

MEMO# 13998

October 1, 2001

DOL PROPOSES EXTENDING PROHIBITED TRANSACTION EXEMPTION FOR CERTAIN INTEREST FREE LOANS TO EMPLOYEE BENEFIT PLANS

[13998] October 1, 2001 TO: INVESTMENT ADVISER ASSOCIATE MEMBERS No. 16-01 INVESTMENT ADVISER MEMBERS No. 24-01 PENSION MEMBERS No. 30-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 61-01 RE: DOL PROPOSES EXTENDING PROHIBITED TRANSACTION EXEMPTION FOR CERTAIN INTEREST FREE LOANS TO EMPLOYEE BENEFIT PLANS The Department of Labor has proposed amending PTE 80-26 to permit certain interest free loans to employee benefit plans to address potential liquidity problems faced by plans due the events of September 11, 2001.¹ PTE 80-26 is a class exemption that permits the lending of money or other extensions of credit from a party in interest or disqualified person to an employee benefit plan and the repayment thereof, provided that the conditions specified in the exemption are met. The exemption was last amended to permit loans and extensions of credit in connection with potential "Y2K problems."² The proposed exemption is intended to address liquidity issues arising from the temporary disruptions in the financial and securities markets, such as interruptions in communications systems, fluctuating market conditions, and delays in the availability of certain portfolio valuations. Under the proposed exemption, effective September 11, 2001 through January 9, 2002, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of ERISA (and the taxes imposed by section 4975(c)(1)(B) and (D) of the Internal Revenue Code) would not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, or to the repayment thereof, under the following conditions: • No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection therewith; • The proceeds thereof are used only for a purpose incidental to the ordinary operation of the plan that arises in connection with difficulties encountered by the plan in 1 66 Fed. Reg. 49703 (September 28, 2001). 2 See Institute Memoranda to Pension Members No. 44-99 and Pension Operations Advisory Committee No. 55-99, dated December 6, 1999, and Pension Members No. 21-00 and Pension Operations Advisory Committee No. 26-00, dated April 10, 2000. 2 liquidating, or otherwise accessing its assets, or accessing its data in a timely manner as a direct or indirect result of the September 11, 2001 disruption; • The loan or extension of credit is unsecured; • The loan or extension of credit is not directly or indirectly made by a plan; and • The loan or extension of credit begins on or after September 11, 2001, and is repaid or terminated no later than January 9, 2002. The term "September 11, 2001 disruption" is defined for purposes of the proposed exemption as "the disruption to the United States financial and securities markets and/or the operation of

persons providing administrative services to employee benefit plans, resulting from the acts of terrorism that occurred on September 11, 2001.” A copy of the proposed exemption is attached. Written comments regarding the proposed exemption can be submitted to the Department on or before November 13, 2001. Kathy D. Ireland Associate Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 13998, or call the ICI Library at (202) 326-8304 and request the attachment for memo 13998. Attachment (in .pdf format)

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