

in the interests of plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of plans;

(3) If granted, the proposed class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and 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.

Written Comments

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

IV. Proposed Exemption

The Department has under consideration the grant of the following class exemption under the authority of 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, 32847 August 10, 1990.)

Section I. Covered Transactions

(a) For the period from six years prior to the date of publication of the final class exemption in the **Federal Register** to the date of publication of the final class exemption in the **Federal Register** the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) 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 following transactions, if the relevant conditions set forth in section II(b) below are met at the time of the transaction:

(1) The purchase or sale of Qualifying REIT Shares (as defined in section III(j)) on behalf of an Account (as defined in section III(a)) at the direction of the participant;

(2) The purchase or sale of Qualifying REIT Shares on behalf of the Plan (as

defined in section III(f)) at the direction of an independent fiduciary (as defined in section II(a)(2));

(3) The contribution in-kind of Qualifying REIT Shares to a Plan by an employer; and

(4) The holding of the Qualifying REIT Shares by the Plan. (b) Effective after the date of publication of the final class exemption in the **Federal Register**, the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) 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 following transactions, if the relevant conditions set forth in section II(b) below are met at the time of the transaction:

(1) The purchase or sale of Qualifying REIT Shares on behalf of an Account in a Plan at the direction of the participant;

(2) The purchase or sale of Qualifying REIT Shares on behalf of the Plan at the direction of the Independent Fiduciary (as defined in section III(e));

(3) The contribution in-kind of Qualifying REIT Shares to a Plan by an employer; and

(4) The holding of the Qualifying REIT Shares by the Plan.

Section II. Conditions

(a) Retroactive Conditions

(1) The participant has discretionary authority to direct the trustee to:

(A) Sell the Qualifying REIT Shares purchased by the participant for his own Account no less frequently than quarterly; and

(B) Vote, tender and exercise similar rights with respect to those Qualifying REIT Shares in the Account over which the participant has discretion; or

(2) An independent fiduciary has discretionary authority to sell the Qualifying REIT Shares purchased at the direction of the independent fiduciary and such independent fiduciary:

(A) Is a trustee, named fiduciary or investment manager with respect to the Qualifying REIT Shares;

(B) Is neither the Trust REIT (as defined in section III(i)) an Employer Affiliate (as defined in section III(d)) nor an affiliate thereof; and

(C) Has the discretionary authority to exercise the voting, tender and similar rights with respect to the Qualifying REIT Shares purchased on behalf of a Plan. Notwithstanding the foregoing, this paragraph (2)(C) shall be deemed met if another fiduciary that is independent of the Trust REIT had the right to exercise the voting, tender and similar rights with respect to the Trust REIT Shares.

(3) Purchases and sales of Qualifying REIT Shares by the Plan are executed:

(A) For cash;

(B) On the Primary Exchange (as defined in section III(h)) or directly with the Trust REIT; and

(C) At the market price for the Trust REIT shares on the Primary Exchange at the time of the transaction.

(4) Notwithstanding paragraph (3) above, the exemption shall apply to purchases and sales of Qualifying REIT Shares between Accounts within a Plan in order to avoid brokerage commissions and other transaction costs, provided that the price received by each Account is equal to the closing price for the Trust REIT shares on the Primary Exchange on the date of the transaction.

(5) At the time the transaction is entered into, the terms of the transaction are at least as favorable to the Plan or the Account as the terms generally available in comparable arm's-length transactions between unrelated parties.

(6) Qualifying REIT Shares contributed to, or purchased by, the Plan from the Trust REIT:

(A) Are conveyed to the Plan at or below the market price for the Trust REIT shares on the Primary Exchange at the time of the transaction; and

(B) Are conveyed to the Plan without the payment of any commission or other fee in connection with the transaction.

(7) Where a participant has discretionary authority to purchase or sell Qualifying REIT Shares, neither the Trust REIT, an Employer Affiliate, the independent fiduciary, nor any affiliates thereof exerts any undue influence over the decisions of the participants to acquire or sell Qualifying REIT Shares.

(b) Prospective Conditions

(1) The participant has discretionary authority to direct the trustee:

(A) To sell Qualifying REIT Shares purchased by, or contributed to, an Account no less frequently than monthly; and

(B) To vote, tender and exercise similar rights with respect to those Qualifying REIT Shares in the Account over which the participant has discretion; or

(2) An Independent Fiduciary, as defined in section III (e), has discretionary authority to purchase, hold or sell the Qualifying REIT Shares and has the discretionary authority to exercise the voting, tender and similar rights with respect to the Qualifying REIT Shares. Notwithstanding the foregoing, this paragraph (2) shall be deemed met if another fiduciary that is independent of the Trust REIT, the Employer Affiliate and any affiliates thereof, has the right to exercise the