

**Side-By-Side Comparison of the Amendments to the Prohibited Transaction Rules
and Other ERISA Fiduciary Provisions Included in H.R. 2830 and S. 1783**

PROHIBITED TRANSACTION EXEMPTIONS

	H.R. 2830, the Pension Protection Act¹	S. 1783, the Pension Security and Transparency Act²
Block Trading	The exemption would provide relief under both ERISA and the Code for the purchase or sale of securities between a plan and a party in interest on a block basis (<u>i.e.</u> , trades on behalf of two or more clients of a fiduciary) provided (i) the transaction is an arm's-length transaction, (ii) the plan's (together with other plans maintained by the same sponsor) interest in the block trade accounts for no more than 10% of the block, and (iii) the counter party to the trade is not a fiduciary based on the provision of investment advice.	Generally the same as H.R. 2830, with the following differences: <ul style="list-style-type: none"> • The exemption would not apply if the counter party to the transaction is a fiduciary with discretion over the assets involved in the transaction or an investment adviser • The block trade must involve at least 10,000 shares or \$200,000 of market value.

¹ H.R. 2830, the Pension Protection Act, was originally introduced by Chairman of the House Education and the Workforce Committee, John Boehner (R-OH) (now Republican Majority Leader) and Chairman of the House Ways and Means Committee, Bill Thomas (R-CA) on June 9, 2005. The House Education and the Workforce Committee favorably approved a substitute version of H.R. 2830 on June 30, 2005 and on November 9, 2005, the House Ways and Means Committee approved its own version of H.R. 2830. The House passed H.R. 2830 on December 15, 2005.

² S. 1783, the Pension Security and Transparency Act, was introduced on September 28, 2005 by the Chairman and Ranking Member of the Senate Finance Committee, Sens. Chuck Grassley (R-IA) and Max Baucus (D-MT), and Chairman and Ranking Member of the Senate Health, Education, Labor, and Pensions ("HELP") Committee, Sens. Mike Enzi (R-WY) and Ted Kennedy (D-MA). A "managers' amendment" to S. 1783 was passed by the Senate on November 16, 2005.

<p>Electronic or Alternative Trading Systems</p>	<p>The exemption would provide relief under ERISA for the purchase or sale of securities or other property between a plan and a fiduciary or party in interest via an exchange, electronic communication network, alternative trading system, or similar regulated trading venue provided (i) neither the trading system nor the parties "take into account" the identity of the parties, (ii) the transaction is an arm's-length transaction, (iii) if the fiduciary or party in interest is an owner of the trading system, the plan authorizes the use of the system, (iv) the transaction is effected at the best price available, and (v) the plan administrator is provided at least 30 days prior notice of the first transaction executed over the system.</p>	<p>Generally the same as H.R. 2830, with the following differences:</p> <ul style="list-style-type: none"> • The Senate bill provides relief under both ERISA and the Code. • If the transaction does not occur on a national exchange, ECN, or alternative trading system, the trading venue must be approved by the Secretary of Labor. • If the fiduciary or party in interest owns part of the system, the use of the system must be annually authorized by a plan fiduciary. • The transactions must be executed pursuant to nondiscretionary rules for matching orders. • If the transaction is not executed over a national exchange, the parties to the transaction must not "actually know" the identity of the counter party. • The exemption would cover only transactions involving the purchase and sale of securities, and would not apply to transactions involving "other property."
<p>Foreign Exchange Transactions</p>	<p>The amendment exempts from ERISA foreign exchange (FX) transactions between a plan and a party in interest bank, broker dealer or affiliate if (i) transaction is in connection with the purchase or sale of securities, (ii) the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arms'-length transactions between unrelated parties, or the terms afforded by the bank or broker in comparable arm's length FX transactions involving unrelated parties, and (iii) the exchange rate may not deviate more than 3% from the interbank bid/asked rate displayed by an</p>	<p>Generally the same as H.R. 2830, with the following differences:</p> <ul style="list-style-type: none"> • The exemption specifically covers IRAs, as well as plans. • FX transactions may be in connection with the purchase, sale or <i>holding</i> of securities. • The exemption is not available where bank or broker dealer provides advice or exercises discretion with respect to the transaction.

