

employer or such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of the plan assets. A named fiduciary (within the meaning of section 402(a)(2) of ERISA) of a plan and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of section I(a) if such an employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement."

Interested persons requested that the Department narrow those persons and entities listed as affiliates under section V(c) of the exemption. According to the interested persons, the definition is difficult to monitor, particularly the portion of the definition that includes 5 percent or more partners and employees. Accordingly, after considering the suggestion, the Department has determined to delete those partnerships in which the person has less than a 10 percent interest. In addition, the Department proposes to amend section V(c)(2) to only include highly compensated employees as defined in section 4975(e)(2)(H) of the Code.

Over the years, a number of interested persons have sought clarification regarding the application of section I(b) of PTE 84-14. Section I(b) excludes from exemptive relief those transactions described in PTEs 81-6 (relating to securities lending arrangements), 83-1 (relating to acquisitions by plans of interests in mortgage pools) and 82-87 (relating to certain mortgage financing arrangements). According to the interested persons, there is uncertainty regarding the application of PTE 84-14 to certain types of transactions that, although similar to the transactions that are the subject of the three specialized exemptions, are beyond the scope of relief provided by those exemptions. Thus, for example, PTE 81-6 would not provide relief for the lending of securities that are assets of a plan to a foreign broker-dealer.³ It is the view of the Department that PTE 84-14 would provide relief for such transactions if the conditions of that exemption were otherwise met. The Department

cautions, however, that PTE 84-14 would not be available for any transaction specifically described in PTEs 81-6, 83-1 or 82-87, if a person determines not to satisfy one or more of the conditions of the specialized exemptions solely in order to take advantage of the relief provided by PTE 84-14.

With respect to section I(d) and the definition of "related" under section V(h), interested persons suggested that the threshold for determining whether a party in interest is related to the QPAM should be increased from a 5 percent ownership interest to a 20 percent ownership interest, and that the definition of "interest" under section V(h)(1) should be narrowed to exclude ownership interests held for the benefit of clients. Additionally, one interested person suggested that section I(d) be revised to make it easier to monitor for compliance. In this regard, the interested person suggested that the exemption permit a determination as to whether a party in interest is related to the QPAM to be made as of the last day of the preceding calendar quarter.

After considering the suggestions, the Department recognizes that compliance with section I(d) may create administrative burdens for a number of financial institutions. However, the Department does not believe that raising the percentage limitation to 20 percent would be appropriate in all cases. For example, while it may be more difficult to monitor the ownership interests of entities that "control" or are "controlled by" the QPAM and the party in interest, the Department believes that the QPAM and the party in interest should be able to determine any ownership interests in each other without excessive administrative burden. Accordingly, the Department is proposing to amend section V(h) to provide that a QPAM is "related" to a party in interest for purposes of section I(d) if:

- The QPAM or the party in interest owns a ten percent or more interest in the other entity;
- A person controlling or controlled by the QPAM or the party in interest owns a twenty percent or more interest in the other entity; or
- A person controlling, or controlled, by the QPAM or the party in interest owns less than a twenty percent interest in the other entity, but nevertheless exercises control over the management or policies of the other party by reason of its ownership interest.

In addition, the Department proposes to modify section V(h) to provide that generally determinations of whether the QPAM is "related" to a party in interest for purposes of section I(d) may be made

as of the last day of the most recent calendar quarter. Finally, the Department is proposing to amend section V(h)(1) to provide that shares held in a fiduciary capacity need not be considered in applying the percentage limitation. The Department believes that these modifications should further lessen the compliance burdens under the class exemption.

Accordingly, the Department is proposing to amend the definition of "related" to in section V(h) as follows:

A QPAM is "related" to a party in interest for purposes of section I(d) of this exemption if, as of the last day of its most recent calendar quarter: (i) The QPAM owns a ten percent or more interest in the party in interest; (ii) a person controlling, or controlled by, the QPAM owns a twenty percent or more interest in the party in interest; (iii) the party in interest owns a ten percent or more interest in the QPAM; or (iv) a person controlling, or controlled by, the party in interest owns a twenty percent or more interest in the QPAM. Notwithstanding the foregoing, a party in interest is "related" to a QPAM if: (i) A person controlling, or controlled by, the party in interest owns less than a twenty percent interest in the QPAM and such person exercises control over the management or policies of the QPAM by reason of its ownership interest; or (ii) a person controlling, or controlled by, the QPAM owns less than a twenty percent interest in the party in interest and such person exercises control over the management or policies of the party in interest by reason of its ownership interest.

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

(2) A person is considered to own an interest if, other than in a fiduciary capacity, 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.

An interested person also requested that the Department clarify the language in section V(a)(4) which defines a QPAM to include "[a]n investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of \$50,000,000, and either (A) shareholders' or partners' equity (as defined in section V(m)) in excess of \$750,000* * *" The interested person noted that section V(m) provides that:

³ PTE 81-6 does provide relief for broker-dealers registered under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government securities (as defined in section 3(a)(12) of the 1934 Act).