

PTE 75-1

Securities Transactions Involving Broker-Dealers, Reporting Dealers and Banks

Part I. Agency transactions and services

The restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975 (c) (1) of the Code, shall not apply-

(a) Until May 1, 1978, to the effecting of any securities transaction on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan, acting in such transaction as agent for the plan, and to the performance by such person of clearance, settlement, or custodial functions incidental to effecting such transaction, if such person ordinarily and customarily effected such securities transactions and performed such functions on May 1, 1975;

(b) To the effecting of any securities transaction on behalf of an employee benefit plan by a person who is a party in interest or a disqualified person with respect to such plan (other than a person who is a fiduciary with respect the plan), acting in such transaction as agent for the plan, and to the performance by such person of clearance, settlement, or custodial functions incidental to effecting such transaction; or

(c) To the furnishing to an employee benefit plan by a person who is a party in interest or disqualified person with respect to such plan of any advice, either directly or through publications or writings, as to the value of securities or other property, the advisability of investing in, purchasing, or selling securities or other property, or the availability of securities or other property or of purchasers or sellers of securities or other property, or of any analyses or reports concerning issuers, industries, securities or other property, economic factors or trends, portfolio strategy, or the performance of accounts, under circumstances which do not make such party in interest or disqualified person a fiduciary with respect to such plan;

Provided that, in each instance, such transactions are effected on behalf of the plan, or such advice, analyses or reports are furnished to the plan, on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and were not, at the time such transactions were effected or at the time such advice, analyses or reports were furnished, prohibited transactions within the meaning of section 503(b) of the Code. For purposes of this exemption, the term "person" shall include such person and any affiliates of such person, and the term "affiliate" shall be defined in the same manner as that term is defined in 29 CFR 2510.3-21(e) and 26 CFR 54.4975-9(e).

Part II. Principal transactions

(1) The restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of a security between an employee benefit plan and a broker-dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), a reporting dealer who makes primary markets in securities of the United States Government or of any agency of the United States Government ("Government securities") and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon, or a bank supervised by the United States or a State, and

(2) The restrictions of section 406(a) and 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase or sale by a plan of securities issued by an open-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), provided that no fiduciary with respect to the plan who makes the decision on behalf of the plan to enter into the transaction is a principal underwriter for, or affiliated with, such investment company within the meaning of sections 2(a)(29) and 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(29) and 80a-2(a)(3)).

~~(2)~~ The ~~exemption~~exemptions set forth in (1) and (2) above ~~is~~are subject to the following conditions:

(a) In the case of such broker-dealer, it customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer.

(b) In the case of such reporting dealer or bank, it customarily purchases and sells Government securities for its own account in the ordinary course of its business and such purchase or sale between the plan and such reporting dealer or bank is a purchase or sale of Government securities.

(c) Such transaction is at least as favorable to the plan as an arm's length transaction with an unrelated party would be, and it was not, at the time of such transaction, a prohibited transaction within the meaning of section 503(b) of the Code.

(d) ~~Neither~~ Except with respect to transactions described in section (2) above, neither the broker-dealer, reporting dealer, bank, nor any affiliate thereof has or exercises any discretionary authority or control (except as a directed trustee) with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

(e) The ~~broker dealer, reporting dealer, or bank engaging in the covered transaction~~ plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (f) of this exemption to determine whether the conditions of this exemption have been met, except that::

(1) ~~No party in interest other than the~~ Such broker-dealer, reporting dealer, or bank ~~engaging in the covered transaction,~~ shall not be subject to the civil penalty, which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (f) below; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the ~~broker dealer, reporting dealer, or bank~~ plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

(f) ~~(1)~~ Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (e) are ~~reasonably~~ unconditionally available for examination during normal business hours by:

~~(A) Any~~ duly authorized ~~employee or representative of~~ employees of (1) the Department ~~or of~~ Labor, (2) the Internal Revenue Service;

~~(B) Any~~ (3) plan participants and beneficiaries, (4) any ~~fiduciary of the plan or any duly authorized employee or representative of such fiduciary;~~

~~(C) Any~~ (5) any ~~contributing employer and of plan participants and beneficiaries, and (5) any~~ employee organization any of whose members are covered by ~~the~~ such ~~plan, or any authorized employee or representative of these entities; or~~

~~(D) Any~~ (6) Any ~~participant or beneficiary of the plan, or IRA owner, or the duly authorized representative of such participant or beneficiary; and~~

