

forwarded its 95 percent (95%) *pro rata* share of the initial capital call on the day of the closing, May 21, 1993, the Group Trust and the GP knew that the proceeds of the purchase of its interest in the Partnership would be forwarded almost immediately by the GP together with the GP's own capital contribution on behalf of the Partnership, to the Seller, a party in interest with respect to the Plans.

Although applicants' counsel in analyzing these elements concluded that no indirect prohibited transaction occurred, counsel represents that this conclusion is "not entirely free from doubt," in part because of the dearth of authority on what constitutes an indirect prohibited transaction. The applicants believe that the investment by the Group Trust in the Partnership could be viewed as an indirect sale or exchange of property between the Plans and a party in interest, the Seller, in violation of section 406(a)(1)(A) of the Act or a use of plan assets by or for the benefit of a party in interest in violation of section 406(a)(1)(D) of the Act. Accordingly, the applicants seek retroactive relief from such provisions of the Act at closing on May 21, 1993, the date when the transaction was entered.

11. The applicants maintain that the requested retroactive exemption is warranted, because the transaction was consummated under conditions that assured that the rights of participants and beneficiaries of the Plans were protected. In this regard, Sarofim served as an advisor to GMIMCO with respect to, among other things, whether to approve the acquisition of the Property by the Partnership as proposed by the GP. Specifically, it is represented that Sarofim reviewed and recommended the Partnership investment to GMIMCO and recommended approval of the Property acquisition. Further, GMIMCO, acting as investment manager on behalf of the Plans, after considering the terms of the acquisition of the Property, as negotiated by the GP, and the recommendations and analyses of Sarofim, made the ultimate decision on behalf of the Plans and the Group Trust to invest in the Partnership and to approve the acquisition of the Property by such Partnership. It is represented that Sarofim is unaffiliated with the Seller or Wells Fargo, and that there is no direct or indirect affiliation between GMIMCO (or GM) and Wells Fargo or the Seller.

It is represented that the terms of the Partnership Agreement were negotiated by GMIMCO and Sarofim, on behalf of the Plans, at arm's length with the GP. Neither GMIMCO, GM, nor Sarofim

have any direct or indirect affiliation with the GP. Additionally, the terms of the Partnership Agreement were negotiated at a time when the opportunity to acquire the Property had not arisen.

The purchase price for the Property paid by the Partnership and the non-price terms of the acquisition were negotiated on an arm's length basis between unrelated parties, the GP and the Seller. Further, the purchase of the Property was also reviewed and recommended by Sarofim and approved by GMIMCO.

Although the Seller of the Property is a party in interest with respect to the Plans, it is represented that this status resulted solely by reason of the Seller's relationship to Wells Fargo, a service provider with respect to other assets of Plans not involved in the Partnership. In this regard, it is represented that Wells Fargo was not a trustee of the Group Trust and had no authority, responsibility, or control with respect to the assets of the Group Trust that were invested in the Partnership. Further, it is represented that Wells Fargo does not have, and did not exercise, any of the authority, control or responsibility that makes it a fiduciary with respect to the Plans in connection with the decision by the Plans (acting through GMIMCO) to invest through the Group Trust in the Partnership or the decision by the Plans (acting through GMIMCO) to approve the Partnership's investment in the Property.

On August 9, 1991, at the time the Group Trust entered into the Subscription Agreement, it is represented that there was no arrangement for the Partnership to specifically acquire the Property. Rather, the Partnership agreement called for the Group Trust to 95 percent (95%) fund the purchase of a property once identified by the GP and agreed to by GMIMCO. Neither the Plans, the Group Trust, GMIMCO, nor Sarofim participated in the search for the Property. It is represented that the GP had no knowledge of the relationship between Wells Fargo and the Plans in July 1992, at the time the Property was identified as an investment opportunity for the Partnership. It is further represented that officials at GMIMCO did not know that the Seller was a subsidiary of a service provider with respect to the Plans until October 1992. In addition, Sarofim, an experienced real estate investment advisory firm, has served since August 1990, as non-discretionary investment advisor to the Plans and to GMIMCO. Accordingly, it is represented that the Group Trust's commitment to become a limited

partner in the Partnership was not in any way conditioned on the acquisition of the Property.

11. It is represented that the transaction was in the interest of the Plans and their participants and beneficiaries. In this regard, the acquisition of the Property was consummated on terms customary in the commercial real estate market after extensive negotiations between the GP and the Seller who are unrelated. The purchase price was competitively bid by the GP and approved by both Sarofim and GMIMCO. It is represented that the GP negotiated a purchase price of \$60 million that is approximately 14 percent (14%) lower than the \$69.9 million dollar asking price for the Property. Further, Delta's appraisal of the Property indicated a value for the Property of \$72 million on an "as is" basis in March, 1993, which was approximately 20 percent (20%) above the purchase price paid by the Partnership. Accordingly, prior to consummation of the acquisition of the Property at the \$60 million dollar purchase price, both GMIMCO and Sarofim specifically concluded that the acquisition of the Property at the price negotiated by the GP was in the best interest of the Plans.

It is represented that Sarofim analyzed at length the potential acquisition of the Property taking into account various scenarios regarding pricing, absorption/leasing, tenant finish costs, tenant expansions, renewal of leases, residual capitalization rates, and financing parameters. Based on this exhaustive analysis, Sarofim recommended to the Plans a pricing range for the Property that would warrant the Group Trust's approval of the acquisition by the Partnership. It is represented that as the ultimate acquisition price for the Property was within the recommended range, both Sarofim and GMIMCO determined that the favorable pricing of the Property would help produce an attractive return for the Plans and was thus in their best interest.

It is further represented that the acquisition of the Property was recommended to the Plans for the following reasons: (a) the Property is a recently completed Class "A" building with high quality systems and construction quality; (b) the Property has advantageous sub-surface parking, which is a major leasing advantage in its market; (c) the Property was 53 percent (53%) leased at the time of the transaction, primarily to a prestigious national law firm with excellent credit; (d) tenants have demonstrated a strong demand to lease vacant space in