



## One Minute Memo<sup>®</sup>

# QPAM Exemption Expanded to Cover Plans of Asset Managers

On July 6, 2010, the U.S. Department of Labor issued an amendment to Prohibited Transaction Class Exemption 84-14, commonly referred to as the QPAM Exemption, which allows asset managers to take advantage of the QPAM Exemption with respect to their own (or their affiliates') plans. Unlike prior amendments to the QPAM Exemption, this amendment does not affect an asset manager's clients - it is for the asset manager's benefit.

Generally, the QPAM Exemption allows qualified and ERISA-covered plans that are managed by a "qualified professional asset manager" (or QPAM) to enter into certain transactions that would otherwise be prohibited transactions, if the transactions are entered into by the QPAM and are not with the employer sponsoring the plan (or its affiliates) or the QPAM (or its affiliates). As amended, an asset manager that is a QPAM can manage assets of its own plan or the plan of its affiliates, and receive the benefit of the QPAM Exemption, provided certain additional requirements are satisfied. The two key requirements are:

- The QPAM must adopt written policies and procedures designed to ensure compliance with the QPAM Exemption, as amended.
- Each year an independent auditor (with appropriate training/experience with ERISA's fiduciary responsibility provisions) must conduct an "exemption audit." Following completion of the audit, the auditor must issue a written report to the plan presenting its specific findings regarding the level of compliance with and the auditor's overall opinion regarding compliance with:
  - (i) the written policies and procedures adopted by the QPAM; and
  - (ii) the general requirements of the QPAM Exemption.

The audit and the written report must be completed within 6 months following the end of the year to which the audit relates. In addition to these new key requirements, the transactions entered into by the QPAM must otherwise satisfy all requirements of the QPAM Exemption, including the requirement that the QPAM have discretionary authority or control with respect to the assets involved in the transaction.

The new amendment will be effective November 3, 2010 (120 days following the date of publication of the amendment in the Federal Register).

How useful this new expansion of the QPAM Exemption will be will depend upon the type of plan maintained by the QPAM or its affiliates and the types of investments in the plan. In general, it will be most useful for defined benefit plans that invest in alternative investments, including venture capital and hedge funds and real estate.

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