

January 6, 2011

2010 in Review: ERISA Individual Prohibited Transaction Exemptions

In 2010, the Department of Labor (DOL) continued an active program of issuing individual exemptions from the prohibited transaction rules of ERISA. These rules generally prohibit, among other things:

- Sale and lending transactions between: (1) certain retirement and other plans specified in ERISA and/or the Internal Revenue Code; and (2) a “party in interest” or “disqualified person” to that plan; and
- Self-dealing or conflicted interests on the part of a plan “fiduciary.”

DOL is, however, authorized to grant a conditional or unconditional exemption for an otherwise prohibited transaction if DOL determines that the exemption is: (1) administratively feasible; (2) in the interests of the plan and of its participants and beneficiaries; and (3) protective of the rights of plan participants and beneficiaries.

DOL published [34 individual prohibited transaction exemptions](#) (PTEs) in 2010—exactly the same number as in 2009. As usual, exemptions for the sale of assets (particularly illiquid or underperforming assets) by a plan to a party in interest continued to be most prevalent, although DOL also granted interesting exemptions: (1) to facilitate the restructuring of the retiree medical obligations of automobile manufacturers; and (2) to permit the in-kind redemption of proprietary mutual fund shares on other than a pro rata basis (PTE 2010-19). These PTEs are summarized in the chart below.

Under DOL’s [“EXPRO” procedure](#), which permits expedited consideration of transactions substantially similar to other transactions for which exemptions have been recently provided, DOL has reported only [four exemptions](#) in 2010. (Under EXPRO, 22 and 17 exemptions were granted in 2008 and 2009, respectively.) These exemptions were for familiar asset sale and captive reinsurance transactions.

DOL has also announced its intention to finalize the proposed revisions to its PTE procedures by November 2011.

2010 Individual PTEs

Transaction	Requesting Party	Citation
Asset Allocation Advice/Investment Allocation Advice		
Updates prior PTE for the TRAK asset allocation program as applied to a family of proprietary mutual funds.	Citigroup Global Markets, Inc.	PTE 2010-33 (75 FR 78763)
Asset Purchase or Sale		
Cash sale of mortgage, mortgage-related, and other asset-backed securities by stable value commingled funds and separate accounts holding plan assets to the investment manager and/or the trustee for the funds and accounts.	State Street Bank and Trust Company	PTE 2010-02 (75 FR 8125)

© 2011 Sutherland Asbill & Brennan LLP. All Rights Reserved.

This communication is for general informational purposes only and is not intended to constitute legal advice or a recommended course of action in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature with respect to the issues discussed herein. The recipient is encouraged to consult independent counsel before making any decisions or taking any action concerning the matters in this communication. This communication does not create an attorney-client relationship between Sutherland and the recipient.

Transaction	Requesting Party	Citation
Cash sale of Lehman floating rate securities by liquidating funds (split off from pooled investment funds) to the fund trustee.	Bank of New York Mellon	PTE 2010-03 (75 FR 8127)
Sales of auction rate securities by an employee benefits plan, where the first sale is <i>unrelated</i> to, and not made in connection with, a settlement agreement, and the second sale is <i>related</i> to, and made in connection with, a settlement agreement.	Goldman Sachs & Co.	PTE 2010-05 (75 FR 12298)
	Deutsche Bank AG	PTE 2010-10 (75 FR 16845)
	Citigroup	PTE 2010-20 (75 FR 38553)
Sale of coins (collectibles not eligible for IRA rollover) by a terminating plan to its discretionary trustee/a principal of the plan sponsor/only participant with benefits still due.	Louis Chaykin, M.D., P.A., Cross-Tested Profit Sharing Plan	PTE 2010-06 (75 FR 12300)
Cash sale of foreign hedge fund equity interests or restricted shares held by a terminating pooled investment fund to the fund's investment manager.	Ivy Asset Management Corporation	PTE 2010-09 (75 FR 16843)
Sale/exchange of auction rate securities by a plan to its sponsor/affiliate; lending of money or other extension of credit to a plan in connection with the holding of auction rate securities by the plan.	UBS Financial Services Inc.	PTE 2010-14 (75 FR 22850)
Cash sale of medium term notes by a short-term investment fund to the fund's discretionary trustee.	Bank of New York Mellon	PTE 2010-17 (75 FR 33338)
Purchase of a condominium unit in a building (owned by a party in interest) by the plan from another party in interest.	Boston Carpenters Apprenticeship and Training Fund	PTE 2010-18 (75 FR 33338)
Cash sales of underperforming short-term debt instruments by short-term collective investment funds to the fund manager.	Barclays California Corporation	PTE 2010-21 (75 FR 38555)
Cash sale of interests in private equity funds at aggregate cost basis plus interest by plans to the plan sponsor; payment by the plan sponsors of certain additional cash amounts to the plans; extension of credit between the plans and the plan sponsors.	CUNA Mutual Pension Plan	PTE 2010-22 (75 FR 38556)
Sale of a certain limited partnership interest by the plan to the plan sponsor.	Carle Foundation Hospital & Affiliates Pension Plan	PTE 2010-23 (75 FR 47637)
Sale of auction rate securities by a plan to its discretionary trustee.	Citizens Bank Wealth Management, N.A.	PTE 2010-24 (75 FR 47637)
Cash sale of fixed income securities by a short-term investment fund to the fiduciary with respect to the fund.	State Street Bank and Trust Company	PTE 2010-25 (75 FR 47638)
Cash sale of a 50 percent interest in a condominium by the IRA to the IRA owner.	John D. Simmons IRA	PTE 2010-28 (75 FR 61775)
Sale of all of the ESOP's shares of common stock to the plan sponsor.	Sherburne Tele Systems, Inc. 2008 Amended and Restated Employee Stock Ownership Plan and Trust	PTE 2010-32 (75 FR 78762)

