

**MEMO# 12018**

June 20, 2000

## **DOL GRANTS EXEMPTION FOR UNDERWRITING TRANSACTIONS**

[12018] June 20, 2000 TO: PENSION COMMITTEE No. 41-00 RE: DOL GRANTS EXEMPTION FOR UNDERWRITING TRANSACTIONS The Department of Labor has published a final exemption applicable to five financial services firms engaged in underwriting activity. Specifically, the exemption permits purchases of securities by asset managers on behalf of employee benefit plans for which the asset manager is a fiduciary, from underwriting syndicates in which a broker-dealer affiliate of the asset manager participates as a manager or syndicate member. The final exemption, like the proposed exemption,<sup>1</sup> is similar to Part III of PTE 75- 1. Based on comments received by the Department, there were a number of technical clarifications made to the exemption when finalized. Some of the more notable changes are as follows: (1) Three-percent limitations modified. Section I(c) and (d) of the exemption were modified so that both provisions impose a three-percent limitation on each employee benefit plan investing in a pooled fund, rather than on the pooled fund as a whole. (2) Characterization of asset-backed securities clarified. The Department clarified that, solely for purposes of the exemption, appropriately rated mortgage-backed or other asset-backed securities should be treated as debt securities. (3) Quarterly affiliated broker-dealer certification. The proposed exemption would have required that the written certification required of the "affiliated broker-dealer" be made part of quarterly reports to independent fiduciaries of the employee benefit plans. In lieu of the requirement to provide the actual certification, the quarterly reports need only include a representation that the certification relates to each covered transaction conducted during the quarter. (4) Annual provision of termination form. The proposed exemption would have required that a "termination form" be provided annually to independent fiduciaries of employee benefit plans. The Department has eliminated this requirement. Employee benefit plans that are in a pooled fund, however, are required to receive a termination form as part of the initial disclosure materials. Also, notification of the right to terminate authorization must be prominently displayed in the required quarterly reports. (5) Limitation on in-house plan investment in pooled funds. The Department adjusted the proposed requirement that no more than 10 percent of the assets of a pooled fund be comprised of assets of employee benefit plans maintained by the asset manager or affiliated broker-dealer for their own employees. The limit is raised to 20 percent in the final exemption. 1 The proposed exemption was described in Institute Memorandum to Pension Committee No. 15-00, dated February 22, 2000. 2(6) Revised definition of "independent fiduciary." The Department amended the definition of "independent fiduciary" in response to comments indicating that it was administratively burdensome to track all relationship between the asset manager and all officers, directors, partners, employees of the asset manager in order to comply with the exemption, especially in large organizations, when most of these persons would have no power to influence any decisions on matters relating

to the exemption. Russell G. Galer Senior Counsel Attachment

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