

MEMO# 11806

April 12, 2000

DOL ISSUES PROPOSED INDIVIDUAL EXEMPTION ON CROSS-TRADES TO BARCLAYS

1 See Institute Memorandum to Investment Advisers Committee No. 17-99; Pension Committee No. 71-99 and Pension Operations Advisory Committee No. 57-99, dated December 17, 1999. [11806] April 13, 2000 TO: INVESTMENT ADVISERS COMMITTEE No. 13-00 PENSION COMMITTEE No. 25-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 28-00 RE: DOL ISSUES PROPOSED INDIVIDUAL EXEMPTION ON CROSS-TRADES TO BARCLAYS

The Department of Labor has issued a proposed individual exemption to Barclays' Index and Model-Driven funds to buy and sell Barclays stock. Note that the Department's proposed class exemption for cross-trades of securities by index and model-driven funds ("proposed passive class exemption") prohibits cross-trades of manager-issued securities.¹ An index or model driven fund that wishes to cross-trade securities issued by the investment manager for the fund must obtain a separate prohibited transaction exemption. Thus, assuming the proposed passive class exemption and Barclays' exemption are granted, the two exemptions together would permit Barclays' funds to cross-trade Barclays stock. The conditions for the Barclays exemption are as follows: (1) The acquisition or disposition of Barclays stock is for the sole purpose of maintaining conformity with the relative index upon which the index or model fund is based and does not involve an agreement regarding the design or operation of the fund acquiring the Barclays stock, which is intended to benefit Barclays stock or any party in which Barclays may have an interest; (2) All aggregate daily purchases of Barclays stock by the funds do not exceed on any particular day the greater of: (a) 15% of the average daily trading volume for Barclays stock for the previous 5 business days; or (b) 15% of the trading volume of Barclays stock occurring on the date of the transaction, as determined by the best available information for the trades occurring on that date; (3) All purchases and sales of Barclays stock occur either: (a) on the London Stock Exchange; (b) through an automated trading system operated by a broker-dealer independent of Barclays that is regulated by the Securities and Futures Authority of the United Kingdom that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (c) in a direct arms-length transaction entered into on a principal basis with a broker-dealer in the ordinary course of its business where the broker-dealer is independent of Barclays and is either registered under the Securities Exchange Act of 1934 (thereby subject to regulation by the SEC) or subject to regulation by the Securities and Futures Authority of the United Kingdom; (4) No transactions by a fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof) or any party in interest that is a fiduciary with discretion to invest plan assets into the fund; (5) No more than 5% of the

total amount of Barclays stock issued and outstanding at any time is held in the aggregate by Barclays' Index and Model-Driven Funds; (6) Barclays stock constitutes no more than 3% of any independent third party index on which the investments of Barclays Index and Model-Driven Funds are based; (7) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays stock pursuant to procedures described in the exemption; (8) A fiduciary independent of Barclays directs the voting of Barclays stock held by the Index or Model Driven Fund on any matter in which shareholders of Barclays stock are permitted or required to vote; and (9) General recordkeeping requirements (see Section III of the Exemption). A copy of Barclays' proposed individual exemption is attached. Kathryn Ricard Associate Counsel Attachment

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