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1. The theory on which the Department of Labor (DOL) would find that the fee structure is a prohibited transaction is that under some circumstances the manager could use the authority that makes it a fiduciary to increase the fee payable to itself or to impact the time at which paid. The opinion letters issued by the DOL are DOL Opinion Letter (Op. Ltr.) 99-16A (Mount Lucas Management Corporation, Dec. 9, 1999); DOL Op. Ltr. 89- 31A (Alliance Capital Management, L.P., Oct. 11, 1989); DOL Op. Ltr. 86-21A (Batterymarch Financial Management, Aug. 29, 1986); and DOL Op. Ltr. 86-20A (BDN Advisers, Inc., Aug. 29, 1986).

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