

call for additional capital. See Section II(a)(1).

Additionally, the General Account may make a loan to the ERISA-Covered Account to enable the ERISA-Covered Account to make its required pro rata capital contribution. Accordingly, subject to the conditions of the proposed exemption, this proposed exemption would provide relief for loans of this type. Prior to any loan being made, it would have to 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. In this way, the needed capital may be provided without causing a "squeeze down" in the equity interest of the participating ERISA-Covered Account. A similar situation may arise where two ERISA-Covered Accounts, or an ERISA-Covered Account and a non-ERISA-Covered Client Account participate in a partnership investment. If one Client Account is unable or unwilling to provide its proportionate share of a capital call, the other Client Account may be interested in making up the shortfall. This might be accomplished by means of an equity contribution with a resulting re-adjustment on a current fair market value basis in the equity ownership interests of the participating Client Accounts. Thus, any of these disproportionate contribution situations between Client Accounts might result in a violation of section 406(b)(2) of the Act. Subject to the generally applicable conditions of this proposed exemption, Section II(a)(3) provides limited relief for these disproportionate contributions.

32. *Co-Partner Shortfall.* In some cases, Aetna's partner in a partnership investment may be unable to meet its additional capital obligation, and the Applicant may deem it advisable for some or all of the participating Accounts to contribute capital in excess of their pro rata share in the partnership in order to finance the operation of the property (and thereby squeeze down the equity interest of the partner).<sup>12</sup> The Applicant is requesting exemptive relief that would permit additional capital

contributions to be made by participating Accounts on a non-proportionate basis if the need arises. Any instance involving the infusion of additional capital to a partnership will be considered by the independent fiduciary for each ERISA-Covered Account participating in the investment and any action to be taken by the Account must be approved by the independent fiduciary. These actions might include contributing a pro rata share of additional equity capital (including a capital contribution that squeezes down the interest of a partner on the basis provided in the partnership agreement), contributing more or less than a pro rata share, or contributing no additional capital. See Section II(a)(4).

*(b) Third Party Purchase of Partnership Properties*

33. Under the terms of certain partnership agreements entered into by Aetna and other real estate investors, if an offer is received from a third party to purchase the assets of the partnership, and one partner (irrespective of the percentage ownership interest of the partner) wishes to accept the offer, the other partner must either (1) also accept the offer, or (2) buy out the first partner's interest at the portion of the offer price that is proportionate to the first partner's share of the partnership. For example, if Aetna on behalf of the Accounts and a real estate developer are partners in a property and an offer is received from another person to acquire the entire property that the developer wants to accept, the Applicant on behalf of the Accounts would be obligated either to sell its interest also to the third party or to buy out the interest of the developer at the portion of the price offered by the third party proportionate to the developer's share of the partnership. When the Applicant's interest in a real estate partnership is shared by two or more Accounts, it is likely that the same decision will be appropriate for each Account in any third-party purchase situation. See Sections I(b) and II(b)(1). It is also possible, however, that it might be in the interests of some Accounts to reject the offer and buy-out the partner, while other Accounts might not have the funds to do so or, for some other reason, would elect to sell to the third party. The partnership agreements typically require, however, that Aetna on behalf of the Accounts provide its co-partner with a buy or sell reply. Thus, in making a buy or sell decision in any of these cases involving an ERISA-Covered Account, the Applicant might be deemed to be acting in violation of

section 406 of the Act. Further, in order to resolve situations where the same reply is not appropriate for all participating Accounts, various alternatives may be adopted. For example, the Account(s) that wishes to continue owning the property may be willing and able itself to buy-out not only the co-partner, but also the other participating Account(s) that wishes to accept the third party offer to sell. The General Account, however, will not participate in the buy-out of another Account(s). Or, one Account may itself be willing and able to buy-out the co-partner while the other Account chooses to continue holding its original interest in the property. Alternatively, all of the Accounts may choose to participate in the buy-out, but on a basis that is not in proportion to their existing ownership interests. When an ERISA-Covered Account is involved, such potentially desirable alternatives may also raise questions under section 406 of the Act (whether or not the General Account is a participant in the investment). Accordingly, the Applicant is requesting exemptive relief that would permit the Applicant to respond to third-party property purchase offers as appropriate under the circumstances. Such a response might involve acceptance of the offer on behalf of all participating Accounts, a buy-out of a partner by some or all of the participating Accounts on a pro rata or non-pro rata basis, or a buy-out of the interest of one participating Account (and of the co-partner) by other participating Accounts. Any action by any ERISA-Covered Account in these situations will be required to be approved by the independent fiduciary for the Account. Further, in any case involving the sharing of a partnership interest between the General Account and an ERISA-Covered Account, the Applicant has determined that the action taken by the General Account in such third-party purchase offer situations will not be inconsistent with the action approved for the ERISA-Covered Account by the independent fiduciary for such Account. For example, where the Applicant recommends that a third-party purchase offer be accepted and the independent fiduciary nevertheless determines that the interest of the co-partner should be bought out, both Accounts will buy out the interest of the co-partner on a proportionate basis, unless a disproportionate buy-out is agreeable to both the Applicant and the independent fiduciary. However, where an offer to sell is acceptable to the co-partner (and the Applicant has the option of selling

<sup>12</sup> In any case involving a shared partnership interest held by the General Account and an ERISA-Covered Account, if it is determined that the ERISA-Covered Account will contribute its pro rata share of extra capital the General Account would also contribute at least its pro rata share of such capital.