



4510-29-P

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**Exemptions from Certain Prohibited Transaction Restrictions**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grants of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: **2019-03, The Les Schwab Tire Centers, D-11924; 2019-04, Principal Life Insurance Company and its Affiliates, D-11947; 2019-05, Seventy Seven Energy Inc. Retirement & Savings Plan, D-11918; 2019-06, Tidewater Savings and Retirement Plan, D-11940;**

**SUPPLEMENTARY INFORMATION:** Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. Each notice set forth a summary of the facts and representations made by the applicant for the exemption, and referred interested persons to the application for a complete statement of the

facts and representations. Each application is available for public inspection at the Department in Washington, D.C. Each notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, each notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). Each applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

Each notice of proposed exemption was issued, and each exemption is being granted, solely by the Department, because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011) and based upon the entire record, the Department makes the following findings:

- (a) Each exemption is administratively feasible;
- (b) Each exemption is in the interests of the plan and its participants and beneficiaries; and
- (c) Each exemption is protective of the rights of the participants and beneficiaries of the plan.

**The Les Schwab Tire Centers of Washington, Inc. (Les Schwab Washington), the Les Schwab Tire Centers of Boise, Inc. (Les Schwab Boise), and the Les Schwab Tire Centers of Portland, Inc. (Les Schwab Portland), (collectively, with their Affiliates, Les Schwab or the Applicant) Located in Aloha, Oregon; Boise, Idaho; Centralia, Washington; and Other Locations [Prohibited Transaction Exemption 2019-03; Exemption Application No. D-11924]**

WRITTEN COMMENTS

In the Notice of Proposed Exemption (the Notice) published in the Federal Register on December 28, 2018 at 83 FR 67654, the Department of Labor (the Department) invited all interested persons to submit written comments and/or requests for a public hearing with respect to the Notice within forty-five (45) days of the date of publication. All comments and requests for a hearing were due by February 11, 2019.

During the comment period, the Department received numerous telephone inquiries from Plan participants that generally concerned matters outside the scope of the

exemption, and one written comment from an anonymous commenter that did not raise any issue that was material to the transaction described in the exemption. The Department did not receive any requests for a public hearing from any of the commenters.

After full consideration and review of the entire record, the Department has decided to grant the exemption, as set forth above. The complete application file (D-11924) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on December 28, 2018, at 83 FR 67654.

#### EXEMPTION

##### SECTION I. Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of

the Code, by reason of sections 4975(c)(1)(A), 4975(c)(1)(D) and 4975(c)(1)(E) of the Code, shall not apply to the sales (the Sales) by the Les Schwab Profit Sharing Retirement Plan (the Plan) of the following parcels of real property (each, a "Parcel" and collectively, the "Parcels") to the Applicant:

(a) The Parcel located at 19100 S.W. Shaw Street, Aloha, Oregon;

(b) The Parcel located at 2045 Broadway Avenue, Boise, Idaho;

(c) The Parcel located at 6520 W. State Street, Boise, Idaho;

(d) The Parcel located at 1211 Harrison Avenue, Centralia, Washington;

(e) The Parcel located at 36 N. Market Boulevard, Chehalis, Washington;

(f) The Parcels located at 1206 Canyon Road, Ellensburg, Washington;

(g) The Parcel located at 1710 Monmouth Avenue, Independence, Oregon;

(h) The Parcel located at 3809 Steilacoom Boulevard S.W., Lakewood, Washington;

- (i) The Parcel located at 1420 Industrial Way,  
Longview, Washington;
- (j) The Parcel located at 8405 State Avenue,  
Marysville, Washington;
- (k) The Parcel located at 610 E. North Bend Way,  
North Bend, Washington;
- (l) The Parcel located at 1625 Beaver Creek Road,  
Oregon City, Oregon;
- (m) The Parcel located at 160 S.E. Bishop Boulevard,  
Pullman, Washington;
- (n) The Parcel located at 911 N. 1<sup>st</sup> Street,  
Silverton, Oregon;
- (o) The Parcel located at 711 Avenue D, Snohomish,  
Washington;
- (p) The Parcel located at 16819 Pacific Avenue S.,  
Spanaway, Washington;
- (q) The Parcel located at 8103 N. Division Street,  
Spokane, Washington;
- (r) The Parcel located at 2420 N.E. Andresen Road,  
Vancouver, Washington; and
- (s) The Parcel located at 216 S.E. 118<sup>th</sup> Avenue,  
Vancouver, Washington;

Where the Applicant is a party in interest with respect to the Plan, provided that the conditions set forth in Section II of this exemption are met.

