Seward & Kissel LLP

August 10, 2006

Memorandum to Our Investment Management Clients and Friends

Congress Passes the Pension Protection Act of 2006

As you may be aware, last Friday Congress passed the Pension Protection Act of 2006 (the "Act"). The new legislation provides sweeping changes designed to modernize ERISA's fiduciary rules. This Memorandum describes selected provisions of the Act most relevant to investment managers. Except as noted, these provisions will become effective on August 18.

25% Test

Under the Act, ***ONLY:*** (i) employee benefit plans subject to the provisions of Part 4 of Title I of ERISA (e.g., U.S. corporate and multiemployer pension plans); (ii) plans subject to Section 4975 of the Internal Revenue Code (e.g., IRAs and Keogh plans); and (iii) entities that are deemed to be investing plan assets (e.g., entities that exceed their 25% threshold with ERISA plan, IRA and Keogh plan investors) will count as benefit plan investors.

Foreign plans, governmental plans and non-electing church plans will no longer be considered benefit plan investors for purposes of the 25% test.

Additionally, the Act provides that an entity shall be considered to hold plan assets "only to the extent" of the percentage of equity interest held by benefit plan investors. This means that only that portion of an investment by a benefit plan investor entity that is plan assets will count towards a second entity's 25% calculation. For example, if a feeder fund has two share classes – class A with $100, of which $30 is from an ERISA plan investor, and class B with $300, of which $10 is from 5 IRAs – then, because class A exceeds the 25% threshold, the investment manager of the feeder fund would be a fiduciary to the ERISA plan and IRA investors, and $40 (the total plan assets of the feeder fund) would count as being held by a benefit plan investor for the master fund's 25% calculation. But since 40/400 is only 10%, the master fund would not be deemed to hold plan assets, assuming no other feeders had a class of shares that were deemed to be plan assets.

We are preparing ERISA supplements for offering memorandum and subscription documents which we expect to have available by the Act's effective date. Please email the attorney in Seward & Kissel's Investment Management Group who works with you or Irina Kerzhner at kerzhner@sewkis.com identifying the relevant funds, if you would like us to prepare these supplements for your fund(s).

Prohibited Transaction Statutory Exemptions

The Act also modernizes a number of ERISA provisions by providing new statutory exemptions for certain transactions involving plan assets. If you are investing plan assets, these new statutory exemptions, when added to the relief provided by QPAM, make investing ERISA plan assets significantly more manageable. These new statutory exemptions provide relief for the following common transactions; they do, however, require that specific conditions be met. Only the major conditions of these exemptions are noted in this memorandum.

Block Trading

The Act provides an exemption for "block trades" (i.e., any trade of at least 10,000 shares or with a market value of at least $200,000 which will be allocated across two or more unrelated client accounts); **Provided**, the terms of the transaction, including the price, are at least as favorable to the plan (or plan asset fund) as an arm's length transaction with an unrelated party; **and** at the time of the transaction, the interest of the plan (together with the interests of all other plans maintained by the same plan sponsor) does not exceed 10% of the aggregate size of the block trade.

Electronic Communication Network

The Act provides an exemption for transactions executed through an electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by the applicable Federal regulating entity (the DOL may approve an ECN structure subject to a foreign regulatory entity); **Provided**, the price and compensation associated with the purchase and sale are not greater than an arm's length transaction with an unrelated party; **and** either:

- the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system in accordance with applicable rules of the Securities and Exchange Commission or other relevant governmental authority; or

- neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades.

Transactions with Service Providers

The Act provides an exemption for (1) the sale, exchange or leasing of property, (2) the lending of money or other extension of credit or (3) the transfer to, or use by or for the benefit of, a party in interest, of any plan assets; **Provided**, the party in interest (or its affiliates) is not a fiduciary with respect to the assets involved in the transaction **and** the plan (or plan asset fund) pays or receives "adequate consideration". We note that the

prohibited transaction for the provision of services is already exempted by Section 408(b)(2).

Foreign Exchange Transactions

The Act provides an exemption for foreign exchange transactions with a bank or a broker-dealer (or any affiliate of either); **Provided**, such transaction is in connection with the sale, purchase or holding of securities or other investment assets **and** at the time the transaction is entered into, the terms of the transaction are not less favorable to the plan (or plan asset fund) than the terms generally available in comparable arm's length transactions between unrelated parties **and** the bank or broker-dealer (or any affiliate of either) is not a fiduciary with respect to the transaction.

Cross -Trading

The Act provides an exemption for cross trading (i.e., a purchase and sale of a security between a plan (or plan asset fund) and any other account managed by the same investment manager); **Provided,** each plan participating in the transaction has assets of at least $100,000,000, **and** certain specific conditions are satisfied, including the provision of detailed reports and notices to an independent plan fiduciary.

The DOL has 180 days after the date of the Act's enactment to issue these regulations. We would not recommend relying on the cross-trading exemption until such time as the DOL provides further guidance on the scope of those policies and procedures.

Prohibited Transaction Correction

Under the Act, certain transactions involving the acquisition, holding or disposition of securities or commodities between a plan (or plan asset fund) and a party in interest that would otherwise be prohibited transactions will be exempt -- so that no prohibited transaction will be deemed to have occurred -- if the transaction is corrected before the end of the "correction period" (the 14-day period beginning on the date on which a fiduciary or a party in interest (or other person knowingly participating in the transaction) discovers, or reasonably should have discovered, that the transaction was a prohibited transaction). To "correct" means:

- to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction; and

- to restore to the plan or affected account any profits made through the use of the plan assets.

Bonding Relief

The Act relieves a plan fiduciary and any person handling plan assets from ERISA's bonding requirement if it is registered as a broker or a dealer under § 15(b) of the Securities Exchange Act of 1934 and is subject to the fidelity bond requirements of a self-regulatory organization with the meaning of the Securities Exchange Act of 1934.

This provision is effective for plan years beginning after the date of the Act's enactment.

If you have any questions about this memo, please feel free to call John Ryan at (212) 574-1679, Sharon Vaino at (212) 574-1277, Michael O'Brien at (212) 574-1505 or Irina Kerzhner at (212) 574-1257.