

Attachment A



NYS DEFERRED COMPENSATION BOARD

Overview of Deferred Compensation Plans in New York State

Public employers in New York State may sponsor deferred compensation plans for their employees as permitted by [Section 457 of the Internal Revenue Code](#). Section 457 deferred compensation plans permit employees to defer a portion of their salary earnings on a pre-tax basis and, beginning in 2011, to a Roth 457 account within the deferred compensation plan.

Pre-tax deferrals provide that the salary amount that is deferred is not included in the employee's federal or New York state taxable income in the year it is deferred. The practical result of pre-tax deferrals is that the amount salary that is deferred is greater than the employee's reduction in take-home-pay because federal and New York state income taxes are not withheld from the amount that is deferred.

Roth 457 contributions are deferred from the employee's salary on an after tax basis. Income taxes are paid on this portion of the deferral in the year of the deferral. However, distributions of the amount deferred to the Roth 457 portion of an employee's account will be exempt from additional income taxation. Earnings related to the distributions from a Roth 457 account that are deemed to be a "qualified distribution" will also be exempt from additional income taxation.

Section 457(b) of the Internal Revenue Code and related [IRS Regulations](#) govern public employer deferred compensation plans and outlines the general requirements to sponsor a plan, establishes the maximum salary amount that may be deferred in each year, when the employee has access to his or her salary deferrals, the ability to roll assets between eligible retirement plans and deferred compensation plans, and other technical requirements.

[Section 5 of the State Finance Law](#) authorizes deferred compensation plans in New York State and establishes the New York State Deferred Compensation Board. The Board enacted [Rules and Regulations](#) related to deferred compensation plans in the State. An explanation of Section 5 and the Board's Rules and Regulations follows.

Section 5 of the State Finance Law

- Created a deferred compensation board to consist of three members, one each to be appointed by the governor, Majority Leader of the Senate, and the Speaker of the Assembly (subd. 1)
- Required the deferred compensation board to establish a deferred compensation plan for all state employees (subd. 2.a)
- Required the deferred compensation board to establish rules and regulations regarding the standards for selecting investment providers to deferred compensation plans (subd. 2.c)
- Permits every public employer to establish its own deferred compensation plan for its employees in accordance with the rules established by the board or participate in the plan for state employees. (subd.3.a)
- Provided that employees represented by a union may participate in a deferred compensation plan after participation is authorized in a collective bargaining agreement (subd. 4 and 5)

Rules and Regulations of the New York State Deferred Compensation Board

The Rules and Regulations of the New York State Deferred Compensation Board (Sections 9001 – 9006 of the Official Compilation of Rules and Regulations of New York State) pertain to the governance and general administration of deferred compensation plans in New York State. These Rules apply equally to the New York State Deferred Compensation Plan and all deferred compensation plan sponsored by local governments in the State.

The remainder of this document will review the Rules and Regulations of the New York State Deferred Compensation Board and address questions related to the Rules.

Section 9000 – Establishment of a Deferred Compensation Committee

This section provides definitions to commonly used terms that exist throughout the Rules. The following definitions are of particular interest.

Deferred Compensation Committee – The Rules require each local government that sponsors a local deferred compensation plan to appoint a "committee, board, entity or an officer" to carry out the responsibilities of administering the local deferred compensation plan. The Rules do not specify the size or composition of the committee, board or entity.

It should be noted that it is permissible to appoint a single individual (an officer) to perform the responsibilities the Committee.

The committee is responsible to "to act on behalf of the local employer under" a plan established by a local employer. Some of the responsibilities of the deferred compensation committee include administering Requests for Proposals for financial institutions, a plan trustee, administrative service agency, auditor and other plan services and contracting with those service providers.

Section 9001.2 – Plan Selection

This section states that a local government may offer a deferred compensation plan by either

- Participating in the State Plan,
- Adopting the Model Plan, as prepared by the State Board, or
- Adopting Another Plan, which complies with all the requirements of the Board's Rules and [Section 457 of the Internal Revenue Code](#).

A local government, however, may only sponsor one deferred compensation plan.

The **State Plan** is the deferred compensation plan sponsored by New York State for its employees and the employees of participating employers. A local government that wants to participate in the State Plan adopts a resolution or other legal document and files it with the State Plan. The employees of the participating employer will then be permitted to take advantage of all Plan investment options and resources.

A **Model Plan** is a deferred compensation plan written by the State Board for use by a local government. A deferred compensation plan is an employer-sponsored benefit governed by the Internal Revenue Code. The Code requires a written plan document describing the administrative procedures that the plan sponsor will follow. The Internal Revenue Service will review the plan document of a plan sponsor to ensure that it conforms to Section 457 of the Code and, if it does, issue a determination letter to that effect. The State Board submits the Model Plan to the Service to obtain a determination letter applicable to it. Therefore, a local government that uses the Model Plan will not have to seek its own determination letter to assure that its plan document is in compliance with Section 457 of the Code.

The third alternative available to a local government is the adoption of "another plan." This requires the sponsoring local government to create its own plan document and apply to the Service for a determination letter.

9002.1 – Trust Requirement

This section requires that all assets of a Deferred Compensation plan are to be "held in trust for the exclusive benefit of plan participants and their beneficiaries," may be used "only to pay plan benefits and defray reasonable expenses of administering the plan," and "cannot revert to the State or local employer until all plan

benefits have been paid to plan participants and beneficiaries in accordance with the terms of the plan."

This section establishes the requirements that must be met in order to qualify as a trust agreement.

9002.2 – Filing Requirements

Each local employer that adopts a model plan or another plan must file specific documents relating to the plan with the President of the New York State Civil Service Commission when

- The deferred compensation plan is initially established
- There is a change to the model plan document or another plan document
- A new contract is entered into with one or more of the service providers to the plan.

The documents that must be filed are:

- A copy of the plan document
- A copy of the trust agreement (if a copy of the trust agreement was submitted previously, a copy of the letter notifying the trustee of the new amendment is sufficient);
- An opinion signed by the local employer's chief executive officer and chief legal officer stating that its deferred compensation plan and trust agreement meet the requirements of Section 4-100 and all other applicable federal, State and local laws, the Board Regulations, and that all required approvals of any local governing body or officer have been obtained;
- The name of each service provider (trustee, independent consultant, financial organization, certified public accountants, and administrative service agency) to the plan and a certification signed by the local employer's chief executive officer and chief legal officer stating that each service provider has been selected as required in Board's Regulations;
- Evidence of bonds and insurance required by the Board's Regulations; and
- Evidence that each service provider to the plan has assumed responsibility and has indemnified the plan from any action brought against it as a result of acts or omissions of the service providers together with the reasonable costs of litigation.

When a committee adopts amendments to the model plan or another plan, the local employer is required to file only those documents that have changed since the most recent filing. The local employer is to file an affidavit attesting to those documents that are the same.

9002.2(b) - Acceptance of Salary Deferrals

Section 9002.2(b) requires a written acknowledgement from the President of the Civil Service Commission that all documents have been received prior to the acceptance of any deferrals from plan participants.

9002.2(b) – Amendments to the Model Plan

A local government that has adopted the model plan may not make any amendments to the model plan document except those authorized by the Board because the model plan and its amendments have received a determination letter from the Service. Adopting amendments other than those approved by the Board may not conform to the Internal Revenue Service Regulations and, therefore, are not covered by the determination letter.

9002.2(c) - Another Plan Requirements

A local government that adopted another plan must file either (i) a ruling or determination from the Service that the plan meets the requirement of Section 457 of the Code or (ii) an opinion of the local government's legal counsel that the plan meets the requirements of Section 457 of the Code.

9003 – Provisions Relating to Contracts with Plan Service Providers

This section requires all services provided to a deferred compensation plan be granted after a competitive request for proposal procedures. Services that may be contracted include the plan trustee, independent consultant, financial organization, certified public accountants, administrative service agency, and legal.

However, the plan need not conduct a request for proposal process for

- Administrative services if the plan determines that the trustee or financial organization can perform this service
- Independent consultant services if the plan determines that the board or committee can perform this service
- Trustee services if the committee or board is to serve as the trustee

A committee may select a certified public accountant in conjunction with a Request for Proposals issued by the public employer that sponsors the plan provided that the scope of services includes auditing of the plan, that the committee adheres to the selection criteria included in Section 9003.3 of the Regulations, and the auditor is selected independently by the committee.

A board or committee may select financial organizations to provide investment services following a search procedure where a plan selects its investment services independently from its administrative service agency, trustee, auditor, or consultant services. The search must be conducted by an independent consultant selected by the board or committee through a request for proposal procedure. The board or committee must direct the investment consultant as to the classification or sub-classification of the investment service and the minimum number of candidates to be recommended. The investment consultant must adhere to the qualification guidelines in the Rules in conducting the search.

Section 9003.2 – RFP Procedures

This section requires that the plan sponsor publish an announcement in the State Register and the official newspaper of the of the plan sponsor requesting competitive proposals. The notice must be published at least prior to the date that the contract will be awarded.

Section 9003.3 – Criteria for Selection

The board or committee shall use the following criteria when selecting a service provider:

- The stability of the service provider as evidenced by its experience or investment record over a substantial period of time
- The ability of the service provider to comply with the requirements of the plan, section 457 and the Board's rules
- Experience with eligible deferred compensation plans and other qualified retirement plans
- With respect to financial products, the variety and types of investment products and the ability to transfer such products offered by a different financial organization
- The quality and soundness of services
- Overall cost efficiency
- Overall quality and scope of the services to be provided.

All proposals from prospective service providers must be in writing and

- Acknowledge that the proposal complies with the requirements of the Board's Rules
- Clearly indicate all direct and indirect fees
- Fully disclose any sponsorship or similar relationship. Relationships are precluded unless it can be demonstrated that the arrangement is cost effective. (Section 9003.3(b))

Before any service agreement becomes effective, the chief executive officer and the chief legal officer of the plan sponsor must certify to the President of the Civil Service Commission that the selection was made in accordance with the Board's rules. (Section 9003.3(d))

Section 9003.4 – Diverse Investment Options

This section requires the deferred compensation committee to provide the opportunity for participant assets to be invested in one or more of a broad range of investment alternatives, including fixed income and equity

investments.

Section 9003.5 – Contract Limitations

Contracts

- Must be awarded on a competitive basis.
- Cannot exceed 5 years in length, however, contracts may be extended, for cause, by a maximum of two one-year extensions.
- Cannot impose penalties or surrender charges for the transfer of assets or responsibilities upon the expiration of the contract.

A board or committee may enter into a contract not to exceed ten years with an administrative service agency financial organization(s), and trustee where the plan selects such services independently from each other selection.

Section 9003.5 (b) – Contract Extensions

Contracts may be extended for up to two, one-year extensions when the committee determines, in writing, that an extension is in the best interests of the plan and approved by the committee by a vote. The initial one-year extension may only be granted only after the expiration of the initial term of the contract. A second one-year extension may be granted upon the completion of the expiration of the first one-year extension. The committee must describe in writing the reasons that the extension is in the best interests of the plan.

Section 9003.5(c) – Anti-delegation Clause

This section provides that a committee may not enter into an agreement that permits a service provider to select other service providers for the plan. However, a mutual fund or brokerage "window" arrangement is not considered a delegation of services and may be provided if it is not the sole investment alternative of the plan.

This section also permits a board or a committee to enter into an agreement with a financial organization to manage a stable income fund that authorizes the financial organization to invest in guaranteed investment contracts, wrap contracts, and other specific services.

Section 9003.6 – All Plan Providers to Act as Plan Fiduciaries

This section requires each plan trustee, independent consultant, administrative service agency and financial organization to certify that it is a fiduciary for the responsibilities it has assumed for the plan. Exempt from this rule are financial organizations that issue guaranteed investment contracts and mutual funds.

Section 9003.7 – Annuity Contracts and Life Insurance Policies are Precluded Investments

This section provides that investments in an annuity contract for a term of more than five years or is measured by one or more natural lifetimes or any life insurance or other contract providing traditional death benefits is prohibited in a plan.