SECTION II. General Conditions

(a) The price paid by Les Schwab to the Plan for each Parcel is no less than the fair market value of each Parcel (exclusive of the buildings or other improvements paid for by Les Schwab, to which Les Schwab retains title), as determined by qualified independent appraisers (the Independent Appraisers), working for CBRE, Inc., in separate appraisal reports (the Independent Appraisals) that are updated on the date of each Sale.

(b) Each Sale is a one-time transaction for cash.

(c) The Plan does not pay any costs, including brokerage commissions, fees, appraisal costs, or any other expenses associated with each Sale.

(d) The Independent Appraisers determine the fair market value of their assigned Parcel, on the date of the Sale, using commercially accepted methods of valuation for unrelated third-party transactions, taking into account the following considerations:

(1) The fact that a lease between Les Schwab and the Plan is a ground lease and not a standard commercial lease;

(2) The assemblage value of the Parcel, where applicable;

(3) Any special or unique value the Parcel holds for Les Schwab; and

(4) Any instructions from the qualified independent fiduciary (the Independent Fiduciary) regarding the terms of the Sale, including the extent to which the Independent Appraiser should consider the effect that Les Schwab's option to purchase a Parcel would have on the fair market value of the Parcel.

(e) The Independent Fiduciary represents the interests of the Plan with respect to each Sale, and in doing so:

(1) Determines that it is prudent to go forward with each Sale;

(2) Approves the terms and conditions of each Sale;

(3) Reviews and approves the methodology used by the Independent Appraiser and ensures that such methodology

is properly applied in determining the Parcel's fair market value on the date of each Sale;

(4) Reviews and approves the determination of the purchase price; and

(5) Monitors each Sale throughout its duration on behalf of the Plan for compliance with the general terms of the transaction and with the conditions of this exemption, and takes any appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries.

(f) The terms and conditions of each Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693-8561. (This is not a toll-free number.)

**Principal Life Insurance Company (PLIC) and its Affiliates  
(collectively, Principal or the Applicant)**

**Located in Des Moines, IA**

**[Prohibited Transaction Exemption 2019-04;  
Exemption Application No. D-11947]**

WRITTEN COMMENTS

In the Notice of Proposed Exemption (the Notice), published in the Federal Register on December 28, 2018 at 83 FR 67670, the Department of Labor (the Department) invited all interested persons to submit written comments and/or requests for a public hearing with respect to the Notice within forty-five (45) days of the date of publication. All comments and requests for a hearing were due by February 11, 2019.

During the comment period, the Department received one written comment from an anonymous commenter that did not raise any issue that was material to the transaction described in the exemption, and one written comment from Principal. Principal requested certain revisions or clarifications to the Notice, which are discussed below.

The Department did not receive any requests for a public hearing.

1. Revisions to "Independent Plan Fiduciary"  
Definition.

Section IV(k) of the Notice provides, that: "*the term* "Independent Plan Fiduciary" means a fiduciary of a plan, where such fiduciary is independent of and unrelated to Principal. The Independent Plan Fiduciary will not be deemed to be independent of and unrelated to Principal if: (1) Such Independent Plan Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Principal; (2) Such Independent Plan Fiduciary, or any officer, director, partner, employee, or relative of such Independent Plan Fiduciary, is an officer, director, partner, or employee of Principal (or is a relative of such person); or (3) such Independent Plan Fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this proposed exemption..."

Principal is primarily concerned with the second prong's reference to a "relative." Principal states that the plan fiduciary exercising discretion to invest in a Fund is often the plan sponsor. Principal's employees may have multiple relatives who are employed by plan sponsors. Principal asserts that it is unable to track individuals employed by client plan sponsors.

