U.S. DEPARTMENT OF LABOR ADOPTS FINAL AMENDMENTS TO QPAM EXEMPTION

On August 23, 2005, the U.S. Department of Labor (the "DOL") adopted final amendments to Prohibited Transaction Class Exemption 84-14 (the "QPAM Exemption"), which generally provides relief for certain transactions between a plan and a "party in interest" that would otherwise be prohibited under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), provided that the transaction is entered into at the direction of a qualified professional asset manager (a "QPAM"). The DOL's amendments generally became effective on August 23, 2005, subject to certain transition rules described below. The major changes to the QPAM Exemption are as follows:

Definition of QPAM

In order to qualify as a QPAM, an asset manager must meet certain asset-under-management ("AUM") and shareholders' or partners' equity requirements. The final amendments increase the required AUM from $50 million to $85 million and the required amount of shareholders' or partners' equity from greater than $750,000 to greater than $1 million. The final amendment also clarifies that the AUM requirement, but not the shareholders' or partners' equity requirement, must be determined as of the last day of the QPAM's most recent fiscal year. *The new requirements must be satisfied as of the last day of the first fiscal year of the QPAM beginning on or after August 23, 2005. For asset managers who have a calendar fiscal year, that would be December 31, 2006.*

Power of Appointment and Look-Back Rule

The QPAM Exemption is unavailable for transactions between a plan and a party in interest if the party in interest or one of its affiliates has the authority to appoint or terminate the QPAM as the manager of a plan's assets or to negotiate the QPAM's asset management agreement with the plan. The QPAM Exemption formerly included a "look-back" rule, which made the exemption unavailable if the party in interest (or its affiliate) had exercised such authority during the one-year period preceding the applicable transaction. The final amendments eliminate the look-back rule and also clarify that this limitation applies only where the party in interest has such authority with respect to the specific assets involved in the transaction between the plan and the party in interest. The amendments also provide that the QPAM Exemption will be available to a party in interest with respect to a plan that invests in a "commingled" investment fund (i.e., a fund subject to regulation by ERISA in which two or more unrelated plans have an interest) that is managed by a QPAM, notwithstanding that the party in interest has the authority to acquire and redeem interests in the fund on the plan's behalf (thereby exercising authority to "appoint" or "terminate" the QPAM as manager of the plan's assets invested in the fund), provided that the plan's interest in the fund, together with the interest of any other plans sponsored by the same employer, represents less than ten percent (10%) of the fund's total assets.

The amendments also modify the definition of an "affiliate" of a party in interest to include those entities in which the party in interest holds a ten percent (10%) or greater interest (formerly a five percent (5%) or greater interest), and in the case of a party in interest that is a plan sponsor, those employees of the plan sponsor who are highly compensated.

Relationship Between QPAM and the Party in Interest

The QPAM Exemption is not available where the party in interest is "related" to the QPAM. Formerly, a party in interest and a QPAM were considered related if the party in interest or the QPAM (or a person controlling, or controlled by, the party in interest or QPAM) owned five percent (5%) or more of the other entity. Under the final amendments, a party in interest and a QPAM will be considered related if (a) the party in interest or the QPAM owns ten percent (10%) or more of the other entity, or (b) any person controlling, or controlled by, the party in interest or QPAM holds a twenty percent (20%) or greater interest in the other entity. A party in interest and the QPAM may nonetheless be considered related if the person controlling, or controlled by, the party in interest or the QPAM owns between ten percent (10%) and twenty percent (20%) interest in the other entity, and exercises control over the management or policies of such other entity. For purposes of determining ownership percentages, shares owned or held in a fiduciary capacity are excluded. Determinations as to whether the QPAM and a party in interest are related are to be made as of the last day of the most recent calendar quarter.

Relief for Financial Institutions Acting as QPAMs for Their Own Plans

In general, the QPAM Exemption requires that the QPAM be independent of a plan's sponsor. For financial service entities acting as a QPAM for their in-house plans, the DOL has provided retroactive and transitional relief pending the adoption of a final amendment to the exemption. The DOL also issued a proposed amendment that would permit financial service entities serving as QPAMs for in-house plans to rely on the QPAM Exemption going forward, subject to satisfaction of additional conditions. These conditions include requiring the QPAM to establish written policies and procedures to assure compliance with the QPAM Exemption, and to retain an independent auditor to conduct annual compliance audits with respect to such written policies and procedures. Financial service entities will be permitted to continue to rely on the QPAM Exemption until the proposed amendment becomes final.

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