

DOL Establishes Content Requirements for Cross-Trading Policies and Procedures

On February 12, 2007, the Department of Labor (DOL) established the content requirements for cross-trading policies and procedures under an ERISA prohibited transaction exemption (PTE) added by the Pension Protection Act of 2006 (PPA 2006). The DOL's interim final rule requires that procedures for cross-trading – the purchase and sale of a security between a plan and another account managed by the same investment manager – must be clear, concise and written in a manner calculated to be understood by the plan fiduciary who authorizes the plan's participation in the cross-trading program. The information contained in the policy must be sufficient to permit a periodic review of any cross-trades by the investment manager's compliance officer and to permit the plan fiduciary to assess the investment manager's cross-trading program. If these and other requirements of the PTE are met, an investment manager may cause an ERISA plan to enter into cross trades which would otherwise be prohibited.

The policies and procedures must be fair and equitable to all participating accounts and reasonably designed to ensure compliance with the cross-trading PTE. In addition, the policies and procedures must specifically include:

- a description of the criteria applied by the investment manager in determining that execution of a cross-trade will be beneficial to both parties to the transaction, the investment manager's policies and procedures for allocating cross-trades in an objective and equitable manner among participating accounts (e.g., a queue or pro rata system), and how the investment manager will mitigate any potentially conflicting division of loyalties and responsibilities to the parties involved in any cross-trades;
- a description of how the investment manager will determine that cross-trades are effected at the "independent current market price" of the security, including the identity of sources used to establish the price;
- a description of the procedures for ensuring compliance with the \$100 million minimum plan asset size requirement of the cross-trading PTE;
- the identity of the compliance officer responsible for reviewing the investment manager's compliance with the cross-trading policies and procedures, and a description of the compliance officer's qualifications for the position; and
- a description of the scope of the compliance officer's review (including whether the review is limited to solely to compliance with the policies and procedures requirement of the cross-trading PTE or extends to other requirements of the cross-trading PTE, as well).

The interim final rule will take effect April 13, 2007, with written comments due on the same date. The DOL will subsequently issue a final rule taking the comments into consideration.

For additional information concerning this and other PTEs added by PPA 2006, please see Ropes & Gray's August 2006 [client alert](#).

Contact Information

If you have additional questions, please contact one of the attorneys below or any member of the ERISA employee benefits group in the Tax & Benefits Department of Ropes & Gray.

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