FIDUCIARY COUNSELORS

A QPAM Audit Will Keep You Out Of Sticky Compliance Issues

A financial institution's own pension plan managed by the institution's internal managers needs an independent audit in order to take advantage of the prohibited transaction relief provided by the QPAM class exemption. If the plan does not get a timely audit, the plan's counterparties can owe lots of money.

Which plans need audits?

Many financial companies, such as banks, insurance companies, and registered investment advisers, provide discretionary investment management services to their own firm's pension plans or plans of an affiliate (referred to as "in-house plans"). The QPAM exemption provides broad relief from the prohibited transaction provisions of the Employee Retirement Income Security Act ("ERISA") for the financial company to act as a discretionary investment manager ("QPAM") for its own plan, provided that the QPAM adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption and an independent auditor conducts an annual exemption audit.

Why?

Financial companies who manage in-house plans cannot engage in otherwise beneficial transactions on behalf of plans with related parties in the absence of an administrative exemption. DOL's Prohibited Transaction Exemption ("PTE") 84-14 permits related parties to engage in transactions with a plan if, among other conditions, the plan assets are managed by a QPAM. That is, using its fiduciary authority to cause its own plan to engage in prohibited transactions is not permitted unless the company meets the requirements and restrictions imposed in PTE 84-14. This PTE was subsequently amended on July 6, 2010 to require plan audits for QPAMs that manage their own plans.

A QPAM audit is different than the typical audit done for financial statement purposes. The purpose of a QPAM audit is to demonstrate that the plan's in-house manager complied with PTE 84-14. It is an independent review to ensure that the QPAM complied with its adopted policies and procedures and the objective conditions described in the PTE. Consequently, the DOL requires that the auditor be an expert in ERISA fiduciary matters. Specifically, the PTE requires "an independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions…"[1]

[1] See PTE 84-14, Part V(c)

What is involved in this audit?

The purpose of the audit, as specified in PTE 84-14, is to determine whether the QPAM is in compliance (i) with the QPAM's written policies and procedures and (ii) with the objective requirements of the exemption.

This will be accomplished by:

1. A review of the written policies and procedures adopted by the QPAM;
2. A test of a representative sample of the plan's transactions during the audit period to determine if the QPAM is in compliance with its policies and procedures and the objective requirements of the exemption; and
3. To the extent that an individual transaction does not comply with the QPAM's policies and procedures or the objective conditions of the exemption, the auditor will identify which policy or procedure or exemption condition was not satisfied. The auditor will also describe the actions, if any, taken by the QPAM to remedy the non-compliant transaction.

The independent auditor will summarize its conclusions in a written report for the plan. In the event the auditor identifies prohibited transactions, the QPAM is required to take appropriate action to address the adverse finding. The failure of the QPAM to address the prohibited transactions identified in the written report would raise issues under the fiduciary responsibility provisions of ERISA § 404.

When is the audit due?

The audit must be completed within six months following the end of the plan year. For calendar year plans, the audit is due by June 30.

Failure to get a timely audit

If a plan does not receive a timely QPAM audit, the QPAM will be considered out of compliance with the QPAM exemption and taxes would be owed under IRC 4975(a) for any prohibited transactions entered into by the QPAM on behalf of the plan.

IRC 4975(a) imposes an excise tax on each prohibited transaction. The amount of the tax is 15% of the amount of the prohibited transaction for each year that the transaction is outstanding.

INHAM class exemption requires an audit.

The QPAM exemption audit is substantially similar to the audit required under PTE 96-23 (the INHAM exemption). INHAMs are registered investment advisers that generally are established only to manage the plans of affiliated companies.

Who do I contact to get a QPAM audit?

Fiduciary Counselors is a privately-held firm that primarily acts as an independent fiduciary for employee benefit plans. With our extensive knowledge of ERISA and the associated fiduciary responsibilities established by the DOL along with our expertise and experience in financial and investment matters, Fiduciary Counselors is well qualified to provide QPAM or INHAM audits as well as solutions to a broad range of fiduciary and investment issues.

In addition to our unique fiduciary expertise, our qualifications are enhanced with the services of Mr. Ivan Strasfeld as a senior advisor. Mr. Strasfeld formerly served as the Director of the Office of Exemption Determinations at the DOL's Employee Benefits Security Administration. Mr. Strasfeld authored PTE 84-14.

Please contact Laura Rosenberg, Senior Vice President, Finance, at Laura.Rosenberg@FiduciaryCounselors.com or (202) 558-5135, or Ivan Strasfeld, Senior Advisor, at Ivan.Strasfeld@FiduciaryCounselors.com.