Principal states that the potential risk from a plan fiduciary's conflict of interest should be viewed in light of the following conditions of the Notice, which constrain Principal's discretion with respect to the purchase and management of Principal Stock: (a) each Index Fund and Model-Driven will be based on a securities index created and maintained by an organization independent of Principal; (b) the acquisition or disposition of Principal Stock will be for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index Fund or Model-Driven Fund is based; and (c) on any matter for which shareholders of Principal Stock are required or permitted to vote, Principal will cause the Principal Stock held by an Index Fund or Model-Driven Fund to be voted as determined by a fiduciary independent of Principal.

Principal states that a definition of "Independent Plan Fiduciary" should strike a balance between capturing relationships where a conflict of interest is likely to be present, and being workable for Principal.

Principal notes that the Department did not include the "Independent Plan Fiduciary" definition in similar individual exemptions that were previously granted. Although each of these exemptions requires approval from an independent plan fiduciary, Principal notes that the exemptions do not define the term "independent."

Finally, Principal states that the requirement for an Independent Plan Fiduciary in Section IV(k)(1) of the Notice is equivalent to the definition of "affiliate," as set forth in Section IV(a)(1) of the Notice, and requests that the term "affiliate" be applied here. Therefore, as revised by Principal, the first and second prongs in the definition of "Independent Plan Fiduciary" in Section IV(k) of the final exemption reads as follows: ". . . The Independent Plan Fiduciary will not be deemed to be independent of and unrelated to Principal if: (1) Such Independent Plan Fiduciary is an affiliate of Principal; (2) Such Independent Plan Fiduciary has an interest in

Principal that could affect its judgment as a fiduciary; .  
. .”

Department's Response: The Department's determination that this exemption is protective of affected plans is based, in part, on an Independent Plan Fiduciary's initial authorization of the plan's investment in an Index Fund or Model-Driven Fund (which directly or indirectly purchases and/or holds Principal Stock). This initial authorization must be performed by a person or entity that is sufficiently independent of Principal, notwithstanding that Principal may thereafter have limited discretion with respect to the purchase and management of Principal stock. In the Department's view, an officer, director, partner or employee of Principal is not sufficiently independent of Principal to perform the initial authorization required by this exemption. While the Department does not agree that a definition of "Independent Plan Fiduciary" should factor in its workability for Principal, the Department agrees that relatives of those individuals may be sufficiently independent of Principal to meet the Department's expectations of an Independent Plan Fiduciary regarding this exemption. Therefore, the Department is revising the

definition, in part, as requested by Principal, by taking out the second prong's reference to relatives. The Department agrees with Principal that the Independent Plan Fiduciary should not otherwise have "an interest in Principal that could affect its judgment as a fiduciary," and the Department has added this to the second prong of the definition.

The Department does not believe that substituting the first prong of the definition with the term "affiliate" enhances this exemption's protections for plans, and declines to make that change. Accordingly, the definition now reads: "the term "Independent Plan Fiduciary" means a fiduciary of a plan, where such fiduciary is independent of and unrelated to Principal. The Independent Plan Fiduciary will not be deemed to be independent of and unrelated to Principal if: (1) Such Independent Plan Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Principal; (2) Such Independent Plan Fiduciary, or any officer, director, partner, or employee of such Independent Plan Fiduciary, is an officer, director, partner or employee of Principal, or otherwise has an interest in

Principal that could affect its judgment as a fiduciary; or  
(3) such Independent Plan Fiduciary, directly or  
indirectly, receives any compensation or other  
consideration for his or her personal account in connection  
with any transaction described in this proposed  
exemption...”

2. Other Clarifications to the Notice.

Principal also seeks certain minor clarifications to  
the Notice that the Department does not view as relevant to  
the determination of whether to grant this exemption.  
These clarifications can be found in Principal’s comment  
letter, which is included as part of the public record for  
Exemption Application No. D-11947.

