

to the third party or buying out the co-partner) and it is determined that the General Account is willing and able alone to buy out the co-partner's interest, the independent fiduciary may elect that the ERISA-Covered Account retain its existing ownership interest. In such case, the General Account may buy out the co-partner pursuant to Section II(b)(1). In any case in which more than one ERISA-Covered Account participates in a shared partnership investment and there is a lack of agreement among the independent fiduciaries with respect to whether to accept a "sell" offer or to buy-out a co-partner, the Applicant, as indicated above, must nevertheless provide a unified response to the co-partner on behalf of all participating Accounts. Accordingly, in these instances, all participating Accounts will be required to accept the "sell" offer, unless the Account or Accounts that prefer the buy-out can buy-out both the co-partner's and the "selling" Account's interest, or unless one Account elects to retain its original ownership interest while the other Account(s) alone buys out the co-partner's interest. The Applicant represents that this action is preferred because the purchase option would require the expenditure of additional funds by an objecting Account.¹³ See Section II(b).

(c) Rights of First Refusal in Partnership Agreements

34. Under the terms of certain partnership agreements entered into by Aetna and other real estate investors, if a partner wishes to sell its interest in the partnership to a third party, the other partner must be given the opportunity to exercise a right of first refusal to purchase the first partner's interest at the price offered by the third party. For example, if Aetna and a real estate developer are joint venture partners and the developer decided to sell its interest to a third party, Aetna would have the right to purchase the developer's interest at the price offered by the third party. In the case of shared real estate partnerships, the decision by the Applicant on behalf of the Accounts with respect to whether or not to exercise a right of first refusal might raise questions under section 406 of the Act since each Account participating in

the investment might be affected differently by such decision. Because, under the terms of the partnership agreement, only one option (exercise or not exercise) may be chosen by the Applicant on behalf of the Accounts, exemptive relief is being requested that would permit the Applicant to exercise or not exercise a right of first refusal as may be appropriate under the circumstances. Any action taken on behalf of an ERISA-Covered Account regarding the exercise of such a right would have to be approved by the independent fiduciary. Further, under the requested exemption, if the General Account and an ERISA-Covered Account share a partnership investment, even though Aetna may initially decide on behalf of the General Account not to make a purchase under a right of first refusal option, the General Account will be required to participate in the purchase of the other partner's interest if the independent fiduciary determines that it is appropriate for the ERISA-Covered Account to participate in the exercise of the right of first refusal on at least a pro rata basis. If, however, two Client Accounts participate in a shared partnership interest and agreement cannot be reached on behalf of the Client Accounts on whether to exercise a right of first refusal, the right will not be exercised and the partner will be permitted to sell its interest to the third party, unless one Client Account decides to buy-out the partner alone. In this regard, it is conceivable that some participating Accounts may elect to take advantage of a right of first refusal opportunity and buy-out a co-partner without other participating Accounts taking part in the transaction. For example, in the case of a shared partnership investment involving the General Account (or any other Account) and an ERISA-Covered Account, if the co-partner wishes to accept an offer to sell its interest and the independent fiduciary of the ERISA-Covered Account decides not to have the Client Account participate in purchasing that partner's interest, the General Account (or other participating Account) would be free to make the purchase on its own. The exercise of a right of first refusal on such a disproportionate basis might also raise questions under section 406 of the Act for which exemptive relief may be needed. See Section II(c).

(d) Buy-Sell Provisions in Partnership Agreements

35. Certain partnership agreements entered into by Aetna may provide that one partner may demand that the other partner either sell its interest to the first partner at a price as determined by the

terms of the partnership agreement or buy out the interest of the first partner at such price. If the other partner refuses to exercise either option within a specified period, it must sell its interest to the first partner at the stated price. These "buy-sell" provisions are generally used to resolve serious difficulties or impasses in the operation of a partnership, but generally a partnership agreement permits the buy-sell provision to be exercised at any time. As in the situations discussed above, the decision by the Applicant on behalf of the Accounts to make a buy-sell offer, or its reaction to such an offer made by a co-partner, may affect various participating Accounts differently. Accordingly, any decision made by the Applicant in these cases involving ERISA-Covered Accounts might raise questions under section 406 of the Act. The Applicant is requesting exemptive relief that would permit the Applicant to make an appropriate decision under the circumstances on behalf of all participating Accounts to make a buy-sell offer to a co-partner or to react to a buy-sell offer from a co-partner. Any such decision must be approved by the independent fiduciary for each ERISA-Covered Account participating in the investment. Further, under the requested exemption, if the Applicant decides to exercise (*i.e.*, initiate) a buy-sell option with respect to the co-partner's interest and the independent fiduciary of a participating ERISA-Covered Account objects, the buy-sell option will not be exercised. Similarly, if the buy-sell option is initiated by the co-partner and there is a split among the independent fiduciaries of participating ERISA-Covered Accounts with respect to whether to buy or sell, all such Accounts will be required to sell, unless the Account(s) that wishes to buy-out the co-partner (or the co-partner and the other participating Account) can do so without the participation of the other Accounts. Also, where a buy-sell option is initiated by the co-partner and Aetna determines that the General Account should purchase the co-partner's interest, if the independent fiduciary of a participating ERISA-Covered Account determines that, as between "buy" or "sell", such Account's interest should be sold, Aetna's entire partnership interest will be sold unless the independent fiduciary agrees that it would be preferable for the ERISA-Covered Account to retain its share of the partnership interest and Aetna determines that the General Account is willing and able to purchase the entire interest of the co-partner. Any such disproportionate purchases may,

¹³ Similarly, in any case involving an ERISA-Covered Account and a non-ERISA-Covered Client Account, if there is a lack of agreement between the independent fiduciary and, for example, the trustees of a foreign or public plan (or the Applicant in the case of a discretionary non-ERISA-Covered Account), all participating Accounts will be required to accept the "sell" offer unless an alternative accommodation as described above is made.