

voting, tender and similar rights with respect to the Trust REIT shares.

(3) 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:

(A) Has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction;

(B) Renders any investment advice [within the meaning of 29 CFR 2510.3-21(c)] with respect to those assets; or

(C) Exerts any undue influence over the decisions of the participants to acquire or sell Qualifying REIT Shares.

(4) Prior to or immediately after an initial investment in Qualifying REIT Shares, either the Trust REIT, or an agent or affiliate thereof provides the person who is directing the investment (*i.e.*, the participant or the Independent Fiduciary) with the most recent prospectus, quarterly report, and annual report concerning the REIT, and thereafter, either the Trust REIT, or an agent or affiliate thereof, provides such participants and/or Independent Fiduciary with updated prospectuses, quarterly statements and annual reports as published.

(5) Information relating to the purchase, holding, and sale of Qualifying REIT Shares, and the exercise of voting, tender and similar rights with respect to such Qualifying REIT Shares by participants is maintained in accordance with procedures designed to safeguard the confidentiality of such information except to the extent necessary to comply with Federal or state laws not preempted by ERISA. To safeguard confidentiality, the Plan shall:

(A) Designate a fiduciary responsible for safeguarding confidentiality;

(B) Provide participants, when they become eligible to participate in the Plan, with a statement describing the procedures established to provide for the confidentiality of information relating to the purchase, holding and sale of Trust REIT shares, and the exercise of voting, tender and similar rights, by participants and beneficiaries and the name, address and telephone number of the fiduciary responsible for monitoring compliance with the procedures; and

(C) Appoint, if the fiduciary responsible for safeguarding participant confidentiality determines that a situation involves a potential for undue employer influence upon participants and beneficiaries with regard to the direct or indirect exercise of shareholder rights, an independent fiduciary (who

may, but need not be, the Independent Fiduciary), to take appropriate action to protect the confidentiality of the participants' votes. For purposes of this subparagraph (C), a fiduciary is not independent if the fiduciary is affiliated with the Trust REIT, an Employer Affiliate, or any affiliate thereof.

(6) All 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)) by a broker that is independent of the Trust REIT, the Employer Affiliate, the Independent Fiduciary, and any affiliates thereof, 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.

(7) Notwithstanding paragraph (6) 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 transaction is executed at the closing price for the Trust REIT shares on the Primary Exchange on the date of the transaction. All such transactions will take place at the closing price on the business day on which the participant instruction is received, or at the closing price on the next business day if the instruction is received after noon or such later deadline as designated by the trustee or named fiduciary.

(8) 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.

(9) Qualifying REIT Shares that are 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;

(B) Can be immediately sold on the Primary Exchange; and

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

(10) Prior to a participant, Plan Sponsor (as defined in section III (g) or an Independent Fiduciary engaging in an initial transaction under this exemption, after the date of publication of the final class exemption in the **Federal Register**, the Trust REIT or its Employer Affiliate provides the following disclosures to the person who exercises discretionary authority with respect to the Qualifying REIT Shares (*i.e.*, the participant or the Independent

Fiduciary). The disclosure must contain the following information regarding the transactions and a supplemental disclosure must be made to the person directing the covered investments if material changes occur subsequent to the initial disclosure. This disclosure must include:

(A) Disclosure of any fees for brokerage services or transaction costs that will be incurred as a result of the transactions;

(B) Disclosure of the role of the Trust REIT, if any, as a principal in the transactions;

(C) The exchange or market system where the Qualifying REIT Shares are traded; and

(D) A statement that a copy of the proposed and final exemption shall be provided to participants and the Independent Fiduciary upon request.

(11) The plan fiduciary for a period of six years maintains the records necessary to enable the persons described below in paragraph (12) to determine whether the conditions of this exemption have been met, except that:

(A) If the records necessary to enable the persons described in paragraph (12) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(B) No party in interest other than the plan fiduciary 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 (12) below.

(12) (A) Except as provided below in paragraph (12)(B) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (11) are unconditionally available at their customary location for examination during normal business hours by —

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

(ii) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary,

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities; or