

**MEMO# 16257**

July 2, 2003

## **DOL ISSUES ADVISORY OPINION CLARIFYING WHEN A QPAM IS RELATED TO A PARTY IN INTEREST UNDER PTE 84-14 (QPAM EXEMPTION LETTER)**

[16257] July 2, 2003 TO: PENSION MEMBERS No. 29-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 36-03 RE: DOL ISSUES ADVISORY OPINION CLARIFYING WHEN A QPAM IS RELATED TO A PARTY IN INTEREST UNDER PTE 84-14 (QPAM EXEMPTION LETTER) The Department of Labor ("DOL") has released Advisory Opinion 2003-07A, which clarifies when a qualified professional asset manager ("QPAM") will be considered to be related to a party in interest for purposes of the ERISA class exemption granted by prohibited transaction exemption ("PTE") 84-14. To read the advisory opinion, please go to the following link: <http://www.dol.gov/ebsa/regs/aos/ao2003-07a.html>. In 1984, the DOL granted PTE 84-14, which permits various parties related to employee benefits plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by an independent QPAM. Additional relief was provided to allow (1) employers to furnish their plans limited amounts of goods and services in the ordinary course of business and (2) leases of office or commercial space between managed funds and QPAMs or contributing employers. As noted in Adv. Op. 2003-07A, PTE 84-14 permits certain transactions between a party in interest with respect to an employee benefits plan and an investment fund (as defined by PTE 84-14) in which the plan has an interest and which is managed by a QPAM, provided that the other conditions of PTE 84-14 are satisfied. One of these conditions requires that the party in interest dealing with the investment fund is neither the QPAM nor a person related to the QPAM. PTE 84-14 states that a QPAM is related to a party in interest if: the party in interest (or a person controlling, or controlled by, the party in interest) owns a five percent or more interest in the QPAM or if the QPAM (or a person controlling, or controlled by, the QPAM) owns a five percent or more interest in the party in interest. Melanie Nussdorf of Steptoe & Johnson LLP requests and receives from DOL a clarification that for purposes of this relatedness requirement, only interests owned by either the QPAM or the party in interest and entities in their vertical chains of ownership are included for purposes of the five percent ownership test. Ownership interests of entities "under common control" with either the QPAM or the party in interest are not included for these purposes.<sup>1</sup> Ms. Nussdorf also requests and receives from DOL a clarification that for purposes of the five percent ownership test, PTE 84-14 requires the counting of ownership interests in only the party in interest itself or the QPAM itself, and not in either of their affiliates. Thus, for example, a QPAM will not be deemed "related" to the party in interest if the QPAM holds an ownership interest of five percent or more in the parent company of the party in interest.<sup>2</sup> Lisa Robinson Assistant Counsel 1 The DOL notes that similar relief would not be available

under PTE 84-14 for any violations of section 406(b)(1) of ERISA (which prohibits a fiduciary from dealing with the assets of the plan in his own interest or for his own account) that may arise in connection with transactions involving affiliated parties. 2 The DOL notes prohibited transaction issues may arise where the parties create a nonsubstantive parent entity to the party in interest and the QPAM (or a person controlling, or controlled by, the QPAM) has a five percent or greater interest in the parent company.

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