

Benefits Security Administration, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D-11167 (Aetna and UBS Realty). The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the 2 pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Aetna and UBS Realty pursuant to 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).

### Summary of Facts and Representations

1. Aetna is an insurance company organized under the laws of Connecticut. Among the many insurance products and financial services Aetna offers are funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act. Historically, Aetna had been significantly involved in managing real estate investments (both real estate mortgage loans and real estate equity interests) held both in its general account for its own benefit as well as in various accounts for the benefit of its investment clients. In connection with this real estate management business, Aetna obtained an exemption—Prohibited Transaction Exemption 91-10 (“PTE 91-10”) <sup>1</sup>—from the Department in 1991 that provided exemptive relief for certain transactions involving the real estate investments in such accounts. For the reasons set forth below, Aetna and UBS Realty have jointly requested that this exemptive relief be modified to reflect certain changed circumstances. If the proposed exemption is granted, PTE 91-10 shall be superseded and replaced by the restated prohibited transaction exemption set forth in this notice.

2. Aetna effectively disposed of a substantial portion of its third-party institutional real estate advisory

business a number of years ago by selling that business to a newly-created entity owned by several of the employees in its institutional real estate group and certain private equity investors. This entity was subsequently purchased by UBS AG, a leading global financial services concern and the largest bank in Switzerland, and currently operates as UBS Realty, a wholly-owned indirect subsidiary of UBS AG. The former employees of Aetna’s institutional real estate group have (subject to normal turnover) continued to manage and operate the business that is now UBS Realty. (Aetna and UBS Realty are sometimes collectively referred to herein as the “Applicant.”)

3. UBS Realty is an independent organization that is part of one of the largest financial service organizations in the world. UBS Realty represents that it: (i) is a registered investment adviser under the Investment Advisers Act of 1940; (ii) meets the requirements of a “qualified professional asset manager” within the meaning of Prohibited Transaction Class Exemption 84-14; <sup>2</sup> (iii) had net equity, as of December 31, 2002, of approximately \$37 million; and (iv) had total assets under management, as of September 30, 2002, of approximately \$9.3 billion, of which approximately \$5.7 billion was derived from Aetna, as described further below. Significantly, UBS Realty had approximately \$3.6 billion of U.S. commercial real estate assets under management as of September 30, 2002, that was independent of its relationship with Aetna. More generally, the entire UBS group of companies had approximately \$16.1 billion of real estate assets under management as of June 30, 2002, and approximately \$1.5 trillion of total assets under management as of August, 2002.

4. Aetna has retained, and until transitioned to UBS Realty (as described below) will continue to retain, discretionary authority and control over the management of the various real estate accounts maintained by Aetna, including those real estate accounts in which employee benefit plans participate (the “ERISA-Covered Accounts”) that are structured as pooled or single customer insurance company separate accounts (collectively, the “Client Accounts”). In connection with its exercise of this discretionary authority and control, Aetna has retained UBS Realty (including its predecessor) to provide non-discretionary advice, recommendations and related services regarding the

management of the Client Accounts. The Applicant represents that, consistent with the provisions of PTE 91-10, until day-to-day discretionary management responsibility is transitioned to UBS Realty, all of the Client Accounts have continued to be “managed” by Aetna, and the various decisions covered by the exemptions contained in PTE 91-10 have continued to be made by Aetna.

5. It is now anticipated that the day-to-day discretionary management authority with respect to the Accounts will be delegated to UBS Realty, with the approval of the investors having an interest in the Client Accounts. Aetna, however, will continue to manage the real estate assets in its general account and in the general accounts of one or more of its affiliated insurance companies (collectively, the “General Account” and together with the Client Accounts, the “Accounts”). The receipt of the requisite investor approval is expected in the near future with an anticipated effective date of such delegation on or about October 1, 2003. On and after the effective date of the transition (the “Transition Effective Date”), the Client Accounts will be managed by UBS Realty on a discretionary basis, subject to the investment guidelines applicable to the particular Client Account and the ultimate oversight of Aetna. Accordingly, after the Transition Effective Date, many of the decisions covered by the exemptions contained in PTE 91-10 will be made by UBS Realty rather than by Aetna.

The Client Accounts will nevertheless continue to be maintained by Aetna as insurance company separate accounts holding assets owned by Aetna that, in effect, “fund” Aetna’s obligations to the holders of the annuity contracts that relate to the Client Accounts. Moreover, as discussed above, UBS’s day-to-day management authority will be undertaken pursuant to an investment advisory agreement with Aetna that, among other things, includes UBS Realty’s agreement to operate the Client Accounts in accordance with the Act and UBS Realty’s acknowledgement of its fiduciary status to the extent that the assets of the Client Accounts are “plan assets” subject to the Act. Finally, Aetna will monitor UBS Realty’s performance of its responsibilities and retains the right to terminate its delegation to UBS Realty as a result of default by UBS Realty under the investment advisory agreement or if Aetna determines that such action is required to comply with its fiduciary obligations.

6. UBS Realty’s general real estate investment strategy is set by its senior

<sup>1</sup> See 56 FR 3273 (January 29, 1991).

<sup>2</sup> See 49 FR 9494 (March 13, 1984).