Annuity contracts as investment vehicles are permissible if the term of the annuity contracts does not extend beyond the term of the contract with the investment provider. Section 9003.5(a) generally limits the contract term with all providers to five years. Section 9003.5(a), further, prohibits the imposition of surrender charges for the transfer of assets at the end of the contract term.

Section 9003.8 – Investment of Salary Deferrals

This section requires that all employee salary deferrals and investment instructions be transmitted to the plan trustee no later than two days after the payroll date. The trustee will invest all deferrals no later than one day following receipt.

Section 9004.1 – Confidentiality of Plan Records

This section prohibits the use of any information obtained by a plan provider for any purpose other than plan

administration of the plan. A plan provider cannot solicit or market any products or services that may be available from that provider. It further states that all participant information obtained by the plan provider shall be kept confidential and used exclusively for purposes of the plan.

Section 9005.1 – Financial Statements, Auditing, and Agreed Upon Procedures

This section requires the Board or committee of a plan with 100 or more participants to annually prepare or cause to be prepared a financial statement of net assets available for benefits in accordance with GASB Statement 32 and to have those financial statements audited by a certified public accountant.

This section also requires the committee of any plan with fewer than 100 participants to annually prepare or cause to prepare an unaudited financial statement of net assets available for benefits and engage a certified public accountant to conduct a review of the plan's activities and conduct an agreed-upon procedures report on specific administrative procedures. Those procedures will include a review of:

- Account balances by investment option and in the aggregate.
- Deferrals reported by the plan sponsor, by individual participant and in the aggregate.
- Remittance of deferrals to the trustee in a timely manner.
- Accounting of deferrals between pre-tax and Roth designated contributions.
- Application of deferral limitations and payment of required minimum distributions.
- Administration of regular distributions, unforeseeable emergency distributions, and loans.
- Processing of deferral and asset allocation changes in a timely manner.
- Disclosure of plan level and participant level fees to participants and allocation of such fees.
- Notification to employees of the plan and enrollment opportunities.

The plan sponsor shall communicate to plan participants that the audit or agreed-upon procedures report is available for review. The audit or agreed-upon procedures of the plan are to be filed with the President of the Department of Civil Service no later than six months following the close of the plan year. The board or committee will appoint the firm of certified public accountants to conduct the annual audit or agreed-upon procedures report through an RFP process.

Section 9005.2 – Authority of Board and Committee

This section empowers the board or committee to terminate any service provider if the service provider is not performing its responsibilities required by the Board's Rules.

Section 9005.3 – Statements to Participants

This section requires the plan to provide each participant a statement at least quarterly, which will include the participant's account balance, interest in each investment option, and any other data required by the plan. The plan will also furnish written disclosure of all fees and expenses paid out of or charged against any plan assets including fees and expenses deducted from any investment return and the allocation of the fees and expenses among participant's accounts.

Section 9005.4 – Bonding and Insurance

Each service provider and each outside agent that handles, holds, invests, maintains custody for or directs disbursement of funds or serves as a trustee must be bonded to protect the plan from loss resulting from fraud or dishonesty by such service provider. The bond may not be less than the value of the plan assets managed, administered or held by such provider, or \$25 million, whichever is less. The board or committee may require a bond greater than this requirement.

If a member of the board or committee is the appointed trustee, the costs of the required bond will be treated as a reasonable expense of the plan and may be paid from the assets of the plan.

Section 9006.1 – Board Authority

This section provides the Board with the authority to investigate, hold hearings and take necessary actions against a plan when it is notified that a plan or contract is not in substantial compliance with the Board's Rules.

The Board may take appropriate actions to ensure that the plan or service providers are acting in compliance with the Board's Rules, including the termination of a plan, contract, or agreement.

Section 9006.2 – Agreements Subject to Board's Rules

This section requires every contract or agreement to contain a provision that the contract is in conformance with the Board's Rules and that the plan document and the Rules are part of the contract.

Section 9006.3 – Exemptions to Board Rules

This section permits the Board to grant an exception to the Board's Rules in exceptional circumstances. A request for an exemption from a plan sponsor must be made in writing to the Board and contain a detailed reason for the exemption. Should the Board grant an exemption, it must describe the exceptional circumstance and the reason that the exemption is in the best interests of the plan. Where an exemption is granted by the Board, the remedy and administrative procedures of the plan must continue to be in accordance with the IRC, the plan documents, and the Board's fiduciary obligation.

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Attachment B

**Rules and Regulations
of the
New York State Deferred Compensation Board**

Effective Date: June 15, 2011

Following are the rules and regulations of the Deferred Compensation Board of the State of New York (the “Regulations”) as amended and restated consistent with the amendments adopted by the Board by resolution at a public meeting on May 20, 2011 and published in the State Register on June 15, 2011 at which time the amendments to the Regulations became effective and enforceable.

SUBTITLE II

Deferred Compensation Board

- 9000 Scope and Definitions**
- 9001 General Provisions**
- 9002 Establishment of Plan**
- 9003 Selection of and Agreements with Trustees, Independent Consultants, Administrative Service Agencies, Financial Organizations and Certified Public Accountants**
- 9004 Solicitation and Education**
- 9005 Auditing, Bonding and Insurance**
- 9006 Compliance**

PART 9000

SCOPE AND DEFINITIONS

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.
9000.1 Scope

Sec.
9000.2 Definitions

Section 9000.1 Scope. This Subtitle applies to every deferred compensation plan established by the board or any local employer pursuant to section 5 of the State Finance Law.

9000.2 Definitions. (a) Unless otherwise defined, the terms used herein shall have the same meaning as that used in the Internal Revenue Code of 1986 (the “Internal Revenue Code”), as now in effect or hereinafter amended, the State Finance Law and the State plan or the model plan.

(b) Wherever used herein, the following terms shall be construed as follows:

(1) *Administrative service agency* means a person duly authorized to do business in the State of New York and qualified to administer and maintain records and accounts

of defined contribution plans which meet the requirements for qualification under the Internal Revenue Code, governmental plans and eligible deferred compensation plans. The functions of an administrative service agency under this Subtitle may be carried out by a trustee, provided that the person serving as a trustee otherwise satisfies all of the requirements under this Subtitle applicable to an administrative service agency.

(2) *Board* means the deferred compensation board of the State of New York established by section 5 of the State Finance Law.

(3) *Deferred compensation committee* means the committee or board, or other entity, office or officer, appointed in accordance with applicable law by a local employer to act in respect of a plan in accordance with section 9001.2(b) of this Subtitle.

(4) *Financial organization* means a person duly authorized to do business in the State of New York and who:

(i) is registered as an investment adviser under the Investment Advisors Act of 1940, as such provisions may be amended from time to time;

(ii) is a bank, as defined in such act; or

(iii) is an insurance company qualified under the laws of more than one state to manage, acquire or dispose of any assets of plans which meet the requirements for qualification under the Internal Revenue Code, governmental plans and eligible deferred compensation plans.

The functions of a financial organization under this Subtitle may be carried out by a trustee, provided that the person serving as a trustee otherwise satisfies all of the requirements under this Subtitle applicable to a financial organization.

For the purposes of this Subtitle, a financial organization that provides self-directed investment services to a plan through a mutual fund or brokerage “window” arrangement sponsored by such financial organization shall be recognized as the sole financial organization in relation to such self-directed investment services and the term “financial organization” shall not be deemed to include any entity sponsoring mutual funds provided through such “window.”

(5) *Guaranteed investment contract* means a contract with an insurance company or a bank that guarantees a specific rate of return on the invested capital over the life of the contract and for the return of such invested capital and interest to the plan on one or more dates specified in the contract.

(6) *Independent Consultant* means a person duly authorized to do business in the State of New York and who may be or is retained by the board or a deferred compensation committee in accordance with the provisions of this Subtitle to provide advice to the board or deferred compensation committee on investment matters and who is registered as an investment adviser under the Investment Advisors Act of 1940, as such provisions may be amended from time to time.

(7) *Local employer* means a public employer as defined in section 5 of the State Finance Law but excluding the State of New York.

(8) *Model plan* means the form of plan authorized by the board for adoption in accordance with the provisions of this Subtitle by any local employer not participating in the State plan and not sponsoring a plan described in section 9001.2(a)(3) of this Subtitle, as such may be amended by the board from time to time. A copy of the model plan may be obtained from the board.

(9) *Participation agreement* means an agreement executed by an employee and the employer as described in the State plan and the model plan or such other similar agreement executed in connection with another plan.

(10) *Person* means any individual, corporation, partnership, association, trust, joint stock company, unincorporated organization or other similar entity.

(11) *President* means the president of the New York State Civil Service Commission.

(12) *Plan* means any of the State plan, the model plan and any other deferred compensation plan described in section 9001.2(a)(3) of this Subtitle.

(13) *Stable income fund* means, with respect to a plan, an investment option available to participants in the plan that seeks to provide book-value accounting, stability of principal and a low volatility total return.

(14) *State plan* means the Deferred Compensation Plan for Employees of the State of New York and Other Participating Public Jurisdictions established by the board, as such may be amended by the board from time to time. A copy of the State plan may be obtained from the board.

(15) *Trust* means a trust to hold the assets of a plan for the exclusive benefit of participants and their beneficiaries that meets the requirements of this Subtitle, including without limitation the requirements of section 9002.1(b), and section 457(g) of the Internal Revenue Code.

(16) *Trust Agreement* means an agreement evidencing a trust meeting the requirements of this Subtitle.

(17) *Trustee* means each person designated by the board or deferred compensation committee, as applicable, in accordance with the provisions of this Subtitle to hold in a trust any amounts under a plan.

(18) *Wrap contract* means a contract with a financial organization that provides for book-value accounting with respect to a designated portion of the assets of a stable income fund but that does not give the financial organization issuing the contract day-to-day investment authority with respect to such assets. Such term includes participating, non-participating and hybrid wrap contracts.

PART 9001

GENERAL PROVISIONS

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.	Sec.
9001.1 Application; Incorporation by Reference	9001.3 Ineligibility
9001.2 Establishment of plan by local employer	9001.4 Special provisions

Section 9001.1 Application; Incorporation by Reference. (a) This Subtitle shall be interpreted and applied so that any plan established hereunder shall be an eligible deferred compensation plan under section 457 of the Internal Revenue Code.

(b) The Board hereby adopts and incorporates by reference the provisions of Sections 457, 401(a)(9) and 72(p) of the Internal Revenue Code and the corresponding sections of title 26 of the Code of Federal Regulations and Section 203 of the Investment Advisers Act of 1940, effective as of the date of the adoption of these Regulations. Copies of said material may be obtained from the U.S. Government Printing Office, Washington D.C. 20402 and such material is available for public inspection and copying at the Offices of the New York State Deferred Compensation Board, Empire State Plaza Concourse – North, Room 124, Albany, NY 12223.

9001.2 Establishment of plan by local employer. (a) Except as specifically provided in this section 9001.2(a), a local employer may not establish or maintain more than one plan for its employees. A local employer may establish a plan for its employees:

- (1) by becoming a participating employer in the State plan as provided therein;
- (2) by adopting the model plan in accordance with the procedures prescribed in Part 9002 of this Subtitle; or
- (3) by adopting another plan which complies with all requirements of this Subtitle and section 457 of the Internal Revenue Code in accordance with the procedures prescribed in Part 9002 of this Subtitle.

A local employer which has previously established a plan may establish a plan in accordance with the requirements of this Subtitle so long as (i) all amounts held under the previously established plan have been distributed or otherwise paid out in accordance with the terms of such previously established plan and all other obligations of the previously established plan have been satisfied, or (ii) another local employer has been substituted as sponsor of the previously established plan.

(b) A deferred compensation committee shall be appointed by a local employer to act on behalf of the local employer under the model plan or a plan described in section 9001.2(a)(3) of this Subtitle to the extent permitted or required by this Subtitle and by such plan whenever such employer adopts such plan and shall continue in existence, as it may be reconstituted from time to time by the local employer in accordance with applicable law, for so long as such plan remains in existence.

