

MEMO# 6835

April 11, 1995

APPLICATION FOR ERISA CLASS EXEMPTION COVERING CONVERSION OF BANK COLLECTIVE INVESTMENT FUNDS INTO MUTUAL FUNDS

April 11, 1995 TO: PENSION COMMITTEE No. 8-95 RE: APPLICATION FOR ERISA CLASS
EXEMPTION COVERING CONVERSION OF BANK COLLECTIVE INVESTMENT FUNDS INTO
MUTUAL FUNDS

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application has been filed with the Department of Labor asking for a retroactive and prospective class exemption from ERISA's prohibited transaction standards for the conversion of bank collective investment funds (CIFs) used to managed ERISA plan assets into mutual funds. A copy of the application is attached. The application explains that over the last several years a number of banks have converted their CIFs in which ERISA plans invest into mutual funds by transferring the CIF's assets in exchange for shares of the mutual fund. The application notes that the conversions were motivated by changes in the investment industry and the growth in participant-directed 401(k) plans. It goes on to explain that the conversions were done in compliance with the banking law rules governing CIFs and the requirements of the Investment Company Act of 1940. The application describes the ERISA prohibited transaction issues presented by such conversions, and represents that banks relied in good faith on the availability of Prohibited Transaction Exemption 77-4 (covering certain purchases or sales of open-end investment company shares) in converting CIFs into mutual funds. The application states that the exemption is being requested because the Department recently took the position that Prohibited PTE 77-4 is not available for "in-kind" exchanges of assets, such as occur in a CIF to mutual fund conversion. The application asserts that the Labor Department's position has created uncertainty on what to do with regard to past transactions, and on how to handle future transaction. The requested class exemption contains general conditions applicable to all conversions, specific conditions applicable to conversions needing retroactive relief, and separate specific conditions for prospective conversion transactions. The requested exemption also provides that if a transfer of assets in a CIF to mutual fund conversion satisfies those general and specific conditions, the transfer shall be treated as a "purchase or sale" of mutual fund shares for purposes of PTE 77-4, so that PTE 77-4 would cover the conversion if the other conditions of PTE 77-4 are satisfied. The Department has not yet announced whether it is prepared to propose a class exemption in this area. We will keep you informed of developments. John J. Canary, Jr. Assistant Counsel - Pension Attachment

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