

(3) An investment manager appointed, pursuant to the provisions of section 402(c)(3) of the Act, to manage all or part of the assets of a plan, may, for purposes of compliance with the provisions of paragraphs (b)(1) and (2) of this section, rely on, and act upon the basis of, information pertaining to the plan provided by or at the direction of the appointing fiduciary, if—

(i) Such information is provided for the stated purpose of assisting the manager in the performance of his investment duties, and

(ii) The manager does not know and has no reason to know that the information is incorrect.

(c) *Definitions.* For purposes of this section:

(1) The term *investment duties* means any duties imposed upon, or assumed or undertaken by, a person in connection with the investment of plan assets which make or will make such person a fiduciary of an employee benefit plan or which are performed by such person as a fiduciary of an employee benefit plan as defined in section 3(21)(A)(i) or (ii) of the Act.

(2) The term *investment course of action* means any series or program of investments or actions related to a fiduciary's performance of his investment duties.

(3) The term *plan* means an employee benefit plan to which title I of the Act applies.

[44 FR 37225, June 26, 1979]

§ 2550.404b-1 Maintenance of the indicia of ownership of plan assets outside the jurisdiction of the district courts of the United States.

(a) No fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, unless:

(1) Such assets are:

(i) Securities issued by a person, as defined in section 3(9) of the Employee Retirement Income Security Act of 1974 (Act) (other than an individual), which is not organized under the laws of the United States or a State and does not have its principal place of business within the United States;

(ii) Securities issued by a government other than the government of the

United States or of a State, or any political subdivision, agency or instrumentality of such a government;

(iii) Securities issued by a person, as defined in section 3(9) of the Act (other than an individual), the principal trading market for which securities is outside the jurisdiction of the district courts of the United States; or

(iv) Currency issued by a government other than the government of the United States if such currency is maintained outside the jurisdiction of the district courts of the United States solely as an incident to the purchase, sale or maintenance of securities described in paragraph (a)(1) of this section; and

(2)(i) Such assets are under the management and control of a fiduciary which is a corporation or partnership organized under the laws of the United States or a State, which fiduciary has its principal place of business within the United States and which is—

(A) A bank as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, equity capital in excess of \$1,000,000;

(B) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any asset of a plan, which company has, as of the last day of its most recent fiscal year, net worth in excess of \$1,000,000 and which is subject to supervision and examination by the State authority having supervision over insurance companies; or

(C) An investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess \$50,000,000 and either

(1) Shareholders' or partners' equity in excess of \$750,000 or

(2) All of its obligations and liabilities assumed or guaranteed by a person described in paragraph (a)(2)(i)(A), (B), or (C)(1) or (a)(2)(ii)(A)(2) of this section; or

(ii) Such indicia of ownership are either

(A) In the physical possession of, or, as a result of normal business operations, are in transit to the physical

possession of, a person which is organized under the laws of the United States or a State, which person has its principal place of business in the United States and which is—

(1) A bank as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, equity capital in excess of \$1,000,000;

(2) A broker or dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of \$750,000; or

(3) A broker or dealer registered under the Securities Exchange Act of 1934 that has all of its obligations and liabilities assumed or guaranteed by a person described in paragraph (a)(2)(i)(A), (B), or (C)(1) or (a)(2)(ii)(A)(2) of this section; or

(B) Maintained by a broker or dealer, described in paragraph (a)(2)(ii)(A)(2) or (3) of this section, in the custody of an entity designated by the Securities and Exchange Commission as a “satisfactory control location” with respect to such broker or dealer pursuant to Rule 15c3-3 under the Securities Exchange Act of 1934, provided that:

(1) Such entity holds the indicia of ownership as agent for the broker or dealer, and

(2) Such broker or dealer is liable to the plan to the same extent it would be if it retained the physical possession of the indicia of ownership pursuant to paragraph (a)(2)(ii)(A) of this section.

(C) Maintained by a bank described in paragraph (a)(2)(ii)(A)(1), in the custody of an entity that is a foreign securities depository, foreign clearing agency which acts as a securities depository, or foreign bank, which entity is supervised or regulated by a government agency or regulatory authority in the foreign jurisdiction having authority over such depositories, clearing agencies or banks, provided that:

(1) The foreign entity holds the indicia of ownership as agent for the bank;

(2) The bank is liable to the plan to the same extent it would be if it retained the physical possession of the indicia of ownership within the United States;

(3) The indicia of ownership are not subject to any right, charge, security

interest, lien or claim of any kind in favor of the foreign entity except for their safe custody or administration;

(4) Beneficial ownership of the assets represented by the indicia of ownership is freely transferable without the payment of money or value other than for safe custody or administration; and

(5) Upon request by the plan fiduciary who is responsible for the selection and retention of the bank, the bank identifies to such fiduciary the name, address and principal place of business of the foreign entity which acts as custodian for the plan pursuant to this paragraph (a)(2)(ii)(C), and the name and address of the governmental agency or other regulatory authority that supervises or regulates that foreign entity.

(b) Notwithstanding any requirement of paragraph (a) of this section, a fiduciary with respect to a plan may maintain in Canada the indicia of ownership of plan assets which are attributable to a contribution made on behalf of a plan participant who is a citizen or resident of Canada, if such indicia of ownership must remain in Canada in order for the plan to qualify for and maintain tax exempt status under the laws of Canada or to comply with other applicable laws of Canada or any Province of Canada.

(c) For purposes of this regulation:

(1) The term *management and control* means the power to direct the acquisition or disposition through purchase, sale, pledging, or other means; and

(2) The term *depository* means any company, or agency or instrumentality of government, that acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates.

[42 FR 54124, Oct. 4, 1977, as amended at 46 FR 1267, Jan. 6, 1981]

§ 2550.404c-1 ERISA section 404(c) plans.

(a) *In general.* (1) Section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) provides