9001.3 Ineligibility. Independent contractors shall not be eligible to participate in any plan.

9001.4 Special provisions. (a) Actuarial tables which distinguish on the basis of sex shall not be utilized for any purpose under any plan.

(b) Any installment distribution option permitted by any plan shall comply with all requirements of sections 457 and 401(a)(9) of the Internal Revenue Code and any treasury regulations promulgated thereunder.

(c) Any plan shall provide clear procedures for the review of domestic relations orders and shall require compliance with all domestic relations orders properly issued in accordance with such procedures and the requirements of applicable law in respect of amounts under the plan.

(d) Any plan established under this Subtitle may permit the loan of any amounts under such plan solely to a participant or beneficiary; *provided* that such plan establishes clear procedures for the administration of such loans and shall require compliance with sections 457 and 72(p) of the Internal Revenue Code and any treasury regulations promulgated thereunder and any other applicable laws.

PART 9002

ESTABLISHMENT OF PLAN

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.
9002.1 Assets held in trust

Sec.
9002.2 Documents to be filed

Section 9002.1 Assets held in trust. (a) A plan established by the board or a local employer shall require (i) that its assets be invested by one or more financial organizations selected by the board or deferred compensation committee, as applicable, and (ii) that, by January 1, 1999 or such other later date as may be permitted under section 457 of the Internal Revenue Code with respect to a plan in existence as of August 20, 1996 and immediately with respect to all other plans, all such assets shall be held in one or more trusts pursuant to one or more trust agreements.

(b) Each trustee designated by the board or deferred compensation committee must be authorized to act as a trustee under applicable law and shall be either a member of the board with respect to the State plan or a member of the relevant deferred compensation committee with respect to a model plan or other plan or a financial organization selected in accordance with the requirements of this Subtitle. A trust agreement between the board or deferred compensation committee and a trustee shall not meet the requirements of this section 9002.1(b) unless it satisfies each of the following requirements:

(1) the trust established by such agreement meets all of the requirements applicable to trusts described in section 457(g) of the Internal Revenue Code;

(2) such agreement provides that the assets of the plan to which such trust relates (i) are held in trust for the exclusive benefit of plan participants and their beneficiaries, (ii) may be used only to pay plan benefits and defray reasonable expenses of administering the plan and (iii) cannot revert to the State or local employer until all plan benefits have been paid to plan participants and beneficiaries in accordance with the terms of the plan;

(3) such agreement names the trustee and provides that, upon the trustee's appointment as such, the trustee shall have exclusive authority and direction to manage and control the assets of the plan, except to the extent that (i) such management and control has been delegated in accordance with the terms of the trust agreement to one or more financial organizations appointed in accordance with this Subtitle, (ii) the trust agreement provides that such trustee shall manage and control the assets of the plan at the direction of the board or deferred compensation committee or at the direction of one or more financial organizations appointed by the board or deferred compensation committee for this purpose, or (iii) the assets of the plan are to be allocated among the investment options available under the plan in accordance with the investment directions of plan participants, which investment directions may be communicated to the trustee by an administrative service agency appointed by the board or deferred compensation committee for this purpose;

(4) to the extent that the trustee performs the duties under this Subtitle of an administrative service agency, such agreement meets all of the requirements under this Subtitle applicable to contracts with administrative service agencies;

(5) to the extent that the trustee performs the duties under this Subtitle of a financial organization, such agreement meets all of the requirements under this Subtitle applicable to contracts with financial organizations; and

(6) such agreement satisfies the other applicable requirements of this Subtitle and any other applicable law.

9002.2 Documents to be filed. (a) Each local employer adopting the model plan or another plan shall file, prior to the acceptance of any deferrals under such plan, with the president for acknowledgment:

(1) a completed copy of the plan supplying all relevant information, including without limitation the information which is bracketed in the model plan;

(2) an executed copy of the trust agreement entered into with each trustee;

(3) a certification signed by its chief executive officer and chief legal officer stating (i) that the local employer is aware that there are three options for adopting a plan as described in section 9001.2(a) of this Subtitle, that the local employer has made an informed choice in determining to adopt the plan and that the local employer understands the ongoing responsibilities it is undertaking, including without limitation pursuant to this Subtitle, section 457 of the Internal Revenue Code and the plan, by adopting the plan; (ii) that the local employer's plan and trust agreement meet the requirements of section 457 of the Internal Revenue Code and of all other applicable State and local laws including this Subtitle; and (iii) that all required approvals of any local governing body or officer have been issued; provided, however, that in executing any such certification with respect to the adoption or amendment of the model plan, the chief executive officer and chief legal officer may rely on any ruling or determination issued by the Internal Revenue Service in respect of the model plan or any amendment to the model plan promulgated by the board;

(4) the name of each trustee, independent consultant, financial organization, firm of certified public accountants and administrative service agency which has been selected to provide services in respect of the plan and a certification signed by its chief executive officer and chief legal officer stating that each such trustee, independent consultant, financial organization, firm of certified public accountants and administrative service agency has been duly selected to provide services in accordance with the provisions of this Subtitle;

(5) evidence that bonds and insurance have been secured pursuant to the provisions of this Subtitle; and

(6) except to the extent that fiduciary acknowledgment is not required under section 9003.6 of this Subtitle, evidence that each trustee, independent consultant,

administrative service agency and financial organization selected by the deferred compensation committee will act as a fiduciary under section 457(g) of the Internal Revenue Code and under State and common trust law principles with respect to all trusteeship, administrative or investment matters for which it has assumed responsibility and the plan will be indemnified as a result of any cause of action brought against it as a result of acts or omissions of the trustee, independent consultant, administrative service agency or financial organization together with the reasonable costs of litigation arising therefrom.

(b) No deferral may be accepted under any plan until the board has been furnished with a written acknowledgment by the president that all of the documents and materials required by subdivision (a) and, to the extent applicable, subdivision (d) of this section 9002.2 have been received.

(c) No amendment may be made to a model plan other than an authorized amendment promulgated by the Board; provided, however, that notwithstanding any other provision hereof, the requirements of the preceding sentence shall be effective as of January 1, 1997 and shall not affect the validity of any amendment to a model plan which was duly adopted in accordance with the then-effective requirements of this section 9002.2 prior to January 1, 1997. Any amendment to a model plan made by the local employer which maintains such model plan shall require the same proof and procedures contained in subdivisions (a) and (b) of this section. Where one or more of the documents and materials required by subdivision (a) of this section contains identical information as submitted on the most recent filing of such documents and materials, a local employer that has adopted an amendment authorized by the Board may submit an affidavit, on a form provided by the Board, attesting that the documents and materials required by subdivision (a) of this section have not changed since the local government last submitted such documents and materials. In the event that one or more of the documents or materials required by subdivision (a) of this section has changed, such documents and materials are required to be submitted at the same time the affidavit is submitted to the president.

(d) Each local employer adopting or amending a plan other than the model plan or amending the model plan in a manner other than authorized by the board shall file, prior to the acceptance of any deferrals under such plan, with the president for acknowledgment (i) a ruling or determination issued by the Internal Revenue Service stating that such plan or form of plan meets the requirements of section 457 of the Internal Revenue Code applicable to eligible deferred compensation plans or (ii) an opinion of legal counsel that such plan meets the requirements of section 457 of the Internal Revenue Code applicable to eligible deferred compensation plans.

PART 9003

SELECTION OF AND AGREEMENTS WITH TRUSTEES, INDEPENDENT CONSULTANTS, ADMINISTRATIVE SERVICE AGENCIES, FINANCIAL ORGANIZATIONS AND CERTIFIED PUBLIC ACCOUNTANTS

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.	Sec.
9003.1 Contracts or agreements	9003.5 Miscellaneous requirements
9003.2 Competitive proposals	9003.6 Acknowledgment
9003.3 Criteria for selection	9003.7 Precluded investments
9003.4 Provision of diverse investments	9003.8 Transfer of assets

Section 9003.1 Contracts or agreements. (a) The contracts or agreements effecting the appointment of any trustee, independent consultant, administrative service agency, financial organization or firm of certified public accountants to provide services in respect of a plan shall be awarded pursuant to the procedures set forth in this Part 9003 and shall comply with the requirements of this Subtitle. Contracts or agreements with administrative service agencies shall not be required in whole or in part if an appointed trustee or financial organization, in the opinion of the board or of the deferred compensation committee, as applicable, is able to perform all or a portion of the required services as effectively. Contracts or agreements with independent consultants shall not be required in whole or in part if, in the opinion of the board or of the deferred compensation committee, as applicable, such board or deferred compensation committee is able to effectively make decisions with respect to the investment of plan assets, the allocation of plan assets among financial organizations and the selection of financial organizations to invest the assets of a plan without the advice of a consultant. Upon the expiration or termination of any contract or agreement entered into in accordance with this Subtitle, the board or deferred compensation committee, as applicable, shall follow the procedures set forth in this Part 9003 in awarding new contracts and entering into new agreements. Unless they are entered into in accordance with the procedures set forth in this Part 9003 and are in all other respects in substantial compliance with the requirements of this Subtitle, all contracts or agreements entered into in respect of a plan shall be null and void and new competitive proposals shall be submitted pursuant to the procedures set forth in this Part 9003. Notwithstanding the previous sentence, no trustee who is the only trustee of a plan shall be forced to resign the position of trustee solely by operation of this section 9003.1 prior to the time such person's successor as trustee has been duly qualified and appointed.

(b) Notwithstanding section 9003.1(a) of this Subtitle, a deferred compensation committee may contract with a firm of certified public accountants selected as a result of a competitive proposal undertaken by the local employer that expressly included in the scope of services an audit of the deferred compensation plan sponsored by the local government to be conducted in compliance with section 9005.1 of this Subtitle. The competitive request for proposals must be in general compliance with section 9003.2 of this Subtitle, except for the requirement of notice in the *State Register*. The deferred compensation committee must adhere to the criteria contained in section 9003.3 of this Subtitle in the selection of such auditor made pursuant to this paragraph (b). A firm of certified public accountants selected by a deferred

compensation committee pursuant to this paragraph (b) shall be subject to the provisions of section 9003.5 of this Subtitle. The firm of certified public accountants may be the same firm that is under contract with the local employer for other auditing services of the local employer.

(c) Notwithstanding section 9003.1(a) of this Subtitle, the board or a deferred compensation committee may contract with a financial organization for the purposes of investing a portion of the assets of a plan selected as a result a search conducted by the independent consultant to the board or deferred compensation committee of financial organizations that provide such services. The board or deferred compensation committee shall provide direction to the independent consultant, in writing, designating the generally recognized investment classification and sub-classification that the independent consultant is to make a recommendation to the board or deferred compensation committee after the conduct of a search of qualified financial organizations and the number of financial organizations that is to be recommended, which number shall not be less than three. The independent consultant must adhere to the criteria contained in section 9003.3 of this Subtitle prior to recommending any financial organization to the Board or deferred compensation committee. The independent consultant must recommend at least the number of financial organizations requested by the board or deferred compensation committee in each generally accepted investment classification and sub-classification and a detailed analysis of each financial organization being recommended, including a comparison of such recommended financial organization to the appropriate and generally recognized benchmarks for such investment classification and sub-classification. The board or deferred compensation committee may select one or more financial organizations for the purposes of investing a portion of the assets of a plan from the recommendation of the independent consultant. The provisions of this Section 9003.1(c) apply to the board and any deferred compensation committee that enters into contracts with financial organizations separately from any other contracts or agreements effecting the appointment of any trustee, independent consultant, administrative service agency, or firm of certified public accountants to provide services in respect of a plan. (added June 18, 2008)

9003.2 Competitive proposals. All contracts and agreements in respect of a plan shall be awarded only after receiving competitive proposals; provided, however, that no competitive proposal or bidding shall be necessary for the board or a deferred compensation committee to serve as the trustee of a plan under its authority or with respect to financial organizations selected pursuant to Section 9003.1(c). The board or deferred compensation committee, as applicable, shall cause to be published an announcement requesting competitive proposals. Such announcement shall be published in the *State Register* and in the official newspaper or newspapers, if any, or otherwise in an appropriate newspaper designated for such purposes, at least 90 days prior to the date on which the contract or agreement will be awarded, and shall request proposals within a specified time period from the date of publication. (amended June 18, 2008)

