

pursuant to section II(a) is effective until the later of the expiration of the lease term or any renewal thereof which does not require the consent of the plan lessor;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building or the commercial center; and

(5) The requirements of sections I(c), I(g), and I(h) are satisfied with respect to the transaction.

(b) The leasing of residential space by a plan to a party in interest if—

(1) The party in interest leasing space from the plan is an employee of an employer any of whose employees are covered by the plan or an employee of an affiliate of such employer (as defined in section 407(d)(7) of the Act);

(2) The employee who is leasing space does not have any discretionary authority or control with respect to the investment of the assets involved in the lease transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(3) The employee who is leasing space is not an officer, director, or a ten percent (10%) or more shareholder of the employer or an affiliate of such employer;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the DBIM, the terms of the transaction are not less favorable to the plan than the terms afforded by the plan to other, unrelated lessees in comparable arm's length transactions;

(5) The amount of space covered by the lease does not exceed five percent (5%) of the rentable space of the apartment building or multi-unit residential subdivision, and the aggregate amount of space leased to all employees of the employer or an affiliate of such employer does not exceed ten percent (10%) of such rentable space; and

(6) The requirements of section I(a), I(c), I(d), I(g), and I(h) are satisfied with respect to the transaction.

### Section III: Places of Public Accommodation

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b) (1) and (2) of the Act and the taxes imposed by 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 the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by a plan

and managed by an DBIM to a party in interest with respect to the plan, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

### Section IV: Definitions

For the purposes of this exemption:

(a) The term “Deutsche Bank In-house Manager” or “DBIM” means an organization which is—

(1) Deutsche Bank, or a direct or indirect wholly-owned bank or trust company subsidiary of Deutsche Bank, supervised under the laws of the United States, a State, or Germany, that (A) Has the power to manage, acquire, or dispose of assets of a plan, (B) has, as of the last day of its most recent fiscal year, equity capital (*i.e.*, common and preferred stock, surplus, undivided profits, contingency reserves, group contingency reserves, and other capital reserves) in excess of \$1,000,000,<sup>7</sup> and (C) has as of the last day of its most recent fiscal year under its management and control total assets attributable to plans maintained by affiliates of the DBIM (as defined in section IV(b)) in excess of \$50 million; provided that if it has no prior fiscal year as a separate legal entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of \$50 million was transferred to it from the employer.

In addition, plans maintained by affiliates of the DBIM and/or the DBIM, must have, as of the last day of each plan's reporting year, aggregate assets of at least \$250 million.

(b) For purposes of section IV(a) and section IV(h), an “affiliate” of an DBIM means a member of either: (1) a controlled group of corporations (as defined in section 414(b)) of the Code of which the DBIM is a member; or (2) a group of trades or businesses under common control (as defined in section 414(c)) of the Code of which the DBIM is a member; provided that “50 percent” shall be substituted for “80 percent” wherever “80 percent” appears in section 414(b) or 414(c) of the Code or the rules thereunder.

(c) The term “party in interest” means a person described in section 3(14) of the Act and includes a “disqualified person” as defined in section 4975(e)(2) of the Code.

<sup>7</sup> The condition in Part IV(a) of the proposed exemption that the INHAM have in excess of \$1 million in equity capital mirrors the parallel requirement in Part IV(a) of QPAM, PTE 84–14.

(d) An DBIM is “related” to a party in interest for purposes of section I(f) of this exemption if the party in interest (or a person controlling, or controlled by, the party in interest) owns a five percent (5%) or more interest in the DBIM or if the DBIM (or a person controlling, or controlled by, the DBIM) owns a five percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term “interest” means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation.

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise;

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

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

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after April 8, 2002, or any renewal that requires the consent of the DBIM occurs on or after April 8, 2002, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be