After full consideration and review of the entire  
record, the Department has decided to grant the exemption,  
as set forth above. The complete application file (D-  
11947) is available for public inspection in the Public  
Disclosure Room of the Employee Benefits Security  
Administration, Room N-1515, U.S. Department of Labor, 200  
Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and

representations supporting the Department's decision to grant this exemption, refer to the Notice published on December 28, 2018, at 83 FR 67670.

#### **FINAL EXEMPTION**

##### Section I. Covered Transactions

The restrictions of sections 406(a)(1)(D), 406(b)(1), and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the direct or indirect acquisition, holding, and disposition of common stock issued by Principal Financial Group, Inc. (PFG), and/or common stock issued by an affiliate of PFG (together, the Principal Stock), by index funds (Index Funds) and model-driven funds (Model-Driven Funds) that are managed by Principal Life Insurance Company (PLIC), an indirectly wholly-owned subsidiary of PFG, or an affiliate of PLIC (collectively, Principal), in which client plans of Principal invest, provided that the conditions of Sections II and III are met.

Section II. Exemption for the Acquisition, Holding  
and Disposition of Principal Stock

(a) The acquisition or disposition of Principal Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant Index upon which the Index Fund or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring Principal Stock that is intended to benefit Principal or any party in which Principal may have an interest;

(b) Whenever Principal Stock is initially added to an Index on which an Index Fund or Model-Driven Fund is based, or initially added to the portfolio of an Index Fund or Model-Driven Fund (or added to the portfolio of an underlying Index Fund in which another Index Fund invests), all purchases of Principal Stock pursuant to a Buy-up (as defined in Section IV(c)) occur in the following manner:

(1) Purchases are from one or more brokers or dealers;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half

hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed, on any particular day, the greater of: (i) fifteen (15) percent of the aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five business days, or (ii) fifteen (15) percent of the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date;

(6) All purchases and sales of Principal Stock occur either: (i) on a recognized U.S. securities exchange (as defined in Section IV(j) below), (ii) through an automated trading system (as defined in Section IV(b) below) operated by a broker-dealer independent of Principal that is registered under the Securities Exchange Act of 1934 (the 1934 Act), and thereby subject to regulation by

the Securities and Exchange Commission (the SEC), which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system that is operated by a recognized U.S. securities exchange, pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Principal Stock cannot be acquired within ten (10) business days from the date of the event which causes the particular Fund to require Principal Stock, Principal appoints a fiduciary, which is independent of Principal (the Independent Fiduciary), to design acquisition procedures and monitor compliance with these procedures;

(c) For transactions subsequent to a Buy-Up, all aggregate daily purchases of Principal Stock by the Funds do not exceed on any particular day the greater of:

(1) Fifteen (15) percent of the average daily trading volume for Principal Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or

(2) Fifteen (15) percent of the trading volume for Principal Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on this date;

(d) All transactions in Principal Stock not otherwise described above in Section II(b) are either:

(1) Entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where the broker-dealer is independent of Principal and is registered under the 1934 Act, and thereby subject to regulation by the SEC;

(2) Effected on an automated trading system operated by a broker-dealer independent of Principal that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system, as defined in Section IV(b), operated by a recognized U.S. securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or

(3) Effected through a recognized U.S. securities

exchange, as defined in Section IV(j), so long as the broker is acting on an agency basis;

(e) No purchases or sales of Principal Stock by a Fund involve purchases from, or sales to, Principal (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with the party in interest would otherwise be subject to an exemption). However, this condition would not apply to purchases or sales on an exchange or through an automated trading system (on a blind basis where the identity of the counterparty is not known);

(f) No more than five (5) percent of the total amount of Principal Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Principal;

(g) Principal Stock constitutes no more than five (5) percent of any independent third-party Index on which the investments of an Index Fund or Model-Driven Fund are based;

(h) A fiduciary of a plan which is independent of Principal (the Independent Plan Fiduciary, as defined in