9003.3 Criteria for selection. (a) In reviewing competitive proposals and selecting a trustee, independent consultant, financial organization, administrative service agency or a firm of certified public accountants, the board or deferred compensation committee, as applicable, shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man or woman acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; provided, however, that the board

or deferred compensation committee, as applicable, may reasonably rely on the evaluation of such competitive proposals made by its properly selected independent consultants in any case other than their own selection. The board or deferred compensation committee, as applicable, shall consider, as applicable, in selecting a trustee, independent consultant, financial organization, administrative service agency or firm of certified public accountants among other items, the following:

(1) the stability of the independent consultant, administrative service agency, firm of certified public accountants or financial organization as evidenced by its experience or investment record over a substantial period of time;

(2) the ability of the trustee, independent consultant, administrative service agency, firm of certified public accountants or financial organization to meet its contractual obligations, provide the services set forth in the proposals, and to comply with the reporting requirements to the board or deferred compensation committee, as applicable, and participants, and with all requirements of the plan, section 457 of the Internal Revenue Code and this Subtitle;

(3) the variety and types of investment products offered by the financial organization, and the ability to transfer among such products offered by a different financial organization with which the board or deferred compensation committee may have a contract;

(4) the trustee's, independent consultant's, administrative service agency's, firm of certified public accountants' or financial organization's experience with plans that meet the requirements for qualification under the Internal Revenue Code, eligible deferred compensation plans under section 457 of the Internal Revenue Code, individual retirement accounts, tax-sheltered annuities under section 403(b) of the Internal Revenue Code, and the trustee's, independent consultant's, administrative service agency's, firm of certified public accountants' or financial organization's familiarity with public pension systems and the fiduciary obligations of administrators, investment managers and trustees under the Employee Retirement Income Security Act of 1974 and similar federal or State statutes;

(5) whether the trustee, investment, consulting, auditing or administrative products and services described in the proposal are of the highest quality and soundness in all respects;

(6) the overall cost efficiency of the proposal; and

(7) the overall quality and scope of the services to be provided to plan participants under the trustee's, independent consultant's, administrative service agency's, firm of certified public accountants' or financial organization's proposal.

All proposals shall be in writing, contain a representation that the proposal complies with all requirements of this Subtitle and clearly indicate all direct fees, indirect fees and charges. All brokerage fees and related charges shall be negotiated so that the best competitive rate under the circumstances is obtained.

(b) Each proposal submitted under this Part 9003 shall fully disclose any sponsorship or similar arrangement. Such arrangements shall be precluded unless it can be demonstrated by clear and convincing evidence that the arrangement is cost effective.

(c) Before a contract or agreement between a deferred compensation committee and a trustee, independent consultant, administrative service agency, firm of certified public accountants or financial organization may become effective, the deferred compensation committee must submit in writing to the president the name of such selected trustee, independent consultant, administrative service agency, firm of certified public accountants or financial organization and a certification signed by its chief executive officer and chief legal officer stating that each such trustee, independent consultant, administrative service agency, firm of certified public accountants or financial organization has been duly selected to provide services in accordance with the provisions of this Subtitle.

9003.4 Provision of diverse investments. The board and each deferred compensation committee shall appoint, with respect to the plan under their control, in accordance with the requirements of this Subtitle, one or more financial organizations such that amounts held under the plan may be at all times invested in one or more of a broad range of investment alternatives, including without limitation a diverse selection of fixed income and equity investments.

9003.5 Miscellaneous requirements. (a) All contracts and agreements entered into with a trustee, an independent consultant, a financial organization, a firm of certified public accountants or an administrative service agency shall be in writing, shall be awarded on the basis of a competitive bid conducted or a search conducted in accordance with Section 9003.1(c) in respect of the specific contract or agreement in accordance with this Part 9003, shall not exceed five years in duration, and shall impose no penalties or surrender charges for the transfer of assets or responsibilities on expiration of the contract or agreement. Where the board or a deferred compensation committee enters into a contract or agreement with a trustee, a financial organization or organizations, and an administrative service agency and such trustee, financial organization or organizations and administrative service agency is selected by the board or deferred compensation committee independently from each other service, such contracts or agreements shall not exceed ten years in duration. Notwithstanding the previous sentence, no trustee who is the only trustee of a plan shall be forced to resign the position of trustee solely by operation of this section 9003.5(a) prior to the time such person's successor as trustee has been duly qualified and appointed. (amended June 18, 2008)

(b) Notwithstanding Section 9003.5(a), when the board or a deferred compensation committee deems it to be in the best interest of the plan, the board or any deferred compensation committee may extend, in writing, by vote duly taken, any contract or agreement entered into with a trustee, an independent consultant, a financial organization, a firm of certified public accountants or an administrative service agency for a duration not to exceed two consecutive one-year periods and with the consent of such party; *provided, however*, that any such one-year extension shall be implemented only upon (1) the expiration of the initial term of such contract or agreement in the case of the first one-year extension, or (2) the expiration of the first one-year extension in the case of the second one-year extension. In the event that the board or a deferred compensation committee implements such an extension, the board or the deferred compensation

committee shall describe in writing the reasons for its determination that the extension is in the best interest of the plan.

(c) Neither the Board nor any deferred compensation committee may permit, nor enter into an agreement that permits, a trustee, financial organization, independent consultant, administrative service agency or any other person to select one or more other trustees, administrative service agencies, firms of certified public accountants, independent consultants, or financial organizations to provide services in respect of a plan. Notwithstanding the previous sentence, this section 9003.5(c) shall not prohibit the Board or any deferred compensation committee from entering into an agreement with

(1) a financial organization selected and retained by the Board or a deferred compensation committee, as applicable, in accordance with this Subtitle, that provides for self-directed investment services through a mutual fund or brokerage “window” arrangement sponsored by such financial organization with respect to a plan, *provided* that such self-directed investment services shall not be the sole investment alternative provided under a plan and that the Board and the deferred compensation committee shall establish clear guidelines regarding participants' access to, and level of participation in, such self-directed investment services

(2) a financial organization selected and retained by the Board or a deferred compensation committee, as applicable, in accordance with this Subtitle, to manage the stable income fund of such plan which authorizes such financial organization to engage in one or more of the following fund management activities with respect to the assets of a stable income fund:

(i) the investment of the assets of the stable income fund in one or more guaranteed investment contracts, provided, however, that such guaranteed investment contract shall not exceed five years in duration;

(ii) the purchase of one or more wrap contracts with respect to the assets of the stable income fund; or,

(iii) the periodic allocation of the assets of the stable income fund between or among two or more other financial organizations selected and retained by the Board or deferred compensation committee, as applicable, in accordance with this Subtitle,

provided that, in each case,

(i) the written agreement between the Board or deferred compensation committee, as applicable, and the financial organization, expressly authorizes the applicable fund management activities and states that the financial organization is a fiduciary to the plan with respect to the fund management activities so authorized;

(ii) any such fund management activity is undertaken by the financial organization in accordance with reasonable practices of the financial organization

applicable to its clients generally, and the financial organization receives no fee or other consideration from any person (other than the plan) related to such fund management activity;

(iii) the guaranteed investment contract or wrap contract, as applicable, imposes no penalties or surrender charges for the transfer of assets or responsibilities on expiration of the contract or agreement;

(iv) the trustee of the plan continues to be the owner on behalf of the plan of all of the assets of the stable income fund; and,

(v) any such fund management activity complies with the criteria for selection and reporting of section 9003.3 of this Subtitle and the then effective investment policies and guidelines of the Board or deferred compensation committee, as applicable, related to the stable income fund.

A financial organization engaged in the management activities described in paragraph (2) of this section 9003.5(c) shall do so in accordance with the procedures of this paragraph (2) and with other provisions of this Subtitle to the extent such other provisions are incorporated into this paragraph (2).

9003.6 Acknowledgment. Except as otherwise provided in this section 9003.6, each trustee, independent consultant, administrative service agency and financial organization so appointed shall acknowledge in writing that it is a fiduciary with respect to all administrative or investment matters for which it has assumed responsibility with respect to a plan. Notwithstanding the foregoing, no such fiduciary acknowledgment shall be required pursuant to this section 9003.6 from a financial organization (i) which issues a guaranteed investment contract, or (ii) which is the manager of an open-ended investment company registered under the Investment Company Act of 1940, as now in effect or as hereinafter amended, solely by reason of the investment, upon the specific direction of a trustee, another financial organization, the Board, a deferred compensation committee or an administrative service agency acting in accordance with the terms of the plan to implement the investment directions of one or more participants, of amounts held under the plan in shares of such open-ended investment company.

9003.7 Precluded investments. No contract or agreement entered into with a financial organization may provide for the investment of any amounts under a plan in any annuity contract providing for a term which could exceed five years or which is measured by one or more natural lives or any life insurance or other contract providing traditional death benefits.

9003.8 Transfer of assets. All amounts deferred under a plan, together with all necessary investment instructions, shall be paid by the State or local employer as promptly as possible, but in no event later than two business days from the applicable payroll date, to an appointed trustee which shall then pay such amounts as promptly as possible, but in no event later than one business day following receipt thereof by such trustee, to one or more appointed financial organizations for investment, and upon receipt thereof by each such financial organization shall, if not otherwise invested, be transferred to an interest-bearing account to hold such amounts in cash or cash equivalent investments within one business day, where such

amounts may remain until the financial organization receives all necessary investment instructions or otherwise determines it prudent to transfer such amounts to another investment fund.

PART 9004

SOLICITATION AND EDUCATION

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.

9004.1 Provisions

Section 9004.1 Provisions. No trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency nor any of their agents shall use information obtained by reason of its appointment in respect of a plan as a trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency to solicit or otherwise induce any person to invest in, purchase, utilize or act in any other manner regarding any products or services made available by such trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency. Educational materials designed to acquaint employees with the benefits of such plan may be provided by a financial organization or administrative service agency upon prior approval by the Board or deferred compensation committee, as applicable. All information obtained in connection with any services performed or proposed to be performed in respect of a plan shall be confidential and used exclusively for purposes relating to such plan and expressly contemplated by an agreement entered into with the Board or deferred compensation committee, as applicable, in accordance with the requirements of this Subtitle. Neither the Board nor any deferred compensation committee shall enter into any agreement in respect of a plan with a trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency which permits the use of any information obtained by reason of appointment as a trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency to solicit or otherwise induce any person to invest in, purchase, utilize or act in any other manner regarding any products or services made available by such trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency for any purpose not directly related to the administration of the plan and the investment of plan assets in accordance with the requirements of this Subtitle.

PART 9005

AUDITING, BONDING AND INSURANCE

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.	Sec.
9005.1 Financial Statements, Auditing and Agreed Upon Procedures	9005.3 Statements
9005.2 Authority of board and committee	9005.4 Bonding and insurance

Section 9005.1 Financial Statements, Auditing and Agreed-Upon Procedures

Reports. The board, with respect to the State plan, and the deferred compensation committee, with respect to any other plan, shall be responsible for causing such plan to be in compliance with this Section 9005 for each plan year.

