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MEMORANDUM

TO: Horace Schow II

FROM: Ray Petty *RP*

DATE: May 22, 2001

RE: Retention of Sutherland Asbill to Prepare a No-Action Letter

As we discussed earlier, I have retained Steve Boehm of Sutherland Asbill & Brennan LLP ("SAB") in Washington, D.C. to prepare a no-action letter for submission to the Securities and Exchange Commission ("SEC"). Steve indicated that the fee for the service should probably be \$10-15,000, although that will increase if we expand the scope of the letter as we are considering.

As you recall, the primary issue here is to what extent our nonpension fund accounts can invest in Rule 144A securities under the Securities Act of 1933. The test as to whether an entity can invest in Rule 144A securities is that they have to have at least \$100 million under investment and they must be a Qualified Institutional Buyer ("QIB"). Rule 144A lists the types of entities that may qualify as a QIB and pension funds are on that list. This is how we currently purchase such securities for the FRS. There is no category of QIB which would on its face appear to encompass any other entity for which we invest funds.

In Regulation D of the Securities Act of 1933, however, the SEC has issued no-action letters regarding the definition of an "Accredited Investor", which uses almost identical language to the QIB definition. In those no-action letters, a state agency sought to be deemed an Accredited Investor as a 501(c)(3) organization. The SEC in its no-action letter stated that the state agency didn't have to have applied for a Section 501(c)(3) determination letter by the SEC as a 501(c)(3) organization (state agencies are required to do that since they have their own tax exempt status) but that they could look to see whether the state agency was functionally equivalent to a

501(c)(3) organization and set out a three part test to make such determination. If we can get a no-action letter as to whether the Lawton Chiles Endowment Fund ("LCEF") is a QIB we will have additional investment options available to us going forward. Although this project started out as an effort to have the LCEF qualify as a QIB, I am asking SAB to address all entities for which we invest that would appear to meet the two part QIB test and the three part test set forth in the SEC's previous no-action letters.

As a side note, Anita Pumphrey in Fixed Income tells me that we are being asked more and more to represent in electronic trading agreements that we are an Accredited Investor for nonpension assets. This has been an area where we have not been to make such a representation, and the response we get from the SEC to this no-action letter will help us to determine whether or not we are in fact an Accredited Investor for certain purposes as well.