Section IV(k)) authorizes the investment of the plan's assets in an Index Fund or Model-Driven Fund which directly or indirectly purchases and/or holds Principal Stock. With respect to any plan holding an interest in an Index Fund or Model-Driven Fund that intends to start investing in Principal Stock, before Principal Stock is purchased directly or indirectly by the Index Fund or Model-Driven Fund, Principal will provide the Independent Plan Fiduciary with a notice through e-mail stating that if the plan fiduciary does not indicate disapproval of investments in Principal Stock within sixty (60) days, then the Independent Plan Fiduciary will be deemed to have consented to the investment in Principal Stock. In this regard: (1) Principal must obtain from such Independent Plan Fiduciary prior consent in writing to the receipt by such Independent Plan Fiduciary of such disclosure via electronic e-mail; (2) Such Independent Plan Fiduciary must have provided to Principal a valid e-mail address; and (3) The delivery of such electronic e-mail to such Independent Plan Fiduciary is provided by Principal in a manner consistent with the relevant provisions of the Department's regulations at 29 CFR section 2520.104b-1(c) (substituting the word

"Principal" for the word "administrator" as set forth therein, and substituting the phrase "Independent Plan Fiduciary" for the phrase "the participant, beneficiary or other individual" as set forth therein). In the event that the Independent Plan Fiduciary disapproves of the investment, plan assets invested in the Index Fund or Model-Driven Fund will be withdrawn and the proceeds processed, as directed by the Independent Plan Fiduciary. For new plan investors in an Index Fund or Model-Driven Fund, Independent Plan Fiduciaries for the plans will consent to the investment in Principal Stock through execution of a subscription or similar agreement for the Index Funds or Model-Driven Fund that contains the appropriate approval language; and

(i) On any matter for which shareholders of Principal Stock are required or permitted to vote, Principal will cause the Principal Stock held by an Index Fund or Model-Driven Fund to be voted, as determined by the Independent Fiduciary.

### Section III. General Conditions

(a) Principal maintains or causes to be maintained for

a period of six (6) years from the date of the transactions, the records necessary to enable the persons described in paragraph (b) of this Section III to determine whether the conditions of this exemption have been met, except that: (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Principal, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest, other than Principal, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b) (1) Except as provided in paragraph (b) (2) of this Section III and notwithstanding any provisions of section 504(a) (2) and (b) of the Act, the records referred to in paragraph (a) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue

Service or the SEC;

(B) Any fiduciary of a plan participating in an Index Fund or Model-Driven Fund, who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of the fiduciary;

(C) Any contributing employer to any plan participating in an Index Fund or Model-Driven Fund or any duly authorized employee or representative of the employer; and

(D) Any participant or beneficiary of any plan participating in an Index Fund or Model-Driven Fund, or a representative of the participant or beneficiary; and

(2) None of the persons described in subparagraphs (B) through (D) of this Section III(b)(1) shall be authorized to examine trade secrets of Principal or commercial or financial information which are considered confidential.

#### Section IV. Definitions

(a) An "affiliate" of Principal includes:

(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 or relative of the person, or partner of any the person; and

(3) Any corporation or partnership of which the person is an officer, director, partner or employee;

(b) The term "automated trading system" means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an "alternative trading system" within the meaning of the SEC's Reg. ATS (17 CFR Part 242.300), as this definition may be amended from time to time, or an "automated quotation system" as described in Section 3(a)(5)(A)(ii) of the 1934 Act (15 USC 8c(a)(5)(A)(ii));

(c) The term "Buy-up" means an initial acquisition of Principal Stock by an Index Fund or Model-Driven Fund which is necessary to bring the Fund's holdings of Principal Stock either to its capitalization-weighted or other specified composition in the relevant index (the Index), as determined by the independent organization maintaining the

Index, or to its correct weighting as determined by the model which has been used to transform the Index;

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

(e) The term "Fund" means an Index Fund (as described in Section IV(a)) or a Model-Driven Fund (as described in Section III(b))

(f) The term "Index" means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities, but only if:

(1) The organization creating and maintaining the Index is:

(A) Engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients; or

(B) A publisher of financial news or information; or

(C) A public stock exchange or association of securities dealers; and

(2) The Index is created and maintained by an

organization independent of Principal; and

(3) The Index is a generally-accepted standardized index of securities which is not specifically tailored for the use of Principal;

