

in the transaction. Where two or more Accounts are involved in such a transfer, the transfer would also be subject to the approval of the Connecticut Insurance Department. In addition, the Applicant has determined that no such transfers will be permitted between the General Account and an ERISA-Covered Account. Because the Applicant would be acting on behalf of both the "buying" and "selling" Accounts in such an inter-Account transfer, the transfer might be deemed to constitute a prohibited transaction under section 406 of the Act. Accordingly, exemptive relief is requested herein for the sale or transfer of an interest in a shared real estate investment by one ERISA-Covered Account to another Client Account of which either Aetna or UBS Realty is a fiduciary. Such transfers would have to be at fair market value and approved by the independent fiduciary for each ERISA-Covered Account involved in the transfer. See Section I(a).

(b) Joint Sales of Property

25. In situations involving shared real estate investments, an opportunity may arise to sell the entire investment to a third party, and it may be determined that the sale is desirable for all of the participating Accounts. When the General Account is participating in the investment, and the sale is therefore determined to be in the best interests of the General Account (in addition to being in the interests of the other Account(s)), the sale might be deemed to constitute a prohibited transaction under section 406 of the Act and section 4975 of the Code.⁷ Similarly, the Applicant may be acting on behalf of two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Account other than the General Account. Accordingly, exemptive relief is requested for these joint sales. The sales would have to be approved by the independent fiduciary for each ERISA-Covered Account involved in the sale. See Section I(b).

(c) Additional Capital Contributions

26. On occasion, commercial real estate investments require infusions of additional capital in order to fulfill the investment expectations of the property. For example, developmental real estate investments sometimes require additional capital in order to complete the construction of the property. In addition, the cash flow to improve or operate completed buildings may also

result in the need for additional capital. Such additional capital is frequently provided by the owners of the property. In the case of a property that is owned entirely on behalf of the Accounts, it is contemplated that needed additional capital will ordinarily be contributed in connection with the investment in the form of an equity capital contribution made by each participating Account in an amount equal to such Account's existing percentage equity interest in the shared investment;⁸ that is, in the first instance, each Account would be afforded the opportunity to contribute additional capital on a fully proportionate basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the ERISA-Covered Account. The making of an additional capital contribution could be deemed to involve a prohibited transaction under section 406 of the Act. If one or more participating Accounts in a shared investment is unable to provide its share of the needed additional capital, various alternatives may be appropriate, including having the other Account(s) make a disproportionate contribution. For example, where the General Account and an ERISA-Covered Account participate in a shared investment and the need for additional capital arises, it might be determined for liquidity reasons or other factors involving the ERISA-Covered Account that the additional contribution should not be made by that ERISA-Covered Account. As a result, the additional equity capital may be provided entirely by the General Account with the further consequence that the General Account would thereafter have a larger interest in the investment and, therefore, a larger share in the appreciation and income to be derived from the property.⁹ Such an adjustment in ownership interests might be deemed to constitute a prohibited (indirect sales) transaction under section 406 of the Act. In addition, these situations could also occur where two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Client Account are involved.

⁸ In any case where the General Account participates in a shared investment with one or more ERISA-Covered Accounts and a call for additional capital is made, the General Account will always contribute at least its pro rata share of such capital.

⁹ In the case of shared real estate investments owned entirely by Aetna, if an Account contributes capital equaling less than its pro rata interest in the investment (or makes no contribution at all), that Account's equity interest will be re-adjusted and reduced based on the change in the fair market value of the property caused by the infusion of new capital.

Accordingly, the Applicant is requesting exemptive relief that would permit the contribution of additional equity capital for a shared investment by Accounts participating in the investment. Any decision made or action taken by an ERISA-Covered Account (*i.e.*, the contribution of either no additional capital, the ERISA-Covered Account's pro rata share of additional capital, less than or more than the ERISA-Covered Account's pro rata share, etc.) must be approved by such independent fiduciary. See Section I(c).

(d) Lending of Funds To Meet Additional Capital Requirements

27. If the General Account and an ERISA-Covered Account participate in a shared investment that experiences the need for additional capital, and it is determined that the ERISA-Covered Account does not have sufficient funds available to meet the call for additional capital, the General Account might be willing and able to loan the required funds to the ERISA-Covered Account. Prior to any loan being made, it must be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. See Section I(d).

(e) Shared Debt Investments

28. The Applicant occasionally makes real estate investments consisting of interim construction loans or medium or long-term mortgage loans on a property. In some instances, the Applicant may have the opportunity to obtain an equity ownership interest in the underlying real property upon maturity of the debt or at the election of the Applicant. It is possible that shared real estate debt investments might raise questions under section 406 of the Act in essentially two situations: (1) A material modification in the terms of a loan agreement, or (2) a default on a loan. From time to time, the terms of outstanding real estate loans need to be modified to take into account new developments. Such modifications may commonly include extensions of the terms of the loan, revised interest rates, revised repayment schedules, changes in covenants or warranties to permit, for example, additional financing to be provided by others, and the provision of additional financing to the borrower by the Applicant. These situations require a decision on behalf of the lender as to

⁷ The Department notes that all future references to the provisions of the Act shall be deemed to include the parallel provisions of the Code.