

MEMO# 1559

November 28, 1989

PROPOSED INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION CONCERNING AGENCY CROSS-TRANSACTIONS

- 1 - November 28, 1989 TO: INVESTMENT ADVISERS COMMITTEE NO. 49-89 PENSION COMMITTEE NO. 18-89 RE: PROPOSED INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION CONCERNING AGENCY CROSS-TRANSACTIONS

_____ As you know, the Institute in 1985 requested that the Department of Labor, as part of a proposal to replace Prohibited Transaction Exemption 79-1, permit agency cross-transactions when a broker-dealer fiduciary has investment discretion with respect to both sides of the transaction. (See Institute Memorandum to Pension Members No. 13-85, dated April 1, 1985.) In Prohibited Transaction Exemption 86-128, the Department permitted agency cross-transactions only in situations in which the broker-dealer fiduciary has investment discretion with respect to only one party to the transaction. (See Institute Memorandum to Pension Members No. 25-86, Investment Adviser Members No. 37-86, and Investment Adviser Associate Members No. 43-86, dated December 8, 1986.) In the attached proposed individual exemption for Capital Guardian Trust Company, an affiliate of the Capital Group, the Department has announced its intention to permit Capital Guardian to cross-trade securities for plans for which it acts as a fiduciary. The proposed exemption contains a number of conditions, which include the following: (1) An independent fiduciary must execute a written authorization for the plan to participate in the cross-trade program; (2) No more than three business days prior to the execution of a cross-trade, Capital Guardian must notify an independent fiduciary (a) that Capital Guardian proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available, (b) the current trading price for such securities, and (c) the total number of shares to be acquired or sold by each plan; - 2 - (3) Each cross-trade transaction must be authorized either orally or in writing by an independent fiduciary; (4) The authorization will be effective for a period of three business days; (5) The cross-trade transaction must be effected at the closing price for the security on the date of the transaction; (6) The price must be within 10 percent of the closing price of the security on the day before the date on which Capital Guardian receives authorization for the transaction; and (7) The cross-trade transaction is effected only where the trade involves less than five percent of the aggregate average trading volume of the securities for the week immediately preceding the authorization of the transaction. The Institute is considering whether to resubmit its request for a class exemption in this area, and what conditions such a request should include. Please review the proposed Capital Research exemption and contact me with any suggestions or comments. Kathy D. Ireland Associate General Counsel Attachment

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