

Aetna, UBS Realty or any of their respective affiliates, the records are lost or destroyed prior to the end of the six-year period.

(i) Except as provided in paragraph (2) of this subsection (i) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (h) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (i) shall be authorized to examine trade secrets of Aetna, UBS Realty or any of their respective affiliates, or commercial or financial information which is privileged or confidential.

(j) Given that this exemption is a replacement to a previous prohibited transaction exemption (see PTE 91–10, 56 FR 3273, January 29, 1991) any approvals, appointments, disclosures, and decisions made or given pursuant to PTE 91–10 shall remain in full force and effect with respect to this replacement exemption.

#### Section V—Definitions

For the purposes of this exemption:

(a) An “affiliate” of Aetna or UBS Realty, respectively includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Aetna or UBS Realty, respectively.

(2) Any officer, director or employee or Aetna, UBS Realty or any person described in section V(a)(1), and

(3) Any partnership in which Aetna or UBS Realty is a partner.

(b) An “Account” means any account maintained by Aetna and, except in the case of the General Account, managed by UBS Realty. The term “Account” includes the General Account, ERISA-

Covered Accounts, Pooled Accounts and Single Customer Accounts, as well as combinations of accounts other than the General Account which are consolidated for investment management purposes as if they were a single account.

(c) The “General Account” means the general asset account of Aetna and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An “ERISA-Covered Account” means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) “Disproportionate” means not in proportion to an Account’s existing equity ownership interest in an investment, partnership or partnership interest in a debt.

(f) The “Transition Effective Date” is the effective date of the delegation by Aetna to UBS Realty of the management of the Accounts, which has been designated as October 1, 2003.

*Effective Date:* This exemption is effective as of October 1, 2003, the Transition Effective Date.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption refer to the notice of proposed exemption published on September 29, 2003, at 68 FR 55993.

*Comments and Modification:* In response to a request made by the applicant, the Department has added a condition to the exemption (see Section IV (j)) stating that any approvals, appointments, disclosures, and decisions made or given pursuant to the prior exemption for Aetna (*i.e.*, PTE 91–10) shall remain in full force and effect with respect to this exemption. In this regard, the applicant represents that the appropriate plan fiduciaries for ERISA-Covered Accounts were informed that any approvals, appointments, disclosures and decisions made or given pursuant to PTE 91–10 shall remain in full force and effect after the date that this exemption is published in the **Federal Register**. In addition, as noted in the notice of proposed exemption (see 68 FR at 55994, column one, last sentence of paragraph 1 of the Summary of Facts and Representations), PTE 91–10 shall be superseded and replaced by this exemption for all transactions entered into after the Transition Effective Date.

No other written comments, and no requests for a public hearing, were received by the Department. Accordingly, the Department has

decided to grant the exemption as modified.

#### FOR FURTHER INFORMATION CONTACT:

Brian J. Buyniski of the Department, at telephone (202) 693–8545. (This is not a toll-free number).

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of December, 2003.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
Department of Labor.*

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#### NATIONAL COUNCIL ON DISABILITY

##### Sunshine Act Meetings

**TIMES AND DATES:** 8:30 a.m.–5 p.m.,  
February 8–February 9, 2004.

**PLACE:** Wyndham Bonaventure Resort & Spa, 250 Racquet Club Road, Fort Lauderdale, Florida.