, Inc. (Subaru), located in Cherry Hill, New Jersey, 75 FR 22852 (April 30, 2010).** This exemption permitted the reinsurance of risks and the receipt of premiums therefrom by a wholly-owned subsidiary of Subaru in connection with an insurance contract sold by MNLife or any successor insurance company which is unrelated to Subaru, to provide group-term life insurance to employees of Subaru under a welfare plan sponsored by Subaru; and

**° Prohibited Transaction Exemption 2011-16, issued to Verizon Communications, Inc. (Verizon) and Celco Partnership, doing business as Verizon Wireless, located in Basking Ridge, New Jersey, 76 FR 49790 (August 11, 2011).** This exemption permitted the reinsurance of risks and the receipt of premiums therefrom by a wholly-owned subsidiary of Verizon in connection with an insurance contract sold by Prudential Life Insurance Company or any successor insurance company which is unrelated to Verizon, to provide group-term life insurance to certain employees and retirees of Verizon under a welfare plan maintained by Verizon and Verizon Wireless.

It is represented that the persons who may be interested in the Proposed Transaction are the participants in the employee-paid supplemental life insurance program offered by the Plans. As parties who may be interested in the Proposed Transaction, each has the right to comment on the Proposed Transactions. Upon receiving tentative authorization, notification will be provided to all interested persons via first class mail. ADM will bear the costs of providing notification to all such interested persons.

Written comments should be addressed to:

Office of Exemption Determinations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Ave, NW  
Room N-5700  
Washington, D.C. 20210  
Ms. Angelena C. Le Blanc  
Attention Submission No. E-00727

Comments may also be submitted by facsimile to 202-219-0204, and by e-mail to [e-oed@dol.gov](mailto:e-oed@dol.gov). **Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

If you have any questions regarding your right to comment on this Notice to Interested Persons, you may contact Ms. Le Blanc at (202) 693-8551.

The comment period will close on **July 30, 2013**, 25 days following completion of the distribution of this Notice to Interested Persons. Final Authorization of the Proposed Transactions will not occur until the Department reviews all comments received in response to this Notice to Interested Persons.