	<p>independent service at the time of the transaction.</p> <p>Generally, this exemption would obviate the need for detailed foreign exchange instructions from the fiduciary.</p>	
Purchases, Sales, and Loans Between Plans and Service Providers	<p>This exemption would provide relief under ERISA for sales, exchanges, leases, loans, and transfers between a plan and those entities that are parties in interest solely by reason of providing services to a plan if the plan pays no more (or receives no less) than "adequate consideration." Generally, this exemption would allow service providers to engage in a variety of transactions in addition to the provision of services with plans, such as loans in connection with purchasing plan investments and purchases and sales of securities on a principal basis.</p>	N/A
BONDING RELIEF		
	H.R. 2830, the Pension Protection Act	S. 1783, the Pension Security and Transparency Act
In General	<p>ERISA's bonding requirements would not apply to brokers and dealers subject to the requirements of a self-regulatory organization (and their affiliates with respect to which the broker or dealer agrees to be liable to the same extent as if the broker or dealer held the assets directly). The proposed language also suggests somewhat awkwardly that bonding requirements also would not apply to registered investment advisers.</p>	<p>The proposed bonding relief is limited to brokers and dealers subject to the fidelity bond requirements of a self-regulatory organization.</p>

DEFINITION OF "PLAN ASSETS"

	H.R. 2830, the Pension Protection Act	S. 1783, the Pension Security and Transparency Act
In General	<p>The DOL plan assets regulation would be modified in four respects:</p> <ul style="list-style-type: none"> • An entity would not be deemed to hold plan assets if less than 50% of the value of every class of equity interests is held by "benefit plan investors." • Only the value of any equity interest <i>owned</i> by a discretionary manager or a paid investment adviser to the entity (or an affiliate) would be disregarded for purposes of calculating the 50% test. Currently, interests <i>held by</i> such a manager, adviser or their affiliates are disregarded. • An entity would be deemed to hold plan assets only to the extent of the percentage of the entity owned by benefit plan investors. • The definition of "benefit plan investor" would be narrowed to include only plans covered by ERISA or subject to I.R.C. section 4975. (Government, church and foreign plans as well as entities deemed to hold plan assets would be excluded.) 	N/A

CORRECTION OF PROHIBITED TRANSACTION

	H.R. 2830, the Pension Protection Act	S. 1783, the Pension Security and Transparency Act
Correction of Party-In-Interest Transactions	The exemption would provide relief under ERISA and the Code for party-in-interest transactions involving the purchase, sale, or holding of a security or commodity (other than employer securities or employer real property) if the transaction is corrected within 14 days of the date that the fiduciary discovers (or reasonably should have discovered) the fact that the transaction was prohibited. The exemption would not apply to a transaction if the fiduciary or party in interest knew or should have known that the transaction was prohibited when the transaction occurred.	Generally the same as H.R. 2830, with the following differences: <ul style="list-style-type: none"> • The transaction must be corrected within 14 days of the <i>date of the transaction</i>, not the date of discovery.

DEFINITION OF AMOUNT INVOLVED

	H.R. 2830, the Pension Protection Act	S. 1783, the Pension Security and Transparency Act
In General	Under current law, DOL may impose section 502(i) penalties on prohibited transactions involving plans not subject to I.R.C. § 4975 (e.g., welfare plans). These penalties are generally calculated in the same manner as the 4975 excise taxes, e.g., a percentage of the "amount involved" in the prohibited transaction. The proposal would define the term "amount involved" for purposes of 502(i) penalties. In the case of a prohibited transaction involving fees paid to a service provider, the "amount involved" would be limited to those fees in excess of the fair market value for such services. In the case of principal transactions involving securities and commodities, the "amount	N/A

involved" would be the amount in excess of what would have been received in an arm's length transaction. For other transactions, the "amount involved" is defined as the greater of the fair market value of property given or the fair market value of property received.

There is no corresponding amendment to I.R.C. section 4975 (applicable to pension plans).