(a) Subject to paragraph (c) of this Section 9005.1, a plan shall be subject to this paragraph (a) for a plan year if the plan has fewer than 100 participants as of the last day of the plan year. If a plan is subject to this paragraph (a) for a plan year, the deferred compensation committee shall:

(1) prepare, or cause to be prepared, for the plan year an unaudited financial statement of the net assets available for benefits and the related statements of changes in net assets available for benefits for the plan year-end; and

(2) engage, or cause to be engaged, in accordance with the requirements of Part 9003 of this Subtitle, a certified public accountant to conduct a review of the plan's activities during the plan year and to produce an agreed-upon procedures report for the plan year, which report shall specify the procedures and the results of the procedures by such firm of certified public accountants in the review of each of the following items (and any other additional items as may be required by the deferred compensation committee for the plan):

(i) whether participant account balances, by investment option and in the aggregate as of the plan-year end, as reported by the administrative service agency for the plan, agree to the value of the assets held by the trustee of the plan by investment option and in the aggregate as of plan-year end;

(ii) whether participant deferrals reported by the plan sponsor, by individual participant and in the aggregate, for the plan year agree with the deferrals received by the trustee of the plan for the plan year;

(iii) whether participant deferrals for the plan year were properly authorized and accurately remitted to the trustee of the plan in accordance with the timing and other requirements of the plan document (or industry practice if no direction is provided in the plan document);

(iv) whether the plan properly and separately accounted for pre-tax and, if applicable, designated Roth contributions deferred or contributed for the plan year;

(v) whether maximum contribution limitations and minimum required distribution requirements were properly implemented for the plan year;

(vi) whether participant requests for lump sum and installment benefit distributions for the plan year were properly authorized and processed in accordance with the plan document and contractual provisions (or industry practice, if no direction is provided in the plan document or applicable contracts);

(vii) whether participant requests for unforeseeable emergency withdrawals during the plan year were processed according to written procedures, properly authorized and properly documented;

(viii) whether participant requests for plan loans during the plan year were processed according to written procedures and were properly authorized and documented;

(ix) whether participant requests for deferral amount changes and asset allocation changes for the plan year were processed accurately and in a timely manner in accordance with the plan document and applicable contract provisions (or industry practice, if no direction is provided in the plan document or applicable contracts);

(x) whether all plan-level and participant-level fees for the plan year were disclosed to participants, were allocated in accordance with written procedures and on a uniform basis and were assessed solely to support operations of the plan; and

(xi) whether, for the plan year, employees who were eligible during that plan year to elect to participate in the plan were provided with written notification of the plan and enrollment opportunities.

(3) The specific procedures and methods applied to each item covered by paragraph (a)(2) of this Section 9005.1 shall be determined in the professional judgment of the certified public accountant in accordance with generally accepted industry standards in conjunction with the deferred compensation committee for the plan prior to the firm's performance of the agreed-upon procedures on the plan.

(b) A plan shall be subject to this paragraph (b) for a plan year if it is the State plan or, subject to paragraph (c) of this Section 9005.1, if the plan has 100 or more participants as of the last day of the plan year. If a plan is subject to this paragraph (b) for a plan year, the board or deferred compensation committee, as applicable, shall:

(1) prepare, or cause to be prepared, a financial statement of the net assets available for benefits and the related statements of changes in net assets available for benefits for the plan year-end, which statements shall be prepared in accordance with Governmental Accounting Standards Board Statement 32, "Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans", or any successor statement thereto; and

(2) engage, or cause to be engaged, in accordance with the requirements of Part 9003 of this Subtitle, a certified public accountant to conduct an audit of the financial statements described in paragraph (b)(1) of this Section 9005.1 in accordance with auditing standards generally accepted in the United States of America.

(c) The following rules shall apply to plans that would otherwise become subject to paragraph (a) or (b) of this Section 9005.1 (or cease to be subject to paragraph (a) or (b) of this Section 9005.1) from one plan year to the next succeeding plan year as a result of an increase or decrease in the number of participants in the plan.

(1) A plan that (i) was subject to paragraph (a) of this Section 9005.1 for a prior plan year and that has complied with the requirements set forth in paragraph (a) above for that plan year and (ii) becomes subject to paragraph (b) of this Section 9005.1 for the current plan year by virtue of having 100 or more participants as of the last day of the current year, may elect to comply with the provisions of paragraph (a) of this Section 9005.1 for such current plan year, and, if such election is made, shall not be subject to the requirements of paragraph (b) of this Section 9005.1 for the current year.

(2) A plan that (i) was subject to paragraph (b) of this Section 9005.1 for a prior plan year and (ii) would be subject, but for the operation of this paragraph (c)(2), to paragraph (a) of this Section 9005.1 for the current plan year by virtue of having fewer than 100 participants as of the last day of the current plan year, shall be required to continue to comply with the provisions of paragraph (b) of this Section 9005.1 for such current plan year and shall not become eligible to utilize the procedures in paragraph (a) of this Section 9005.1.

(3) Example: Plan X has 90 participants as of the last day of Plan Year 1, and accordingly, the deferred compensation committee of Plan X causes the plan to comply with the financial statement and agreed-upon procedures requirements described in paragraph (a) of this Section 9005.1 with respect to Plan Year 1. On the last day of Plan Year 2, Plan X has 110 participants. Plan X may elect to continue to comply with the provisions of paragraph (a) of this Section 9005.1 and will not be subject to the audit requirements of paragraph (b) for Plan Year 2.

(4) Example. Plan Y has 110 participants as of the last day of Plan Year 1, and accordingly, the deferred compensation committee of Plan Y causes the plan to comply with the financial statement and audit requirements described in paragraph (b) of this Section 9005.1 with respect to Plan Year 1. On the last day of Plan Year 2, Plan Y has 90 participants. Plan Y must continue to comply with the provisions of paragraph (b)

of this Section 9005.1 and will not be permitted to rely on the agreed-upon procedures provisions of paragraph (a) of this Section 9005.1 for Plan Year 2.

(d) The deferred compensation committee for a plan subject to paragraph (a) of this Section 9005.1 for a given plan year may elect to comply with the requirements of paragraph (b) of this Section 9005.1 for such plan year.

(e) For purposes of this Section 9005.1, "participant" means any person who, as of the last day of a plan year, has an account balance under the plan that is greater than zero.

(f) The agreed-upon procedures requirement described in paragraph (a)(2) of this Section 9005.1 and the audit requirement described in paragraph (b)(2) of this Section 9005.1 shall be completed by no later than 6 months following the end of the plan year to which such agreed-upon procedures or audit relates. Provided, however, for a plan year that ended on or after December 31, 2010 and before December 31, 2011, the agreed-upon procedures or audit relating to such plan year shall be completed by no later than 12 months following the end of such plan year.

(g) The board or deferred compensation committee, as applicable, for a plan shall adopt and communicate to plan participants written procedures whereby a plan participant may request in writing or electronically to receive the financial statements and agreed-upon procedures report described in paragraph (a)(2) of this Section 9005.1 and the audited financial statements and accompanying auditors report described in paragraph (b)(2) of this Section 9005.1 at no cost to the participant other than a reasonable charge for copying and postage. The board or deferred compensation committee, as applicable, will be deemed to have satisfied the requirements of this paragraph (g) if participants (i) are able to obtain the applicable reports and financial statements for the plan or (ii) are directed to a web site associated with the plan or the State or local employer sponsor of the plan that contains such information in a readily readable and downloadable format.

(h) The board or deferred compensation committee, as applicable, shall file with the president a complete and accurate copy of the financial statements and agreed-upon procedures report described in paragraph (a)(2) of this Section 9005.1 or the audited financial statements and accompanying auditors report described in paragraph (b)(2) of this Section 9005.1 promptly following delivery of such statements and reports to the board or deferred compensation committee, as applicable.

(i) The provisions of this Section 9005.1 shall be in effect for each plan year of a plan ending on or after December 31, 2010. (added June 15, 2011)

9005.2 Authority of board and committee. The board and each deferred compensation committee shall receive reports from its agents and appointed trustees, independent consultants, administrative service agencies and financial organizations, and shall promptly terminate or amend such agency, arrangement, agreement or contract with such trustee, independent consultant, administrative service agency or financial organization if its obligations under this Subtitle or otherwise so require. To the extent necessary to comply with this section 9005.2 or

section 9006.1, the board or deferred compensation committee, as applicable, shall have the authority to serve as a temporary or interim trustee until a successor trustee is appointed in accordance with this Subtitle.

9005.3 Statements. Each participant in a plan shall be furnished with a statement at least quarterly from the trustee or administrative service agency. Such statement shall indicate the balance of his or her account under the plan, the participant's interest in each investment option under the plan and any other data which the board or deferred compensation committee, as applicable, shall determine to be relevant. Each participant in a plan shall be furnished with clear and complete written disclosure no less frequently than annually (i) of all fees and expenses paid out of or charged against any assets of the plan, including all fees and expenses netted against any investment return on amounts held under the plan and (ii) of the allocation of all such fees and expenses to and among participants' accounts under the plan.

9005.4 Bonding and insurance. (a) Each person appointed in accordance with this Subtitle or outside agent which handles, holds, invests, maintains custody of or directs disbursement of funds or serves as a trustee shall be bonded with a customary or usual bond, obtained from an organization duly authorized and licensed to provide such bond in the State of New York, to protect against any loss resulting from fraud or dishonesty by such person or the employees, officers and agents thereof.

(b) The amount of the bond shall not be less than the lesser of:

(1) 100 percent of the amount under the plan managed or administered or held by such person; or

(2) \$25 million; provided, however, that the board or deferred compensation committee, as applicable, may, in its discretion, require a bond in a greater amount if the board or deferred compensation committee determines that such greater amount is necessary or advisable to adequately protect the plan from any loss resulting from fraud or dishonesty by such person.

The cost of any such bond for a trustee who is a member of the board or deferred compensation committee shall be treated as a reasonable and necessary expense of administering the plan and may be paid from the assets of the plan.

(c) Each trustee, independent consultant, administrative service agency and financial organization appointed in accordance with this Subtitle shall provide appropriate evidence of adequate insurance, and the cost of any such insurance for a trustee who is a member of the board or deferred compensation committee, as applicable, shall be treated as a reasonable and necessary expense of administering the plan and may be paid from the assets of the plan.

PART 9006

COMPLIANCE

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.

9006.1 Authority of board

9006.2 Documentary provisions

Sec.

9006.3 Exemptions

Section 9006.1 Authority of board. Upon notice that any plan or any contract or agreement or other arrangement entered into in respect of a plan does not substantially comply with this Subtitle or any other applicable federal, State or local law, or that a local employer is not ensuring substantial compliance with its plan, the board may investigate, hold hearings and take such action as it deems warranted or appropriate, including but not limited to termination of the plan, contract, agreement or other arrangement.

9006.2 Documentary provisions. Every contract or agreement entered into by the board or a deferred compensation committee in respect of a plan shall contain a provision that the agreement or contract is subject to the plan and to this Subtitle, and that such plan and this Subtitle are made a part thereof.

9006.3 Exemptions. In exceptional circumstances, and where the board deems it to be in the best interest of the plan, the board in its sole discretion may grant an exemption from the applicability of any of the rules and regulations set forth under this Subtitle; *provided, however,* that, any exemption granted hereunder must be in accordance with the requirements of the Internal Revenue Code, the plan and the board's fiduciary obligations. In the event that the board grants such an exemption, the board shall describe in writing the exceptional circumstances and explain the reasons for its determination that the exemption is in the best interests of the plan. All requests for such exemption must be submitted to the board in writing and contain a detailed explanation of the reasons why an exemption has been requested.

