

**MEMO# 4031**

August 20, 1992

# **INSTITUTE SUBMISSION TO DEPARTMENT OF LABOR REQUESTING INFORMATION LETTER AND ADVISORY OPINION CONCERNING PROHIBITED TRANSACTION EXEMPTIONS**

August 20, 1992 TO: PENSION COMMITTEE NO. 33-92 RE: INSTITUTE SUBMISSION TO  
DEPARTMENT OF LABOR REQUESTING INFORMATION LETTER AND ADVISORY OPINION  
CONCERNING PROHIBITED TRANSACTION EXEMPTIONS

Attached is a copy of the Institute's submission to the Department of Labor requesting an information letter concerning the operation of various exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act (ERISA). The letter sets forth a series of scenarios involving the sale of mutual fund shares and requests the Department's confirmation of the application of the statutory exemption under section 408(b)(2) of ERISA for the provision of services and Prohibited Transaction Class Exemptions 75-1, 77-4, 84-24 and 86-128. In addition, the Institute letter submits that the Department's current interpretation of these exemptions creates an unjustified distinction between those mutual fund shares that are sold on an agency basis and those that are sold on a principal basis. Specifically, the Institute submission requests that the Department issue an advisory opinion under section 408(b)(2) of ERISA to provide that the effecting of a purchase or sale of mutual fund shares is considered a "service" regardless of whether the shares are sold on a principal or an agency basis. We will keep you informed of further developments.  
Kathy D. Ireland Associate Counsel - Pension Attachment

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