(g) The term "Index Fund" means any investment fund, trust, insurance company separate account, separately managed account, or portfolio, sponsored, maintained, trustee, or managed by Principal, in which one or more investors invest, and:

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently- maintained securities index, as described in Section IV(c) below, by either: (i) investing directly in the same combination of securities which compose the Index or in a sampling of the securities, based on objective criteria and data, or (ii) investing in one or more other Index Funds to indirectly invest in the same combination of securities which compose the Index, or in a sampling of the securities based on objective criteria and data;

(2) For which all assets held outside of any liquidity buffer are invested without Principal using its discretion, or data within its control, to affect the

identity or amount of securities to be purchased or sold, and the liquidity buffer, if any, does not hold any Principal Stock;

(3) That contains "plan assets" subject to the Act;

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, which is intended to benefit Principal or any party in which Principal may have an interest.

(h) The term "Model-Driven Fund" means any investment fund, trust, insurance company separate account, separately managed account, or portfolio, sponsored, maintained, trustee, or managed by Principal, in which one or more investors invest, and:

(1) For which all assets held outside of any liquidity buffer consist of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of Principal, to transform an independently-maintained Index, as defined in Section IV(c) below, and the liquidity buffer, if any, does not hold any Principal Stock;

(2) That contains "plan assets" subject to the Act; and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Principal or any party in which Principal may have an interest;

(i) The term "Principal" refers to Principal Life Insurance Company, its indirect parent and holding company, Principal Financial Group, Inc., and any current or future affiliate, as defined above in Section IV(a);

(j) The term "recognized U.S. securities exchange" means a U.S. securities exchange that is registered as a "national securities exchange" under Section 6 of the 1934 Act (15 USC 78f), as this definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR Part 240.3b-16); and

(k) The term "Independent Plan Fiduciary" means a fiduciary of a plan, where such fiduciary is independent of and unrelated to Principal. The Independent Plan Fiduciary

will not be deemed to be independent of and unrelated to Principal if:

(1) Such Independent Plan Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Principal;

(2) Such Independent Plan Fiduciary, or any officer, director, partner, or employee of such Independent Plan Fiduciary, is an officer, director, partner or employee of Principal, or otherwise has an interest in Principal that could affect its judgment as a fiduciary; or

(3) Such Independent Plan Fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this exemption.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693-8561. (This is not a toll-free number.)

**Seventy Seven Energy Inc. Retirement & Savings Plan**

**(the Plan)**

**Located in Oklahoma City, OK**

**[Prohibited Transaction Exemption 2019-05;**

**Exemption Application Nos. D-11918]**

Written Comments

In the Notice of Proposed exemption published in the Federal Register on December 28, 2018 at 83 FR 67664 (the Notice), the Department invited all interested persons, including all participants in the Plan, former employees with vested account balances in the Plan, all retirees and beneficiaries currently receiving benefits from the Plan, all employers with employees participating in the Plan, all unions with members participating in the Plan (of which there are none), and all Plan fiduciaries to submit written comments and/or requests for a hearing to the Department within 40 days of the date of the publication. During the comment period, the Department received one favorable comment from an anonymous commenter and no hearing requests.

After full consideration and review of the entire

record, the Department has determined to grant the exemption. The complete application file (D-11918) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the Federal Register on December 28, 2018 at 83 FR 67664.

#### EXEMPTION

The restrictions of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the shall not apply, effective August 1, 2016 through April 20, 2017, to: (1) the acquisition by the participant accounts in the Plan (the Accounts) of warrants (the Warrants), issued by Seventy Seven Energy, Inc. (SSE), the Plan sponsor, in connection with SSE's bankruptcy; and (2) the holding of the Warrants by the Plan.