Attachment C

Erie County, NY - 457 Deferred Compensation Plan

Investment Menu - As of December 31, 2015

VALIC

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Asset Class	Fund Name	Ticker	Plan Assets	Per Participant/ Flat Dollar Fee	Net Expense Ratio	Admin or M&E Expense	Add'l Asset Based Fee	Total Charges (a+b+c)	Revenue Share ¹	Short-term Redemption Policy/Fee	Date Added to Plan	(a)	(b)	(c)
MISCELLANEOUS REGION	FIDELITY CANADA	FICDX	\$497,839	N/A	1.15%	N/A	N/A	1.15%	0.25%	1.5 /90 days	9/1/2004			
MISCELLANEOUS REGION	FIDELITY NORDIC	FNORX	\$94,907	N/A	1.00%	N/A	N/A	1.00%	0.25%	1.5 /90 days	9/1/2004			
CHINA REGION	FIDELITY CHINA REGION	FHKCX	\$427,605	N/A	0.99%	N/A	N/A	0.99%	0.25%	1.5 /90 days	9/1/2004			
PACIFIC/ASIA EX-JAPAN STK	FIDELITY EMERGING ASIA	FSEAX	\$483,230	N/A	1.09%	N/A	N/A	1.09%	0.25%	1.5 /90 days	9/1/2004			
JAPAN STOCK	FIDELITY JAPAN	FJPNX	\$38,637	N/A	0.80%	N/A	N/A	0.80%	0.25%	1 /90 days	9/1/2004			
JAPAN STOCK	FIDELITY JAPAN SMALLER COMPANIES	FJSCX	\$62,884	N/A	1.00%	N/A	N/A	1.00%	0.25%	1 /90 days	9/1/2004			
DIVERSIFIED PACIFIC/ASIA	FIDELITY PACIFIC BASIN	FPBFX	\$34,918	N/A	1.17%	N/A	N/A	1.17%	0.25%	1.5 /90 days	9/1/2004			
LATIN AMERICA STOCK	FIDELITY LATIN AMERICA	FLATX	\$180,192	N/A	1.13%	N/A	N/A	1.13%	0.25%	1.5 /90 days	9/1/2004			
DIVERSIFIED EMERGING MKTS	FIDELITY EMERGING MARKETS	FEMKX	\$1,186,084	N/A	1.05%	N/A	N/A	1.05%	0.25%	1.5 /90 days	9/1/2004			
DIVERSIFIED EMERGING MKTS	MORGAN STANLEY INSTITUTIONAL EMERGING MARKETS PORTFOLIO A	MMKBX	\$36,381	N/A	1.50%	N/A	N/A	1.50%	0.40%	2 /30 days	9/1/2004			
DIVERSIFIED EMERGING MKTS	OPPENHEIMER DEVELOPING MARKETS A	ODMAX	\$1,033,376	N/A	1.30%	N/A	N/A	1.30%	0.50%	0	9/1/2004			
DIVERSIFIED EMERGING MKTS	USAA EMERGING MARKETS	USEMX	\$830,539	N/A	1.50%	N/A	N/A	1.50%	0.15%	0	9/1/2004			
EUROPE STOCK	FIDELITY EUROPE	FIEUX	\$130,735	N/A	1.03%	N/A	N/A	1.03%	0.25%	1 /30 days	9/1/2004			
FOREIGN SMALL/MID GROWTH	FIDELITY INTERNATIONAL SMALL CAP	FISMX	\$147,479	N/A	1.32%	N/A	N/A	1.32%	0.25%	2 /90 days	9/1/2004			
FOREIGN SMALL/MID GROWTH	TOUCHSTONE INTL SMALL CAP Y	TNSYX	\$15,696	N/A	1.31%	N/A	N/A	1.31%	0.15%	0	9/1/2004			
FOREIGN SMALL/MID VALUE	TEMPLETON FOREIGN SMALLER COMPANIES A	FINEX	\$38,296	N/A	1.67%	N/A	N/A	1.67%	0.40%	0	9/1/2004			
FOREIGN LARGE GROWTH	FIDELITY ADVISOR INTERNATIONAL DISCOVERY	FIGRX	\$113,603	N/A	0.99%	N/A	N/A	0.99%	0.25%	1 /30 days	9/1/2004			
FOREIGN LARGE GROWTH	FIDELITY DIVERSIFIED INTERNATIONAL	FDIVX	\$5,305,215	N/A	1.00%	N/A	N/A	1.00%	0.25%	1 /30 days	9/1/2004			
FOREIGN LARGE GROWTH	AMERICAN FUNDS EUROPACIFIC GROWTH R4	REREX	\$576,325	N/A	0.84%	N/A	N/A	0.84%	0.35%	0	9/1/2004			
FOREIGN LARGE GROWTH	FIDELITY INTERNATIONAL CAPITAL APPRECIATION	FIVFX	\$197,954	N/A	1.13%	N/A	N/A	1.13%	0.25%	1 /30 days	9/1/2004			
FOREIGN LARGE BLEND	FIDELITY SPARTAN INTERNATIONAL INDEX INV	FSIIX	\$2,245,786	N/A	0.20%	N/A	N/A	0.20%	0.00%	1 /90 days	9/1/2004			
FOREIGN LARGE BLEND	FIDELITY OVERSEAS	FOSFX	\$1,063,117	N/A	1.04%	N/A	N/A	1.04%	0.25%	1 /30 days	9/1/2004			
FOREIGN LARGE BLEND	ABERDEEN INTL EQUITY I/S	GIGSX	\$6,077	N/A	1.16%	N/A	N/A	1.16%	0.25%	0	9/1/2004			
FOREIGN LARGE VALUE	TEMPLETON FOREIGN A	TEMFX	\$299,253	N/A	1.18%	N/A	N/A	1.18%	0.40%	0	9/1/2004			
FOREIGN LARGE VALUE	AMERICAN BEACON INTERNATIONAL EQUITY INV	AAIPX	\$48,851	N/A	1.06%	N/A	N/A	1.06%	0.35%	0	9/1/2004			
FOREIGN LARGE VALUE	CALVERT INTERNATIONAL EQUITY A	CWVGX	\$16,260	N/A	1.40%	N/A	N/A	1.40%	0.50%	0	9/1/2004			
WORLD STOCK	TEMPLETON WORLD A	TEMWX	\$173,609	N/A	1.06%	N/A	N/A	1.06%	0.40%	0	9/1/2004			
WORLD STOCK	TEMPLETON GROWTH A	TEPLX	\$457,960	N/A	1.05%	N/A	N/A	1.05%	0.40%	0	9/1/2004			
WORLD STOCK	AMERICAN FUNDS CAPITAL WORLD GROWTH AND INCOME R4	RWIEX	\$2,349,309	N/A	0.79%	N/A	N/A	0.79%	0.35%	0	9/1/2004			
WORLD STOCK	FRANKLIN MUTUAL GLOBAL DISCOVERY A	TEDIX	\$238,357	N/A	1.29%	N/A	N/A	1.29%	0.40%	0	9/1/2004			
WORLD STOCK	JANUS GLOBAL RESEARCH T	JAWWX	\$3,156,428	N/A	0.79%	N/A	N/A	0.79%	0.25%	0	9/1/2004			
WORLD STOCK	FIDELITY WORLDWIDE	FWWFX	\$81,850	N/A	0.96%	N/A	N/A	0.96%	0.25%	1 /30 days	9/1/2004			
WORLD STOCK	MORGAN STANLEY INSTITUTIONAL GLOBAL FRANCHISE PORTFOLIO A	MSFBX	\$39,300	N/A	1.27%	N/A	N/A	1.27%	0.40%	0	9/1/2004			
INDUSTRIALS	FIDELITY SELECT DEFENSE & AEROSPACE PORTFOLIO	FSDAX	\$137,935	N/A	0.79%	N/A	N/A	0.79%	0.25%	0.75 /30 days	9/1/2004			
REAL ESTATE	FIDELITY REAL ESTATE INVESTMENT PORTFOLIO	FRESX	\$1,470,433	N/A	0.78%	N/A	N/A	0.78%	0.25%	0.75 /90 days	9/1/2004			
REAL ESTATE	FIDELITY REAL ESTATE INCOME	FRIFX	\$168,572	N/A	0.83%	N/A	N/A	0.83%	0.25%	0.75 /90 days	9/1/2004			
UTILITIES	FIDELITY TELECOM AND UTILITIES	FIUIX	\$300,003	N/A	0.81%	N/A	N/A	0.81%	0.25%	0	9/1/2004			
SMALL GROWTH	ALGER SMALLCAP GROWTH INSTITUTIONAL INST	ALSRX	\$62,630	N/A	1.24%	N/A	N/A	1.24%	0.50%	0	9/1/2004			
SMALL GROWTH	MORGAN STANLEY INSTITUTIONAL SMALL COMPANY GROWTH PORTFOLIO A	MSSMX	\$45,781	N/A	1.38%	N/A	N/A	1.38%	0.40%	2 /30 days	9/1/2004			
SMALL GROWTH	RICE HALL JAMES MICRO CAP PORTFOLIO INSTL	RHJSX	\$53,239	N/A	1.54%	N/A	N/A	1.54%	0.15%	2 /90 days	9/1/2004			
SMALL GROWTH	INVESCO SMALL CAP GROWTH A	GTSIX	\$101,505	N/A	1.22%	N/A	N/A	1.22%	0.40%	0	9/1/2004			
SMALL BLEND	JOHN HANCOCK SMALL COMPANY A	JCSAX	\$212,824	N/A	1.43%	N/A	N/A	1.43%	0.50%	0	9/1/2004			