(2) ~~None of the persons described in subparagraph (1)(B)-(D) above shall be authorized to examine trade secrets or commercial or financial information of the broker dealer, reporting dealer, or bank which is privileged or confidential, or records regarding a plan or IRA other than the plan or IRA with respect~~

~~to which they are the fiduciary, contributing employer, employee organization, participant, beneficiary, or IRA owner.~~

~~(3) Should such broker-dealer, reporting dealer, or bank refuse to disclose information on the basis that such information is exempt from disclosure, the broker-dealer, reporting dealer, or bank shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.~~

~~(4) Failure to maintain the required records necessary to determine whether the conditions of this exemption have been met will result in the loss of the exemption only for the transaction or transactions for which records are missing or have not been maintained. It does not affect the relief for other transactions.~~

For purposes of this exemption, the terms “broker-dealer,” “reporting dealer” and “bank” shall include such persons and any affiliates thereof, and the term “affiliate” shall be defined in the same manner as that term is defined in 29 CFR ~~2510.3-21~~2510.3-21(e) and 26 CFR ~~54.4975-9~~54.4975-9(e).

Part III. Underwritings

The restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) of the Code, shall not apply to the purchase or other acquisition of any securities by an employee benefit plan during the existence of an underwriting or selling syndicate with respect to such securities, from any person other than a fiduciary with respect to the plan, when such a fiduciary is a member of such syndicate, provided that the following conditions are met:

(a) No fiduciary who is involved in any way in causing the plan to make the purchase is a manager of such underwriting or selling syndicate, except that this paragraph shall not apply until July 1, 1977. For purposes of this exemption, the term “manager” means any member of an underwriting or selling syndicate, who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(b) The securities to be purchased or otherwise acquired are—

(1) Part of an issue registered under the Securities Act of 1933 or, if exempt from such registration requirement, are (i) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (ii) issued by a bank, (iii) issued by a common or contract carrier, if such issuance is subject to the provisions of section 20a of the Interstate Commerce Act, as amended, (iv) exempt from such registration requirement pursuant to a Federal statute other than the Securities Act of 1933, or (v) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission during the preceding 12 months.

(2) Purchased at not more than the public offering price prior to the end of the first full business day after the final terms of the securities have been fixed and announced to the public, except that:

(i) If such securities are offered for subscription upon exercise of rights, they are purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such securities are debt securities, they may be purchased at a public offering price on a day subsequent to the end of such first full business day, provided that the interest rates on comparable debt securities offered to the public subsequent to such first full business day and prior to the purchase are less than the interest rate of the debt securities being purchased.

(3) Offered pursuant to an underwriting agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

- (i) Such securities are purchased by others pursuant to a rights offering; or
- (ii) Such securities are offered pursuant to an over-allotment option.

(c) The issuer of such securities has been in continuous operation for not less than three years, including the operations of any predecessors, unless—

(1) Effective May 9, 2022, at the time of acquisition, such securities are nonconvertible debt securities that are (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that such securities can be sold at or near their fair market value within a reasonably short period of time;

(2) Such securities are issued or fully guaranteed by a person described in paragraph (b)(1)(i) of this exemption; or

(3) Such securities are fully guaranteed by a person who has issued securities described in in paragraph (b)(1)(ii), (iii), (iv) or (v) and this paragraph (c).

(d) The amount of such securities to be purchased or otherwise acquired by the plan does not exceed three percent of the total amount of such securities being offered.

(e) The consideration to be paid by the plan in purchasing or otherwise acquiring such securities does not exceed three percent of the fair market value of the total assets of the plan as of the last day of the most recent fiscal quarter of the plan prior to such transaction, provided that if such consideration exceeds \$1 million, it does not exceed one percent of such fair market value of the total assets of the plan.

(f) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (g) of this exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

(g) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (f) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan.

If such securities are purchased by the plan from a party in interest or disqualified person with respect to the plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the conditions of this exemption are not met. However, if such securities are purchased from a party in interest or disqualified person with respect to the plan, the restrictions of section 406(a) of the Act shall apply to any fiduciary with respect to the plan and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall apply to such party in interest or disqualified person, unless the conditions for exemption of Part II of this notice (relating to certain principal transactions) are met.

~~For purposes of this exemption, the term “fiduciary” shall include such fiduciary and any affiliates of such fiduciary, and the term “affiliate” shall be defined in the same manner as that term is defined in 29 CFR 2510.3-21(e) and 26 CFR 54.4975-9(e).~~

~~(h)~~ (h) *Exception.* No relief from the restrictions of ERISA section 406(b) and the taxes imposed by Code section 4975(a) and (b) by reason of Code sections 4975(c)(1)(E) and (F) is available for ~~fiduciaries~~

~~providing~~ the receipt of compensation as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) ~~or~~ and Code section 4975(e)(3)(B) and regulations thereunder.

