

MEMO# 11021

May 27, 1999

PROPOSED INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION INVOLVING THE PURCHASE OF FUND SHARES AND RECEIPT OF COMMISSIONS

1 A similar individual prohibited transaction exemption was issued in 1991. See 56 Fed. Reg. 57679 (Nov. 13, 1991). [11021] May 27, 1999 TO: PENSION COMMITTEE No. 36-99 RE: PROPOSED INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION INVOLVING THE PURCHASE OF FUND SHARES AND RECEIPT OF COMMISSIONS

_____ The U.S. Department of Labor has proposed to issue an individual prohibited transaction exemption to a financial services company that would permit the principal underwriter for its funds to effect the purchase of the funds by ERISA plans and to receive a sales commission in connection with such purchase. The proposal states that the financial services company requested relief because of the uncertainty of the applicability of Prohibited Transaction Class Exemption (PTE) 84-24 to the transactions at issue. PTE 84-24 generally provides relief from the prohibited transaction provisions of ERISA for certain classes of transactions involving purchases by plans of mutual fund shares and the receipt of sales commissions in connection therewith by the fund's principal underwriter. This class exemption does not provide relief, however, if the principal underwriter or its affiliate is a plan trustee, other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan. In the situation at issue, an affiliate of the principal underwriter serves as trustee of collective investment funds and single-customer investment trusts. The applicant represented to the Department of Labor that the trustee will not provide investment advice or otherwise have any discretionary authority, responsibility, or control with respect to any plan assets not invested in an investment trust, or in connection with the decision by a plan to invest plan assets in an investment fund or trust, or in mutual fund shares for which its affiliate serves as principal underwriter. Nevertheless, according to the proposal, the exemption provided under PTE 84-24 may not be available for a plan's mutual fund purchases if the assets of the plan are under the management of the affiliated trustee.¹ A copy of the proposed exemption is attached. Russell G. Galer Senior Counsel Attachment