

covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after the date this exemption is granted, the amount attributable in any taxable year of the party in interest to transactions engaged in with an investment fund pursuant to section II(a) of this exemption does not exceed one (1) percent of the gross receipts derived from all sources for the prior taxable year of the party in interest, and

(5) The requirements of sections I(c) through (g) are satisfied with respect to the transaction;

(b) The leasing of office or commercial space by an investment fund maintained by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) No commission or other fee is paid by the investment fund to the QPAM or to the employer, or to an affiliate of the QPAM or employer (as defined in section V(c)), in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants,

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as defined in section 407(d)(3) of ERISA), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of the QPAM in which the plan has an interest does not exceed 10 percent of the fair market value of the assets of the plan held in those investment funds. In determining the aggregate fair market value of employer real property and employer securities as described herein, a plan shall be considered to own the same

proportionate undivided interest in each asset of the investment fund or funds as its proportionate interest in the total assets of the investment fund(s). For purposes of this requirement, the term “employer real property” means real property leased to, and the term “employer securities” means securities issued by, an employer any of whose employees are covered by the plan or a party in interest of the plan by reason of a relationship to the employer described in subparagraphs (E) or (G) of ERISA section 3(14), and

(6) The requirements of sections I(c) through (g) are satisfied with respect to the transaction.

Part III—Specific Lease Exemption for QPAMs

Effective December 21, 1982, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an investment fund managed by a QPAM to the QPAM, a person who is a party in interest of a plan by virtue of a relationship to such QPAM described in subparagraphs (G), (H), or (I) of ERISA section 3(14) or a person not eligible for the General Exemption of Part I by reason of section I(a), if—

(a) The amount of space covered by the lease does not exceed the greater of 7500 square feet or one (1) percent of the rentable space of the office building, integrated office park or of the commercial center in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants,

(c) 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 QPAM, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission or other fee is paid by the investment fund to the QPAM, any person possessing the disqualifying powers described in section I(a), or any affiliate of such persons (as defined in section V(c)), in connection with the transaction.

Part IV—Transactions Involving Places of Public Accommodation

Effective December 21, 1982, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of

ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

Part V—Definitions and General Rules

For purposes of this exemption:

(a) The term “qualified professional asset manager” or “QPAM” means an independent fiduciary (as defined in section V(n)) which is—

(1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) in excess of \$1,000,000 or

(2) A savings and loan association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, that has made application for and been granted trust powers to manage, acquire or dispose of assets of a plan by a State or Federal authority having supervision over savings and loan associations, which savings and loan association has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) or net worth (as defined in section V(l)) in excess of \$1,000,000 or

(3) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, which company has, as of the last day of its most recent fiscal year, net worth (as defined in section V(l)) in excess of \$1,000,000 and which is subject to supervision and examination by a State authority having supervision over insurance companies, or

(4) An investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of \$85,000,000 as of the last day of its most recent fiscal year, and either (A) shareholders' or partners' equity (as defined in section V(m)) in excess of \$1,000,000, or (B) payment of all of its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 and 406 of ERISA is unconditionally guaranteed by—(i) A person with a relationship to such investment adviser described in section