For purposes of this exemption, the term “fiduciary” shall include such fiduciary and any affiliates of such fiduciary, and the term “affiliate” shall be defined in the same manner as that term is defined in 29 CFR 2510.3–21(e) and 26 CFR 54.4975–9(e).

Part IV. Market-making

The restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) of the Code, shall not apply to any purchase or sale of any securities by an employee benefit plan from or to a market-maker with respect to such securities who is also a fiduciary with respect to such plan, provided that the following conditions are met:

(a) The issuer of such securities has been in continuous operation for not less than three years, including the operations of any predecessors, unless—

(1) Effective May 9, 2022, at the time of acquisition, such securities are nonconvertible debt securities that are (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that such securities can be sold at or near their fair market value within a reasonably short period of time;

(2) Such securities are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, or

(3) Such securities are fully guaranteed by a person described in this paragraph (a).

(b) As a result of purchasing such securities—

(1) The fair market value of the aggregate amount of such securities owned, directly or indirectly, by the plan and with respect to which such fiduciary is a fiduciary, does not exceed three percent of the fair market value of the assets of the plan with respect to which such fiduciary is a fiduciary, as of the last day of the most recent fiscal quarter of the plan prior to such transaction, provided that if the fair market value of such securities exceeds \$1 million, it does not exceed one percent of such fair market value of such assets of the plan, except that this paragraph shall not apply to securities described in paragraph (a)(2) of this exemption; and

(2) The fair market value of the aggregate amount of all securities for which such fiduciary is a market-maker, which are owned, directly or indirectly, by the plan and with respect to which such fiduciary is a fiduciary, does not exceed 10 percent of the fair market value of the assets of the plan with respect to which such fiduciary is a fiduciary, as of the last day of the most recent fiscal quarter of the plan prior to such transaction, except that this paragraph shall not apply to securities described in paragraph (a)(2) of this exemption.

(c) At least one person other than such fiduciary is a market-maker with respect to such securities.

(d) The transaction is executed at a net price to the plan for the number of shares or other units to be purchased or sold in the transaction which is more favorable to the plan than that which such fiduciary, acting in good faith, reasonably believes to be available at the time of such transaction from all other market-makers with respect to such securities.

(e) The plan maintains or causes to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (f) of this exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six year period.

(f) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (e) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department of Labor, (2) the Internal Revenue Service, (3) plan participants and beneficiaries, (4) any employer of plan participants and beneficiaries, and (5) any employee organization any of whose members are covered by such plan.

(g) *Exception.* No relief from the restrictions of ERISA section 406(b) and the taxes imposed by Code section 4975(a) and (b) by reason of Code sections 4975(c)(1)(E) and (F) is available for ~~fiduciaries providing the receipt of compensation as a result of the provision of~~ investment advice within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B) and regulations thereunder.

For purposes of this exemption—

(1) The term “market-maker” shall mean any specialist permitted to act as a dealer, and any dealer who, with respect to a security, holds himself out (by entering quotations in an interdealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(2) The term “fiduciary” shall include such fiduciary and any affiliates of such fiduciary, and the term “affiliate” shall be defined in the same manner as that term is defined in 29 CFR 2510.3–21(e) and 26 CFR 54.4975–9(e).

Part V. Extension of credit

The restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1) of the Code, shall not apply to any extension of credit to an employee benefit plan by a party in interest or a disqualified person with respect to the plan, provided that the following conditions are met:

(a) The party in interest or disqualified person:

(1) Is a broker or dealer registered under the Securities Exchange Act of 1934; and

(2) Does not have or exercise any discretionary authority or control (except as a directed trustee) with respect to the investment of the plan assets involved in the transaction, nor does it render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, unless no interest or other consideration is received by the party in interest or disqualified person or any affiliate thereof in connection with such extension of credit.

(b) Such extension of credit:

(1) Is in connection with the purchase or sale of securities;

(2) Is lawful under the Securities Exchange Act of 1934 and any rules and regulations promulgated thereunder; and

(3) Is not a prohibited transaction within the meaning of section 503(b) of the Code.

