

MEMO# 1988

June 26, 1990

TREASURY DEPARTMENT LETTER ON TRI-PARTY REPOS

June 26, 1990 TO: SEC RULES MEMBERS NO. 44-90 ACCOUNTING/TREASURERS MEMBERS NO. 13-90 RE: TREASURY DEPARTMENT LETTER ON TRI-PARTY REPOS

The Department of the Treasury has issued a letter meant to clarify when "tri-party" repos are subject to the hold-in-custody rules for repurchase agreements under the Government Securities Act of 1986. A tri-party repo occurs when a single custodian has responsibilities to both the repo buyer and the repo seller. The Treasury Department's letter states that the determination of whether such a transaction is exempt from the hold-in-custody rules depends on the role of the custodian, the custodian's relationship to the buyer and seller, and the entity that exercises control over the securities during the course of the transaction. Each of these factors should be clearly covered in the governing written agreement. Specifically, under the agreement the custodian must undertake to act on behalf of both parties and the specific terms of the transaction must be set forth in sufficient detail to enable the custodian to verify that the proper securities and cash have been transferred. The letter sets forth various specific requirements concerning segregation of securities, control over the transfer of securities by the custodian, and procedures required for substitution of securities. In addition, the written agreement must provide that, in the event of default by the seller, the buyer has the right, either directly or through instructions to the custodian, to dispose of the securities and apply the proceeds in satisfaction of the seller's liability. A copy of the Treasury Department's letter is attached. Craig S. Tyle Associate General Counsel Attachment

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