

Proposed Exemption

Under 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, August 10, 1990), the Department proposes to amend and replace Prohibited Transaction Exemption 91-10, 56 FR 3273 (January 29, 1991), with the following exemption.

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts

If the exemption is granted, as indicated below, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*—The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared partnership interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and 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, shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared partnership interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and 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, shall not apply either to the making of a proportionate equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution (or the failure to make such additional contribution) by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair

market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and 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, shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts:

(1) The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and 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, shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower or any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower.

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of one or more ERISA-Covered Accounts: (A) Not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one of such Accounts has approved such modification or has not approved the exercise of such rights; and

(3) The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and 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, shall not apply either to the proportionate acquisition of additional debt by one or more of the Accounts to a shared debt investment, or to the acquisition of Disproportionate additional debt (or the failure to acquire such additional debt) by one or more of

such Accounts which results in an adjustment in the amount of debt held by the Accounts in the shared investment provided that each ERISA-Covered Account is given an opportunity to acquire additional debt on a proportionate basis.

Section II—Exemption for Certain Transactions Involving the Management of Partnership Interests Shared by Two or More Accounts

If the exemption is granted, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate partnership between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and 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, shall not apply either to the making of additional proportionate equity capital contributions by one or more Accounts participating in the partnership; or to the making of Disproportionate (as defined Section V(e)) equity capital contributions by one or more of such Accounts which results in an adjustment in the equity ownership interest of the Accounts in the shared partnership investment on the basis of the fair market value of such interests subsequent to such contributions; provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and 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, shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(3) The restrictions of section 406(b)(2) of the Act shall not apply to the making of Disproportionate