

MEMO# 955

February 2, 1989

JOINT STATEMENT OF LABOR AND TREASURY DEPARTMENTS ON PLAN INVESTMENTS SUBJECT TO TENDER OFFERS AND MERGER PROPOSALS

February 2, 1989 TO: PENSION MEMBERS NO. 6-89 INVESTMENT ADVISER MEMBERS NO. 6-89 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 6-89 RE: JOINT STATEMENT OF LABOR AND TREASURY DEPARTMENTS ON PLAN INVESTMENTS SUBJECT TO TENDER OFFERS AND MERGER PROPOSALS

On January 31, officials at the U.S. Departments of Labor and Treasury held a press briefing to discuss the responsibilities under the Employee Retirement Income Security Act (ERISA) of employee benefit plan fiduciaries with respect to plan investments subject to tender offers and merger proposals. Attached are copies of the text of the officials' prepared remarks and a written joint statement on this subject. The joint statement rejects recent assertions that fiduciaries must automatically tender the plan's shares if a tender offer represents a premium over the prevailing market price for the target company's stock. Instead, the joint statement reaffirms that the proper analysis remains a determination of what course of action is in the economic interest of the plan, recognizing that the trust is a separate legal entity designed to provide retirement income. In considering this course of action, the fiduciaries should weigh the tender offer against the underlying intrinsic value of the target company and the likelihood of that value being realized by current management or by a possible subsequent tender offer. In addition, the fiduciaries should weigh the long-term value of the company against the value presented by the tender offer and the ability to invest the proceeds elsewhere. We will keep you informed of further developments. Kathy D. Ireland Assistant General Counsel Attachment

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