(c) Notwithstanding section (a)(2), a fiduciary under ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B) may receive reasonable compensation for extending credit to a plan or IRA to avoid a failed purchase or sale of securities involving the plan or IRA if:

~~(1) The potential failure of the purchase or sale of the securities is not caused by such fiduciary or an affiliate;~~

~~(1)~~ ~~(2)~~ The terms of the extension of credit are at least as favorable to the plan or IRA as the terms available in an ~~arm's~~arm's length transaction between unaffiliated parties;

~~(2)~~ ~~(3)~~ Prior to the extension of credit, the plan or IRA receives written disclosure of (i) the rate of interest (or other fees) that will apply and (ii) the method of determining the balance upon which interest will be charged, in the event that the fiduciary extends credit to avoid a failed purchase or sale of securities, as well as prior written disclosure of any changes to these terms. This section ~~(ec)~~(32) will be considered satisfied if the plan or IRA receives the disclosure described in Securities Exchange Act Rule 10b-~~16;~~⁵⁵-16;

For purposes of this exemption, the terms "party in interest," "disqualified person" and "fiduciary" shall include such party in interest, disqualified person, or fiduciary, and any affiliates thereof, and the term "affiliate" shall be defined in the same manner as that term is defined in 29 CFR 2510.3-21 and 26 CFR 54.4975-9. Also, for the purposes of this exemption, the term "IRA" means any account or annuity described in Code section 4975(e)(1)(B) through (F).

(d) The ~~broker dealer engaging in the covered transaction~~plan maintains or causes to be maintained for a period of six years from the date of such transaction ~~in a manner that is reasonably accessible for examination,~~ such records as are necessary to enable the persons described in paragraph ~~(ed)~~ of this exemption to determine whether the conditions of this exemption have been met ~~with respect to a transaction,~~ except that:

(1) ~~No party other than the broker dealer engaging in the covered transaction~~If such party in interest or disqualified person is not a fiduciary with respect to any assets of the plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph ~~(ed)~~ below; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the ~~broker-dealer~~plan fiduciaries, such records are lost or destroyed prior to the end of such six-year period.

~~(e)(1) Except as provided in paragraph (e)(2) of this exemption, and notwithstanding~~ Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph ~~(dc)~~ are reasonably unconditionally available ~~at their customary location~~ for examination during normal business hours by:

~~(A) duly An~~ authorized ~~employee or representative of~~employees of (1) the Department of Labor ~~or,~~
(2) the Internal Revenue Service,

~~(B) (3) plan participants and beneficiaries, (4) any~~ Any fiduciary of a plan that engaged in a transaction pursuant to this exemption, or any authorized employee or representative of such fiduciary;

~~(C) Any contributing~~ employer ~~and of plan participants and beneficiaries, and (5) any~~ employee organization any of whose members are covered by asuch plan ~~described in paragraph (e)(1)(B), or any authorized employee or representative of these entities; or~~

~~(D) Any participant or beneficiary of a plan described in paragraph (e)(1)(B), IRA owner or the authorized representative of such participant, beneficiary or owner.~~

~~(2) None of the persons described in paragraph (e)(1)(B) (D) of this exemption are authorized to examine records regarding a recommended transaction involving another investor, or privileged trade secrets or privileged commercial or financial information, of the broker dealer engaging in the covered transaction, or information identifying other individuals.~~

~~(3) Should the broker dealer engaging in the covered transaction refuse to disclose information on the basis that the information is exempt from disclosure, the broker dealer must, by the close of the thirtieth~~

~~(30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.~~

~~(4) Failure to maintain the required records necessary to determine whether the conditions of this exemption have been met will result in the loss of the exemption only for the transaction or transactions for which records are missing or have not been maintained. It does not affect the relief for other transactions.~~

For purposes of this exemption, the terms “party in interest,” and “disqualified person” ~~and “fiduciary”~~ shall include such party in interest, or disqualified person, ~~or fiduciary,~~ and any affiliates thereof, and the term “affiliate” shall be defined in the same manner as that term is defined in 29 CFR ~~2510.3-21 and 26 CFR 54.4975-9~~. Also, ~~for the purposes of this exemption, the term “IRA” means any account or annuity described in Code section 4975(e)(1)(B) through (F), including, for example, an individual retirement account described in section 408(a) of the Code and a health savings account described in section 223(d) of the Code.~~2510.3-21(e) and 26 CFR 54.4975-9(e).

Summary report:	
Litera Compare for Word 11.4.0.111 Document comparison done on 4/23/2024 2:39:26 PM	
Style name: Dechert Default	
Intelligent Table Comparison: Active	
Original filename: PTE 75-1 (Proposed).docx	
Modified filename: PTE 75-1 (2024).docx	
Changes:	
<u>Add</u>	58
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<u>Move To</u>	2
<u>Table Insert</u>	0
Table Delete	0
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Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
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