SMALL BLEND	FIDELITY SMALL CAP DISCOVERY	FSCRX	\$276,819	N/A	1.06%	N/A	N/A	1.06%	0.25%	1.5/ 90 days	9/1/2004
SMALL BLEND	FIDELITY SMALL CAP STOCK	FSLCX	\$846,950	N/A	0.66%	N/A	N/A	0.66%	0.25%	2/ 90 days	9/1/2004
SMALL BLEND	DREYFUS SMALL CAP STOCK INDEX	DISSX	\$2,026,561	N/A	0.50%	N/A	N/A	0.50%	0.40%	0	9/1/2004
SMALL BLEND	AMERICAN CENTURY SMALL COMPANY INV	ASQIX	\$209,345	N/A	0.87%	N/A	N/A	0.87%	0.35%	0	9/1/2004
SMALL BLEND	FIDELITY STOCK SELECTOR SMALL CAP	FDSCX	\$423,864	N/A	0.77%	N/A	N/A	0.77%	0.25%	0	9/1/2004
SMALL BLEND	JPMORGAN SMALL CAP EQUITY SELECT	VSEIX	\$778,083	N/A	1.00%	N/A	N/A	1.00%	0.25%	0	9/1/2004
SMALL BLEND	CALVERT SMALL CAP VALUE CL A	CCVAX	\$1,685	N/A	1.37%	N/A	N/A	1.37%	0.50%	0	9/1/2004
SMALL VALUE	AMERICAN BEACON SMALL CAP VALUE INV	AVPAX	\$603,982	N/A	1.17%	N/A	N/A	1.17%	0.35%	0	9/1/2004
MID-CAP GROWTH	BARON ASSET RETAIL	BARAX	\$88,552	N/A	1.31%	N/A	N/A	1.31%	0.40%	0	9/1/2004
MID-CAP GROWTH	BARON GROWTH RETAIL	BGRFX	\$615,152	N/A	1.29%	N/A	N/A	1.29%	0.40%	0	9/1/2004
MID-CAP GROWTH	ALGER MIDCAP GROWTH INSTITUTIONAL I	ALMRX	\$278,803	N/A	1.30%	N/A	N/A	1.30%	0.50%	0	9/1/2004
MID-CAP GROWTH	FIDELITY GROWTH STRATEGIES	FDEGX	\$825,115	N/A	0.72%	N/A	N/A	0.72%	0.25%	1.5/ 90 days	9/1/2004
MID-CAP GROWTH	FIDELITY MID-CAP STOCK	FMCSX	\$1,043,295	N/A	0.76%	N/A	N/A	0.76%	0.25%	0.75/ 30 days	9/1/2004
MID-CAP GROWTH	FRANKLIN SMALL-MID CAP GROWTH A	FRSGX	\$420,266	N/A	0.94%	N/A	N/A	0.94%	0.40%	0	9/1/2004
MID-CAP GROWTH	DREYFUS MID CAP GROWTH F	FRSPX	\$56,860	N/A	1.13%	N/A	N/A	1.13%	0.40%	0	9/1/2004
MID-CAP GROWTH	AMG MANAGERS CADENCE MID CAP SVC	MCMYX	\$56,644	N/A	0.97%	N/A	N/A	0.97%	0.25%	0	9/1/2004
MID-CAP GROWTH	MORGAN STANLEY INSTITUTIONAL MID CAP GROWTH PORTFOLIO A	MACGX	\$8,496,684	N/A	1.00%	N/A	N/A	1.00%	0.40%	0	9/1/2004
MID-CAP GROWTH	NEUBERGER BERMAN MID CAP GROWTH	NBMTX	\$31,862	N/A	1.00%	N/A	N/A	1.00%	0.25%	0	9/1/2004
MID-CAP GROWTH	WELLS FARGO DISCOVERY A	WFDAX	\$108,893	N/A	1.20%	N/A	N/A	1.20%	0.55%	0	9/1/2004
MID-CAP GROWTH	WELLS FARGO OPPORTUNITY A	SOPVX	\$71,337	N/A	1.22%	N/A	N/A	1.22%	0.55%	0	9/1/2004
MID-CAP GROWTH	FIDELITY MID CAP GROWTH	FSMGX	\$0	N/A	-	N/A	N/A	-			9/1/2004
MID CAP GROWTH	INVESCO MID CAP GROWTH A	VGRAX	\$64,957	N/A	1.19%	N/A	N/A	1.19%	0.45%	0	9/1/2004
MID-CAP BLEND	FIDELITY SPARTAN EXTENDED MARKET INDEX INV	FSEMX	\$205,848	N/A	0.10%	N/A	N/A	0.10%	0.00%	0.75/ 90 days	9/1/2004
MID-CAP BLEND	DREYFUS MID CAP INDEX	PESPX	\$1,029,046	N/A	0.50%	N/A	N/A	0.50%	0.40%	0	9/1/2004
MID-CAP BLEND	JPMORGAN MID CAP VALUE SELECT	JMV SX	\$850,494	N/A	0.99%	N/A	N/A	0.99%	0.25%	0	9/1/2004
MID-CAP BLEND	ARIEL INVESTOR	ARGFX	\$462,565	N/A	1.03%	N/A	N/A	1.03%	0.35%	0	9/1/2004
MID-CAP BLEND	ARIEL APPRECIATION INVESTOR	CAAPX	\$464,074	N/A	1.13%	N/A	N/A	1.13%	0.35%	0	9/1/2004
MID-CAP BLEND	WELLS FARGO COMMON STOCK A	SCSAX	\$112,397	N/A	1.25%	N/A	N/A	1.25%	0.55%	0	9/1/2004
MID-CAP VALUE	FIDELITY VALUE	FDVLX	\$975,370	N/A	0.84%	N/A	N/A	0.84%	0.25%	0	9/1/2004
MID-CAP VALUE	FIDELITY LOW-PRICED STOCK	FLPSX	\$2,930,836	N/A	0.79%	N/A	N/A	0.79%	0.25%	1.50/ 90 days	9/1/2004
MID-CAP VALUE	FIDELITY LEVERAGED COMPANY STOCK	FLVCX	\$895,237	N/A	0.79%	N/A	N/A	0.79%	0.25%	1.50/ 90 days	9/1/2004
MID-CAP VALUE	FIDELITY MID CAP VALUE	FSMVX	\$0	N/A	0.83%	N/A	N/A	0.83%	0.25%	0.75/ 30 days	9/1/2004
MID-CAP VALUE	FIDELITY STRUCTURED MID VAL VALUE	FSMVX	\$1,781,053	N/A	0.83%	N/A	N/A	0.83%	0.25%	0.75/ 30 days	9/1/2004
MID-CAP VALUE	FIDELITY VALUE STRATEGIES	FSLSX	\$31,415	N/A	0.69%	N/A	N/A	0.69%	0.25%	0	9/1/2004
LARGE GROWTH	FIDELITY FOCUSED STOCK	FTQGX	\$159,919	N/A	0.73%	N/A	N/A	0.73%	0.25%	0	9/1/2004
LARGE GROWTH	FIDELITY NEW MILLENNIUM FUND	FMLX	\$91,560	N/A	0.84%	N/A	N/A	0.84%	0.25%	0	9/1/2004
LARGE GROWTH	FIDELITY MAGELLAN	FMAGX	\$109,009	N/A	0.70%	N/A	N/A	0.70%	0.25%	0	9/1/2004
LARGE GROWTH	FIDELITY OTC PORTFOLIO	FOCPX	\$791,693	N/A	0.83%	N/A	N/A	0.83%	0.25%	0	9/1/2004
LARGE GROWTH	FIDELITY NASDAQ COMPOSITE INDEX	FNCMX	\$566,310	N/A	0.29%	N/A	N/A	0.29%	0.00%	0.75/ 90 days	9/1/2004
LARGE GROWTH	MORGAN STANLEY INSTITUTIONAL GROWTH PORTFOLIO A	MSEGX	\$202,986	N/A	0.83%	N/A	N/A	0.83%	0.40%	0	9/1/2004
LARGE GROWTH	AMG MANAGERS CADENCE CAPITAL APPRECIATION SVC	MCFYX	\$31,816	N/A	0.97%	N/A	N/A	0.97%	0.25%	0	9/1/2004
LARGE GROWTH	NEUBERGER BERMAN SOCIALLY RESPONSIVE	NBSTX	\$62,561	N/A	1.03%	N/A	N/A	1.03%	0.35%	0	9/1/2004
LARGE GROWTH	AMERICAN FUNDS THE GROWTH FUND OF AMERICA R4	RGAEX	\$1,521,890	N/A	0.67%	N/A	N/A	0.67%	0.35%	0	9/1/2004
LARGE GROWTH	FIDELITY EXPORT AND MULTINATIONAL	FEXPX	\$79,172	N/A	0.77%	N/A	N/A	0.77%	0.25%	0.75/ 30 days	9/1/2004
LARGE GROWTH	FIDELITY	FFIDX	\$491,287	N/A	0.52%	N/A	N/A	0.52%	0.25%	0	9/1/2004
LARGE GROWTH	FIDELITY FIFTY	FFTYX	\$0	N/A	-	N/A	N/A	-			9/1/2004
LARGE GROWTH	FIDELITY CAPITAL APPRECIATION	FDCA X	\$1,014,019	N/A	0.83%	N/A	N/A	0.83%	0.25%	0	9/1/2004
LARGE GROWTH	FIDELITY STOCK SELECTOR ALL CAP	FDSSX	\$7,572	N/A	0.73%	N/A	N/A	0.73%	0.25%	0	9/1/2004
LARGE GROWTH	FIDELITY INDEPENDENCE	FDFFX	\$191,425	N/A	0.73%	N/A	N/A	0.73%	0.25%	0	9/1/2004
LARGE GROWTH	FIDELITY GROWTH COMPANY	FDGRX	\$677,743	N/A	0.82%	N/A	N/A	0.82%	0.25%	0	9/1/2004

LARGE GROWTH	FIDELITY BLUE CHIP GROWTH	FBGRX	\$9,379,566	N/A	0.89%	N/A	N/A	0.89%	0.25%	0	9/1/2004
LARGE GROWTH	FIDELITY CONTRAFUND	FCNTX	\$2,307,076	N/A	0.64%	N/A	N/A	0.64%	0.25%	0	9/1/2004
LARGE GROWTH	ALGER CAPITAL APPRECIATION INSTITUTIONAL	ALARX	\$225,520	N/A	1.16%	N/A	N/A	1.16%	0.50%	0	9/1/2004
LARGE GROWTH	NEUBERGER BERMAN FOCUS	NBFCX	\$8,185	N/A	1.10%	N/A	N/A	1.10%	0.35%	0	9/1/2004
LARGE GROWTH	WELLS FARGO GROWTH A	SGRAX	\$74,471	N/A	1.13%	N/A	N/A	1.13%	0.55%	0	9/1/2004
LARGE GROWTH	WELLS FARGO LARGE CAP GROWTH A	STAFX	\$90,758	N/A	1.07%	N/A	N/A	1.07%	0.55%	0	9/1/2004
LARGE GROWTH	ABERDEEN US MULTICAP EQUITY A	GXXAX	\$69,746	N/A	1.17%	N/A	N/A	1.17%	0.50%	0	9/1/2004
LARGE GROWTH	ABERDEEN US MULTICAP EQUITY IS	GXXIX	\$52,426	N/A	0.99%	N/A	N/A	0.99%	0.25%	0	9/1/2004
LARGE GROWTH	DREYFUS RESEARCH GROWTH A	DWOAX	\$12,205	N/A	1.13%	N/A	N/A	1.13%	0.50%	0	9/1/2004
LARGE GROWTH	USAA GROWTH FUND	USAAX	\$496,851	N/A	1.11%	N/A	N/A	1.11%	0.15%	0	9/1/2004
LARGE BLEND	DOMINI SOCIAL EQUITY INV	DSEFX	\$194,276	N/A	1.16%	N/A	N/A	1.16%	0.30%	2/ 30 days	9/1/2004
LARGE BLEND	FIDELITY DISCIPLINED EQUITY	FDEQX	\$424,530	N/A	0.89%	N/A	N/A	0.89%	0.25%	0	9/1/2004
LARGE BLEND	FIDELITY DIVIDEND GROWTH	FDGFX	\$12,778,837	N/A	0.69%	N/A	N/A	0.69%	0.25%	0	9/1/2004
LARGE BLEND	FIDELITY LARGE CAP STOCK	FLCSX	\$209,471	N/A	0.88%	N/A	N/A	0.88%	0.25%	0	9/1/2004
LARGE BLEND	FIDELITY GROWTH & INCOME PORTFOLIO	FGRIX	\$202,569	N/A	0.67%	N/A	N/A	0.67%	0.25%	0	9/1/2004
LARGE BLEND	DAVIS NEW YORK VENTURE A	NYVTX	\$747,564	N/A	0.86%	N/A	N/A	0.86%	0.50%	0	9/1/2004
LARGE BLEND	FIDELITY SPARTAN 500 INDEX	FUSEX	\$10,919,496	N/A	0.10%	N/A	N/A	0.10%	0.00%	0	9/1/2004
LARGE BLEND	FIDELITY SPARTAN TOTAL MARKET INDEX INV	FSTMX	\$1,860,943	N/A	0.10%	N/A	N/A	0.10%	0.00%	0.50/ 90 days	9/1/2004
LARGE VALUE	FIDELITY VALUE DISCOVERY	FVDFX	\$863,012	N/A	0.84%	N/A	N/A	0.84%	0.25%	0	9/1/2004
LARGE VALUE	FIDELITY ADVISOR VALUE STRATEGIES	FSLSX	\$0	N/A	0.69%	N/A	N/A	0.69%	0.25%	0	9/1/2004
LARGE VALUE	AMERICAN FUNDS AMERICAN MUTUAL R4	RMFEX	\$439,283	N/A	64.00%	N/A	N/A	64.00%	0.35%	0	9/1/2004
LARGE VALUE	FRANKLIN MUTUAL SHARES A	TESIX	\$101,932	N/A	1.10%	N/A	N/A	1.10%	0.40%	0	9/1/2004
LARGE VALUE	FIDELITY EQUITY INCOME	FEQIX	\$4,425,752	N/A	0.69%	N/A	N/A	0.69%	0.25%	0	9/1/2004
LARGE VALUE	FIDELITY EQUITY DIVIDEND INCOME	FEQTX	\$65,319	N/A	0.63%	N/A	N/A	0.63%	0.25%	0	9/1/2004
LARGE VALUE	FIDELITY BLUE CHIP VALUE	FBCVX	\$202,904	N/A	0.83%	N/A	N/A	0.83%	0.25%	0	9/1/2004
LARGE VALUE	AMERICAN BEACON LARGE CAP VALUE INV	AAGPX	\$312,556	N/A	0.94%	N/A	N/A	0.94%	0.35%	0	9/1/2004
LARGE VALUE	TOUCHSTONE FOCUSED Y	TFYX	\$5,137	N/A	0.96%	N/A	N/A	0.96%	0.15%	0	9/1/2004
WORLD ALLOCATION	FIDELITY GLOBAL BALANCED	FGBLX	\$42,718	N/A	1.02%	N/A	N/A	1.02%	0.25%	1/ 30 days	9/1/2004
TARGET DATE 2036-2040	FIDELITY FREEDOM 2040	FFFFX	\$3,061,658	N/A	0.75%	N/A	N/A	0.75%	0.25%	0	9/1/2004
TARGET DATE 2031-2035	FIDELITY FREEDOM 2035	FFTHX	\$1,328,921	N/A	0.75%	N/A	N/A	0.75%	0.25%	0	9/1/2004
TARGET DATE 2026-2030	FIDELITY FREEDOM 2030	FFFEX	\$7,064,038	N/A	0.74%	N/A	N/A	0.74%	0.25%	0	9/1/2004
TARGET DATE 2021-2025	FIDELITY FREEDOM 2025	FFTWX	\$2,759,884	N/A	0.70%	N/A	N/A	0.70%	0.25%	0	9/1/2004
TARGET DATE 2016-2020	FIDELITY FREEDOM 2020	FFFDX	\$8,537,604	N/A	0.66%	N/A	N/A	0.66%	0.25%	0	9/1/2004
TARGET DATE 2011-2015	FIDELITY FREEDOM 2015	FFVFX	\$1,231,504	N/A	0.63%	N/A	N/A	0.63%	0.25%	0	9/1/2004
TARGET DATE 2000-2010	FIDELITY FREEDOM 2005	FFFVX	\$352,780	N/A	0.56%	N/A	N/A	0.56%	0.25%	0	9/1/2004
TARGET DATE 2000-2010	FIDELITY FREEDOM 2000	FFFBX	\$0	N/A	-	N/A	N/A	-			9/1/2004
TARGET DATE 2000-2010	FIDELITY FREEDOM 2010	FFFCX	\$4,328,697	N/A	0.60%	N/A	N/A	0.60%	0.25%	0	9/1/2004
RETIREMENT INCOME	FIDELITY FREEDOM INCOME	FFFAF	\$806,758	N/A	0.49%	N/A	N/A	0.49%	0.25%	0	9/1/2004
AGGRESSIVE ALLOCATION	FIDELITY FOUR-IN-ONE INDEX	FFNOX	\$377,026	N/A	0.22%	N/A	N/A	0.22%	0.00%	0	9/1/2004
AGGRESSIVE ALLOCATION	FIDELITY STRATEGIC DIVIDEND & INCOME	FSDIX	\$98,596	N/A	0.74%	N/A	N/A	0.74%	0.25%	0	9/1/2004
AGGRESSIVE ALLOCATION	FIDELITY ASSET MANAGER 85%	FAMRX	\$151,443	N/A	0.76%	N/A	N/A	0.76%	0.25%	0	9/1/2004
MODERATE ALLOCATION	FIDELITY ASSET MANAGER 70%	FASGX	\$26,823	N/A	0.73%	N/A	N/A	0.73%	0.25%	0	9/1/2004
MODERATE ALLOCATION	FPA CRESCENT	FPACX	\$686,003	N/A	1.11%	N/A	N/A	1.11%	0.00%	2/ 90 days	9/1/2004
MODERATE ALLOCATION	FIDELITY PURITAN	FPURX	\$3,418,696	N/A	0.56%	N/A	N/A	0.56%	0.25%	0	9/1/2004
MODERATE ALLOCATION	AMERICAN FUNDS AMERICAN BALANCED R4	RLBEX	\$1,078,268	N/A	0.64%	N/A	N/A	0.64%	0.35%	0	9/1/2004
MODERATE ALLOCATION	AMERICAN BEACON BALANCED INV	AABPX	\$121,018	N/A	0.93%	N/A	N/A	0.93%	0.35%	0	9/1/2004
MODERATE ALLOCATION	CALVERT BALANCED PORTFOLIO A	CSIFX	\$121,214	N/A	1.18%	N/A	N/A	1.18%	0.50%	0	9/1/2004
MODERATE ALLOCATION	FIDELITY ASSET MANAGER 50%	FASMX	\$35,453	N/A	0.67%	N/A	N/A	0.67%	0.25%	0	9/1/2004
MODERATE ALLOCATION	FIDELITY BALANCED	FBALX	\$1,647,407	N/A	0.56%	N/A	N/A	0.56%	0.25%	0	9/1/2004
CONSERVATIVE ALLOCATION	FIDELITY ASSET MANAGER 20%	FASIX	\$23,814	N/A	0.53%	N/A	N/A	0.53%	0.25%	0	9/1/2004

