

for withdrawals is insufficient to meet all the withdrawal requests on any valuation date, available cash is paid to each withdrawing contractholder on a pro rata basis. With respect to pooled closed-end Accounts, the actual cash flow, including amounts received from the sale of investments, is generally paid out to all contractholders on a pro rata basis until all assets of the Account have been liquidated. Prior to liquidation of the Account, contractholders have the right, subject to the Applicant's agreement which cannot be unreasonably withheld, to sell their interests in the Account. For single customer Accounts, the contractholder with respect to wholly-owned properties can cause the Applicant to liquidate the investment or transfer it to a successor investment manager.

15. An independent fiduciary or independent fiduciary committee must be appointed to act on behalf of each ERISA-Covered Account participating in the sharing of investments with respect to certain transactions and decisions contemplated by the proposed exemption. The independent fiduciary, acting on behalf of the ERISA-Covered Account, shall have the responsibility and authority to approve or reject recommendations made by the Applicant regarding the allocation of shared real estate investments to the ERISA-Covered Account and recommendations concerning subsequent transactions that are the subject of this proposed exemption. The independent fiduciary must be informed of the procedures set forth in the proposed exemption for the resolution of anticipated impasses prior to an acceptance by the fiduciary of the appointment. The Applicant shall provide the independent fiduciary with the information and materials necessary for the independent fiduciary to make an informed decision on behalf of the ERISA-Covered Account. No allocation or transaction that is the subject of the proposed exemption will be undertaken prior to the rendering of such informed decision by the independent fiduciary. The independent fiduciary shall also review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account's portfolio to determine whether the holding of such shared real estate investments continues to be in the best interest of the ERISA-Covered Account.<sup>4</sup>

<sup>4</sup> For example, in the case of an investment shared by the General Account and an ERISA-Covered Account, if the independent fiduciary of the ERISA-Covered Account determined, after its review of the Account's shared investment portfolio and financial information relating thereto, that the

16. The independent fiduciary must be unrelated to Aetna and UBS Realty as well as any of their respective affiliates. The independent fiduciary may not be, or consist of, any officer, director or employee of either Aetna or UBS Realty, or be affiliated in any way with either Aetna or UBS Realty or any of their respective affiliates. The independent fiduciary must be either: (1) A business organization that has at least five (5) years of experience with respect to commercial real estate investments; (2) a committee comprised of one or more individuals who each have at least five (5) years of experience with respect to commercial real estate investments; or (3) the sponsor (or its designee) of a plan or plans that is the sole participant in an ERISA-Covered Account. An organization or individual may not serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income and cost of living increases thereon) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from either Aetna or UBS Realty and their respective affiliates for that fiscal year exceeds five (5) percent of such person's annual gross income in the aggregate from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five (5) percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include services rendered to the Accounts as independent fiduciary under any prohibited transaction exemptions granted by the Department. In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may: (i) Acquire any

ERISA-Covered Account's interest in the shared investment should be disposed of, UBS Realty would be required to carry out the decision of the independent fiduciary. If the portfolio manager of the General Account agreed that its interest in the shared investment should also be disposed of, then the entire shared investment would be sold. If the portfolio manager of the General Account did not agree that its interest in the shared investment should be sold, UBS Realty would first try to sell only the ERISA-Covered Account's interest in the shared investment. However, to the extent that it is not feasible or possible to sell the ERISA-Covered Account's interest alone, the entire shared investment would be sold notwithstanding the non-acquiescence of the General Account.

property from, sell any property to, or borrow any funds from, either Aetna or UBS Realty or any of their respective affiliates, or any Account managed by either Aetna or UBS Realty or any of their respective affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six (6) months after such organization or individual ceases to be an independent fiduciary; or (ii) negotiate any such transaction during the period that such organization or individual serves as independent fiduciary. A sponsor (or its designee) of a plan participating in an ERISA-Covered Account may not serve as independent fiduciary with respect to any pooled ERISA-Covered Account. A business organization or committee member may not serve as an independent fiduciary of more than one ERISA-Covered Account.

17. In the case of a single customer ERISA-Covered Account, if the plan sponsor or its designee decides not to act as the independent fiduciary, the independent fiduciary or independent fiduciary committee will be selected initially by either Aetna or UBS Realty. The independent fiduciary must be approved by the plan sponsor or another plan fiduciary prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. In the case of a closed-end pooled ERISA-Covered Account, the appropriate plan fiduciary of each participating plan will be required to approve the initial selection of the independent fiduciary proposed by either Aetna or UBS Realty prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. In the case of an open-end pooled ERISA-Covered Account, the independent fiduciary or the independent fiduciary committee will be selected initially by either Aetna or UBS Realty. The Applicant represents that because these Client Accounts often include a significant number of plan contractholders, the independent fiduciary will not be approved initially by plan contractholders. The selection of the independent fiduciary, however, must be approved by a majority of the contractholders in such a Client Account within twelve (12) months after the selection has been made.

18. For both single customer and pooled ERISA-Covered Accounts, prior to the making of any decision to approve the selection of an independent fiduciary, plan contractholders must be furnished appropriate biographical information pertaining to the independent fiduciary or members of the independent fiduciary committee.