Transaction	Requesting Party	Citation
Automobile Manufacturers' Retiree Medical Obligations		
Acquisition and holding of employer securities by a retiree medical trust; transactions resulting from the exercise by the employer or the trust of certain rights regarding securities granted under a settlement agreement; loan and reimbursement transactions between the employer and the trust resulting from the transfer of responsibility to provide retiree medical benefits from the employer to the trust.	Ford Motor Company	PTE 2010-08 (75 FR 14192)
Acquisition, holding and disposition of employer securities by a retiree medical trust; payment of retiree benefit claims by various parties; reimbursement of claims paid by a party that was not legally responsible for that claim.	Chrysler LLC	PTE 2010-12 (75 FR 21668)
Acquisition, holding and disposition of certain employer securities by a retiree medical trust; payment of retiree benefit claims by various parties; reimbursement of claims paid by a party that was not legally responsible for that claim; return of assets deposited or transferred by mistake.	UAW General Motors Company Retiree Medical Benefits Plan	PTE 2010-30 (75 FR 62879)
Captive Reinsurance		
Reinsurance of risks and receipt of premiums by a wholly owned subsidiary of the plan sponsor in connection with an insurance policy sold by an unrelated insurer that would pay for certain benefits under the sponsor's welfare benefit plan.	The Coca Cola Company	PTE 2010-11 (75 FR 16847)
	Subaru of America, Inc.	PTE 2010-15 (75 FR 22852)
Credit Support		
Letters of credit guaranteeing commercial lease obligations of unrelated third-party tenants in connection with commercial properties owned by a fund or commercial properties for which a fund has a security interest, where guarantor is the manager and trustee of the funds.	JPMorgan Chase Bank, N.A.	PTE 2010-04 (75 FR 12297)
Foreign Exchange Transaction		
Determination by local sub-custodian to invest assets of plans or a pooled fund in foreign exchange transactions involving less developed currencies.	Deutsche Bank AG	PTE 2010-01 (75 FR 8117)
Foreign exchange hedging transactions between a pooled investment fund and the fund's investment manager/affiliate.	Deutsche Asset Management (UK) Limited	PTE 2010-31 (75 FR 78758)
Lease by Plan		
Lease by the plan from a party in interest of a condominium unit in a building owned by the party in interest, where another party in interest with respect to the fund indirectly owns the only other condominium unit in the building.	Boston Carpenters Apprenticeship and Training Fund	PTE 2010-29 (75 FR 61776)

Transaction	Requesting Party	Citation
Loan to Plan		
Loan to a plan by a party in interest for: (1) the repayment of an outstanding loan made to the plan by two banks, both of which are unrelated parties; and (2) the expansion of a training facility that is situated on certain real property owned by the plan.	Finishing Trades Institute of the Mid-Atlantic Region	PTE 2010-27 (75 FR 56568)
Series of interest-free advances by the plan sponsor to PBGC, IRS and service providers, for the purpose of paying certain expenses incurred on behalf of the plan; reimbursement of such advances to the plan sponsor within 60 to 365 days after the date of each such advance.	Retirement Plan for Employees of the Rehabilitation Institute of Chicago	PTE 2010-34 (75 FR 78766)
Pooled Funds		
Purchase or sale by a plan or collective fund of mutual fund shares where the investment advisor of the mutual fund is the fiduciary of the plan/collective fund; receipt of mutual fund fees by the advisor for providing advisory or secondary services to the mutual fund in connection with the investment.	Putnam Fiduciary Trust Company	PTE 2010-13 (75 FR 22847)
	PNC Financial Services Group, Inc.	PTE 2010-26 (75 FR 56564)
In-kind redemptions by a thrift plan of shares of proprietary mutual funds. Redemptions for four of the five funds were on other than a pro rata basis; the in-kind redemptions facilitated the merger of the plan into the plan of the sponsor's new parent/fund investment adviser.	PNC Financial Services Group, Inc.	PTE 2010-19 (75 FR 38551)
Securities Lending		
Lending of securities by employee benefit plans to a securities lending agent/sub-agent, and receipt of compensation by the lending agent/sub-agent in connection with these transactions.	Morgan Stanley & Co., Inc.	PTE 2010-16 (75 FR 33333)
Underwriting Syndicate		
Purchase of securities by asset manager on behalf of plans or pooled funds from unrelated persons during the existence of an underwriting or selling syndicate with respect to such securities, where a broker-dealer affiliated with the asset manager is a manager or member of the syndicate.	Columbia Management Advisors, LLC	PTE 2010-07 (75 FR 12300)



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

Daniel M. Buchner	202.383.0869	daniel.buchner@sutherland.com
Adam B. Cohen	202.383.0167	adam.cohen@sutherland.com
Jamey A. Medlin	404.853.8198	jamey.medlin@sutherland.com
Alice Murtos	404.853.8410	alice.murtos@sutherland.com
Joanna G. Myers	202.383.0237	joanna.myers@sutherland.com
Robert J. Neis	404.853.8270	robert.neis@sutherland.com
Vanessa A. Scott	202.383.0215	vanessa.scott@sutherland.com
W. Mark Smith	202.383.0221	mark.smith@sutherland.com
William J. Walderman	202.383.0243	william.walderman@sutherland.com
Carol A. Weiser	202.383.0728	carol.weiser@sutherland.com