

MEMO# 12706

October 2, 2000

DOL ISSUES FINAL INDIVIDUAL EXEMPTION FOR ASSET ALLOCATION SERVICES TO PLANS AND PARTICIPANTS

[12706] October 2, 2000 TO: PENSION COMMITTEE No. 71-00 AD HOC COMMITTEE ON INVESTMENT ADVICE RE: DOL ISSUES FINAL INDIVIDUAL EXEMPTION FOR ASSET ALLOCATION SERVICES TO PLANS AND PARTICIPANTS The Department of Labor has published a final individual exemption regarding the provision of certain "asset allocation services" by the Bank of Oklahoma (the "Bank"). Specifically, the final exemption would provide relief from ERISA section 406(b) for the provision of such asset allocation services to employee benefit plans and their participants, and from ERISA section 406(a) for the purchase or redemption by a plan of shares in both mutual funds "affiliated" with the Bank and "third-party" funds. The final exemption is nearly identical to the proposed exemption.¹ The final exemption allows plans to participate in the Bank-sponsored "Foundations Program" under which plans may invest in certain Bank-affiliated mutual funds and third-party funds. As part of the program, the Bank would recommend asset allocation models, make "adjustments" to the models, and "rebalance" a participating plan's account.² These services would be provided to an independent fiduciary of a participating plan or to a participant of a plan that authorizes participant investment direction. Any recommendation or evaluation made by the Bank would be "implemented only at the express direction of these parties." Fees paid by the plan to the Bank for asset allocation and related services would be offset by investment management and administrative fees such that the recommendation of an affiliated fund or a third party fund will be "fee-neutral." With respect to the program's rebalancing feature, neither the Bank nor its affiliates would receive commissions from such sales and the participating plans would not be charged a redemption fee. Additionally, as part of the Bank's monitoring activities, the Bank would retain an "Independent Financial Analyst" to review certain types of fund selection activities.³ The exemption requires that the

1 See Institute Memorandum to Pension Committee No. 52-00 and Ad Hoc Committee on Investment Advice, dated July 20, 2000. 2 The final exemption, like the proposed exemption, does not expressly state that the Bank's activities constitute the provision of "investment advice." 3 The final exemption modifies the duties of the Independent Financial Analyst from that in the proposed exemption by clarifying the scope of its review of funds selected under the Foundations Program. 2Independent Financial Analyst not derive more than 5 percent of its total annual revenues from the Bank and/or its affiliates. In addition to these requirements, the proposed exemption conditions relief from sections 406(a) and (b) of ERISA on a number of other requirements, such as:

- An independent fiduciary (on behalf of the plan) or a participant of a plan that authorizes participant investment direction (on behalf of that individual) initially must agree to participate in the Foundations Program;
- As to each plan, "the total fees

that are paid to the Bank and its affiliates” must be no more than “reasonable compensation for the services provided”; • The terms of each purchase or redemption of shares in the program’s Funds must be “at least as favorable to an investing plan as those obtainable in an arm’s length transaction with an unrelated party”; • The Bank must provide extensive initial and continuing disclosures to the independent plan fiduciary and/or the participant giving investment directions; and • The Bank must comply with recordkeeping requirements that would enable parties to determine whether the conditions of the exemption have been met. Thomas T. Kim Assistant Counsel Attachment Attachment (in .pdf format)

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