

V(c)(1) if the investment adviser and such affiliate have, as of the last day of their most recent fiscal year, shareholders' or partners' equity, in the aggregate, in excess of \$1,000,000, or (ii) A person described in (a)(1), (a)(2) or (a)(3) of section V above, or (iii) A broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of \$1,000,000; Provided that such bank, savings and loan association, insurance company or investment adviser has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

(b) An "investment fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

(c) For purposes of section I(a) and Part II, an "affiliate" of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, 10 percent or more partner (except with respect to part II this figure shall be 5 percent), or highly compensated employee as defined in section 4975(e)(2)(H) of the Code (but only if the employer of 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 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 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.

(d) For purposes of section I(g) an "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

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

(f) The term "party in interest" means a person described in ERISA section 3(14) and includes a "disqualified person," as defined in Code section 4975(e)(2).

(g) The term "relative" means a relative as that term is defined in ERISA section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(h) 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; (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. 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; 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.

(i) 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 December 21, 1982, or a renewal that requires the consent of the QPAM occurs on or after December 21, 1982 and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction.

Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such time as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to a QPAM. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of the QPAM. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of ERISA or section 4975 of the Code while the transaction is continuing, unless the conditions of this 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.

(j) The term "goods" includes all things which are movable or which are fixtures used by an investment fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights and any other property, tangible or intangible, which, under the relevant