This exemption is subject to the following conditions:

(a) The Plan acquired the Warrants automatically in

connection with the plan of reorganization entered into on May 9, 2016, by SSE and all of its wholly-owned subsidiaries with certain lenders, under which all holders of shares of SSE common stock, including the Plan, were treated in the same manner;

(b) The Plan acquired the Warrants without any unilateral action on its part;

(c) The Plan did not pay any fees or commissions in connection with the acquisition or holding of the Warrants;

(d) Had the Warrants not expired unexercised, all decisions regarding the exercise or sale of the Warrants acquired by the Plan would have been made by the Plan participants in whose Plan Accounts the Warrants were allocated, in accordance with the terms of the Warrant agreement, dated as of August 1, 2016, and in accordance with the Plan provisions and regulations pertaining to the individually-directed investment of the Plan Accounts; and

(e) The Plan trustee did not allow Plan participants to exercise the Warrants held by their Plan Accounts because the fair market value of SSE common stock following SSE's emergence from bankruptcy on August 1, 2016 did not, at any time prior to the date that the Warrants expired,

exceed the exercise price of the Warrants.

EFFECTIVE DATE: This exemption is effective as of August 1, 2016 through April 20, 2017.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

**Tidewater Savings and Retirement Plan (the Plan)**

**Located in New Orleans, LA**

**[Prohibited Transaction Exemption 2019-06;**

**Exemption Application No. D-11940]**

WRITTEN COMMENTS

In the Notice of Proposed Exemption (the Notice), published in the Federal Register on December 27, 2018 at 83 FR 67667, the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing within forty-five (45) days of the date of publication. All comments and hearing requests were due by February 11, 2019.

During the comment period, the Department received one favorable comment from an anonymous commenter, and no requests for a public hearing.

After giving full consideration to the entire record, the Department has determined to grant the exemption, as noted above. The complete application file (D-11940) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room

N-1515, U.S. Department of Labor, 200 Constitution Avenue,  
N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the Federal Register on December 28, 2018 at 83 FR 67667.

#### EXEMPTION

##### SECTION I. COVERED TRANSACTIONS

The restrictions of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act will not apply, effective July 31, 2017, to: (1) the acquisition in the Tidewater Savings and Retirement Plan (the Plan), by the participant-directed accounts (the Accounts) of certain participants, of Series A Warrants and Series B Warrants (collectively, the Equity Warrants) of Tidewater, Inc. (Tidewater), the Plan sponsor and a party in interest with respect to the Plan; and (2) the holding of the Equity Warrants by the Accounts, provided that the conditions set forth in Section II below are or were satisfied.

SECTION II. CONDITIONS FOR RELIEF

(a) The acquisition of the Equity Warrants by the Accounts of Plan participants occurred in connection with Tidewater's bankruptcy proceeding;

(b) The Equity Warrants were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual participants in the Plan, a portion of whose Accounts in the Plan held shares of old Tidewater common stock (the Old Common Stock);

(c) Each shareholder of the Old Common Stock, including each Account of an affected Plan participant, was issued the same proportionate shares of the Equity Warrants based on the number of shares of the Old Common Stock held by the shareholder as of July 31, 2017;

(d) All holders of the Equity Warrants, including the Accounts, were treated in a like manner;

(e) The decisions with regard to the acquisition, holding or disposition of the Equity Warrants by an Account were made by each Plan participant whose Account received the Equity Warrants;

(f) The Accounts did not pay any brokerage fees,

commissions, or other fees or expenses to any related broker in connection with the acquisition and holding of the Equity Warrants, nor did the Accounts pay any brokerage fees or commissions in connection with the sale of the Equity Warrants;

(g) Each sale transaction involving the Equity Warrants was for cash, and no sale would enrich the Plan fiduciaries;

(h) Plan participants could: (1) acquire shares of the New Common Stock for their Plan Accounts by exercising their purchase rights under the Equity Warrants; or (2) direct Merrill Lynch to sell the Equity Warrants held in their Accounts, at any time; and

(i) Plan participants were notified when the Committee approved the sale of the Equity Warrants.

EFFECTIVE DATE: This exemption is effective for the period beginning July 31, 2017, and ending whenever the Equity Warrants are exercised by Plan participants or they expire.

FOR FURTHER INFORMATION CONTACT: Blessed Chuksorji-Keefe of the Department, telephone (202) 693-8567. (This is not a toll-free number.)

## GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC.

**Lyssa Hall,**

*Director,*

*Office of Exemption Determinations,*

*Employee Benefits Security Administration,*

*U.S. Department Of Labor.*

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