

MEMO# 6003

June 27, 1994

DEPARTMENT OF LABOR GRANTS ERISA INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION FOR CERTAIN AGENCY CROSS-TRANSACTIONS

June 27, 1994 TO: INVESTMENT ADVISERS COMMITTEE NO. 40-94 PENSION COMMITTEE NO. 21-94 RE: DEPARTMENT OF LABOR GRANTS ERISA INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION FOR CERTAIN AGENCY CROSS-TRANSACTIONS

The Department of Labor recently granted the attached prohibited transaction exemption (PTE 94-43) for certain agency cross-transactions involving employee benefit plan accounts managed by the adviser requesting the exemption. **SCOPE OF THE EXEMPTION** The Department granted relief for cross-trades involving equity as well as debt securities held in indexed as well as managed accounts. The cross-trade program must be effected pursuant to a non-discretionary pro-rata allocation system so that accounts participating in the program will have an opportunity to participate on a proportional basis in all cross-trade transactions. **GENERAL CONDITIONS APPLICABLE TO THE CROSS-TRADE PROGRAM** The following "general conditions" must be satisfied for the exemption to apply. Participating plans must have at least \$25 million in assets, and no account can include assets of any plan of the adviser or its affiliates. An independent fiduciary must be given certain background information and disclosure materials, and must execute a written authorization (terminable at-will) before the plan can participate in the program. Only securities for which there is a generally recognized market can be traded, and the trade must be "effected" at "current market value" on the date of the transaction, i.e., for equities, the "closing price" on the day of the trade, and for debt securities, the price determined pursuant to SEC Rule 17a-7(b). The adviser cannot charge the plan any fee or commission for the transaction, and the adviser must provide certain quarterly and annual reports on the cross-trade program. **SPECIFIC CONDITIONS FOR INDEXED AND MANAGED ACCOUNTS** In addition to the "general conditions" which apply to all transactions, the following "specific conditions" also must be satisfied depending on whether the cross-trade involves an indexed account or a managed account. **1. Indexed Accounts** The account index must be generally accepted as a established index created and maintained by an organization that meets certain requirements listed in the exemption and is independent of the adviser. The index must be based on an index which represents the investment performance of a specific segment of the public market for equity or debt securities in the U.S. and/or foreign countries. The cross-trade must take place within three business days of certain defined "triggering events" outside of the adviser's control. The adviser must maintain for at least six years, and make available to certain interested parties, certain records regarding the cross-trades.

2. Managed Accounts No more than three business days before the cross trade, the adviser must notify an independent fiduciary for each plan to be involved: (i) that the adviser wants to effect a cross-trade; (ii) the number of shares to be traded; and (iii) the current trading price. The independent fiduciary must specifically approve, either orally or in writing, each cross trade in advance. The adviser must give written confirmation of oral approvals within one business day. The trade must be effected at "current market price" (as defined in the exemption and described above), which must be within 10% of the trading price quoted to the authorizing fiduciary. A cross-trade can exceed five percent of the aggregate average daily trading volume for the prior week only with the express authorization of an independent fiduciary of each plan involved. The adviser must provide written confirmation within ten days after a trade is completed. Please note that this is an individual exemption that covers only the adviser that requested the exemption, and provides exemptive relief from only certain listed "prohibited transaction" provisions of ERISA and the Internal Revenue Code. John J. Canary, Jr. Assistant Counsel - Pension Attachment

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