

**MEMO# 1049**

March 20, 1989

# **DEPARTMENT OF LABOR LETTER CONCERNING TENDER OFFERS INVOLVING PLAN INVESTMENTS HELD IN INDIVIDUALLY DIRECTED ACCOUNTS**

- 1 - March 20, 1989 TO: PENSION MEMBERS NO. 17-89 INVESTMENT ADVISER MEMBERS NO. 24-89 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 23-89 RE: DEPARTMENT OF LABOR LETTER CONCERNING TENDER OFFERS INVOLVING PLAN INVESTMENTS HELD IN INDIVIDUALLY DIRECTED ACCOUNTS

Attached is a copy of a recent letter issued by the Department of Labor that discusses the responsibilities of plan trustees and other designated fiduciaries with respect to plan assets held in individually directed accounts under the Employee Retirement Income Security Act (ERISA). Although the letter specifically addresses such responsibilities in the case of a tender offer, the Department states in a footnote that the principles set forth in the letter would also apply with regard to proxy voting. The plan at issue was an eligible individual account plan which specifically permitted each participant to direct the trustee to tender any employer securities allocated to his or her account. If no valid instructions were received by the trustee with respect to a particular account, the plan provided that the shares would remain invested in employer stock. Any shares not allocated to an individual account were required under the plan to be tendered in proportion to those allocated shares for which valid directions had been received. The letter confirms that a plan may grant a participant the authority to direct trustees with regard to the tendering of stock allocated to his or her own account. The letter also states, however, that the trustee or other designated fiduciary may follow only those directions that are proper, in accordance with the plan's terms, and not contrary to the provisions of ERISA. Among other things, the trustee must assure that participants receive necessary and accurate information in order to allow them to be fully informed, must ignore the direction of any participant who was subjected to undue pressure in making his or her decision, and must determine whether a violation of ERISA would occur if the participants' directions were followed. With respect to unallocated or non-voted allocated stock, - 2 - the Department states that tender decisions are the exclusive responsibility of the trustee or other designated fiduciary, which should follow plan instructions only insofar as the plan provisions are consistent with titles I and IV of ERISA. For example, if the trustee determined that the course of action directed by the plan would be imprudent, then the trustee could not follow the plan's directions. We will keep you informed of further developments. Kathy D. Ireland Assistant General Counsel Attachment

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