

MEMO# 17437

April 29, 2004

DEPARTMENT OF LABOR PROPOSES AMENDMENTS TO PROHIBITED TRANSACTION EXEMPTION 75-1

[17437] April 29, 2004 TO: PENSION COMMITTEE No. 24-04 RE: DEPARTMENT OF LABOR PROPOSES AMENDMENTS TO MUTUAL FUND PROVISIONS OF PROHIBITED TRANSACTION EXEMPTION 75-1 The Department of Labor has proposed amendments to Part II of Prohibited Transaction Exemption 75-1, a class exemption that deals with principal transactions and specifically mentions the purchase and sale of securities issued by open-end investment companies.¹ The Department proposed these amendments on its own motion, in order to clarify the scope of the exemption. Currently, the provision of the exemption relating to mutual fund purchases and sales is contained within the conditions to the general principal transactions exemption in subsection (d) of Part II. The Department proposes to reposition this provision in a new paragraph (2) of Part II of the exemption, and to clarify its scope. Under the original language, the exemptive relief was not available if “a fiduciary with respect to the plan” was “a principal underwriter for, or affiliated with, such investment company.” The proposed language would clarify that this limitation applies only to a “fiduciary with respect to the plan who makes the decision on behalf of the plan to enter into the transaction.” In the preamble to the proposed amendments, the Department requests public comment on the current utility of the exemption provided in the new paragraph. Comments on the proposed amendments are due by June 14, 2004. Please contact me by telephone at (202) 371-5432, by fax at (202) 326-5841, or by email at kireland@ici.org by Thursday, May 20 if you have any comments that the Institute should consider including in a comment letter concerning the proposed amendments. Kathy D. Ireland Senior Associate Counsel

¹ The Department’s notice of the proposed amendments is available at <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/pdf/04-9632.pdf>.