CONVERTIBLES	FIDELITY CONVERTIBLE SECURITIES	FCV SX	\$135,940	N/A	0.58%	N/A	N/A	0.58%	0.10%	0	9/1/2004
EMERGING MARKETS BOND	FIDELITY NEW MARKETS INCOME	FNMIX	\$101,343	N/A	0.90%	N/A	N/A	0.90%	0.10%	1/ 90 days	9/1/2004
WORLD BOND	TEMPLETON GLOBAL BOND A	TPINX	\$1,488,967	N/A	0.89%	N/A	N/A	0.89%	0.40%	0	9/1/2004
WORLD BOND	PIMCO GLOBAL BOND (UNHEDGED) ADMIN	PADM X	\$1,197,959	N/A	0.80%	N/A	N/A	0.80%	0.25%	0	9/1/2004
WORLD BOND	ABERDEEN GLOBAL FIXED INCOME INST SVC	CGFIX	\$134,589	N/A	1.01%	N/A	N/A	1.01%	0.25%	0	9/1/2004
MULTISECTOR BOND	PIONEER STRATEGIC INCOME A	PSRAX	\$932,274	N/A	1.03%	N/A	N/A	1.03%	0.60%	0	9/1/2004
MULTISECTOR BOND	FIDELITY STRATEGIC INCOME	FSICX	\$236,513	N/A	0.69%	N/A	N/A	0.69%	0.10%	0	9/1/2004
LONG GOVERNMENT	PIMCO LONG-TERM U.S. GOVERNMENT ADMIN	PLGBX	\$174,735	N/A	0.73%	N/A	N/A	0.73%	0.25%	0	9/1/2004
CORPORATE BOND	COLUMBIA CORPORATE INCOME Z	SRINX	\$452,346	N/A	0.67%	N/A	N/A	0.67%	0.25%	0	9/1/2004
INTERMEDIATE-TERM BOND	PIMCO TOTAL RETURN ADMIN	PTRAX	\$1,114,092	N/A	0.71%	N/A	N/A	0.71%	0.25%	0	9/1/2004
INTERMEDIATE-TERM BOND	NEUBERGET BERMAN CORE BOND INV	NCRIX	\$181,440	N/A	0.87%	N/A	N/A	0.87%	0.25%	0	9/1/2004
INTERMEDIATE-TERM BOND	MORGAN STANLEY INSTITUTIONAL CORE PLUS FIXED INCOME PORTFOLIO A	MFXAX	\$22,861	N/A	0.77%	N/A	N/A	0.77%	0.40%	0	9/1/2004
INTERMEDIATE-TERM BOND	FIDELITY ADVISOR MORTGAGE SECURITIES	FMSFX	\$5,862	N/A	0.45%	N/A	N/A	0.45%	0.10%	0	9/1/2004
INTERMEDIATE-TERM BOND	JANUS FLEXIBLE BOND T	JAFIX	\$335,121	N/A	0.69%	N/A	N/A	0.69%	0.25%	0	9/1/2004
INTERMEDIATE-TERM BOND	FIDELITY INTERMEDIATE BOND	FTHRX	\$226,005	N/A	0.45%	N/A	N/A	0.45%	0.10%	0	9/1/2004
INTERMEDIATE-TERM BOND	FIDELITY SPARTAN U.S. BOND INDEX	FBIDX	\$4,763,771	N/A	0.20%	N/A	N/A	0.20%	0.00%	0	9/1/2004
INTERMEDIATE-TERM BOND	FIDELITY INVESTMENT GRADE BOND	FBNDX	\$458,408	N/A	0.45%	N/A	N/A	0.45%	0.10%	0	9/1/2004
INTERMEDIATE-TERM BOND	USAA INCOME FUND	USAIX	\$282,451	N/A	0.53%	N/A	N/A	0.53%	0.15%	0	9/1/2004
HIGH YIELD BOND	FIDELITY CAPITAL & INCOME	FAGIX	\$873,848	N/A	0.72%	N/A	N/A	0.72%	0.10%	1/ 90 days	9/1/2004
HIGH YIELD BOND	FIDELITY HIGH INCOME	SPHIX	\$169,153	N/A	0.72%	N/A	N/A	0.72%	0.10%	1/ 90 days	9/1/2004
HIGH YIELD BOND	PIMCO HIGH-YIELD BOND	PHYAX	\$331,925	N/A	0.80%	N/A	N/A	0.80%	0.25%	0	9/1/2004
INFLATION-PROTECTED BOND	FIDELITY INFLATION-PROTECTED BOND	FINPX	\$867,231	N/A	0.45%	N/A	N/A	0.45%	0.10%	0	9/1/2004
INTERMEDIATE GOVERNMENT	FIDELITY GNMA	FGMN X	\$613,715	N/A	0.45%	N/A	N/A	0.45%	0.10%	0	9/1/2004
INTERMEDIATE GOVERNMENT	FIDELITY GOVERNMENT INCOME	FGOVX	\$162,789	N/A	0.45%	N/A	N/A	0.45%	0.10%	0	9/1/2004
INTERMEDIATE GOVERNMENT	AMERICAN CENTURY GOVERNMENT BOND INV	CPTNX	\$567,092	N/A	0.47%	N/A	N/A	0.47%	0.25%	0	9/1/2004
INTERMEDIATE GOVERNMENT	WELLS FARGO GOVERNMENT SECURITIES A	SGVDX	\$2,880,745	N/A	0.85%	N/A	N/A	0.85%	0.45%	0	9/1/2004
INTERMEDIATE GOVERNMENT	USAA GOVERNMENT SECURITIES	USGNX	\$13,282	N/A	0.51%	N/A	N/A	0.51%	0.15%	0	9/1/2004
BANK LOAN	FIDELITY FLOATING RATE HIGH INCOME	FFRHX	\$73,685	N/A	0.70%	N/A	N/A	0.70%	0.10%	1/ 60 days	9/1/2004
SHORT-TERM BOND	AMERICAN BEACON SHORT TERM BOND INV	AALPX	\$0	N/A	-	N/A	N/A	-			9/1/2004
SHORT-TERM BOND	FIDELITY SHORT TERM BOND	FSHBX	\$144,463	N/A	0.45%	N/A	N/A	0.45%	0.10%	0	9/1/2004
SHORT-TERM BOND	PIMCO LOW DURATION ADMIN	PDLAX	\$89,003	N/A	0.81%	N/A	N/A	0.81%			9/1/2004
SHORT GOVERNMENT	FIDELITY LIMITED TERM GOVERNMENT	FFXSX	\$5,764	N/A	0.45%	N/A	N/A	0.45%	0.10%	0	9/1/2004
MONEY MARKET-TAXABLE	FIDELITY RET GOVERNMENT MONEY MARKET	FGMXX	\$9,355	N/A	0.42%	N/A	N/A	0.42%	0.00%	0	9/1/2004
MONEY MARKET-TAXABLE	FIDELITY RTMT GOVERNMENT MONEY MARKET II	FRTXX	\$769,778	N/A	0.42%	N/A	N/A	0.42%	0.00%	0	9/1/2004
MONEY MARKET-TAXABLE	FIDELITY SPARTAN MONEY MARKET	SPRXX	\$205,900	N/A	0.42%	N/A	N/A	0.42%	0.00%	0	9/1/2004
MONEY MARKET-TAXABLE	FIDELITY TREASURY ONLY M MARKET FUND	FDLXX	\$29,785	N/A	0.42%	N/A	N/A	0.42%	0.00%	0	9/1/2004
PERSONAL CHOICE RETIREMENT	SCHWAB PCRA	SPCRA	\$1,702,758	N/A		N/A	N/A	0.00%			9/1/2004
STABLE VALUE	FIDELITY GOVT CASH RESERVES	FDRXX	\$157,885	N/A	0.37%	N/A	N/A	0.37%	0.00%	0	9/1/2004
STABLE VALUE	FIXED INTEREST OPTION	FB125	\$58,308,183	N/A		N/A	N/A	0.00%			9/1/2004

¹ Include 12(b)-1, sub-ta, shareholder services, etc.

\$221,215,699