

MEMO# 23944

November 10, 2009

DOL Guidance on Broker's Request for Grant of Security Interest in Non-IRA Accounts as Condition for Opening IRA Account

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TO: PENSION MEMBERS No. 53-09
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 51-09
BROKER/DEALER ADVISORY COMMITTEE No. 62-09 RE: DOL GUIDANCE ON BROKER'S
REQUEST FOR GRANT OF SECURITY INTEREST IN NON-IRA ACCOUNTS AS CONDITION FOR
OPENING IRA ACCOUNT

The Department of Labor released Advisory Opinion 2009-03A, [\[1\]](#) which concludes that it is a prohibited transaction (violating Internal Revenue Code section 4975(c)(1)(B)) for an IRA owner to grant to a brokerage firm a security interest in the assets of non-IRA accounts held by the broker as a requirement for establishing an IRA with the broker.

The requestor of the advisory opinion had a non-IRA account with a broker and wished to open an IRA with the broker. The account documents requested by the broker in connection with opening the IRA included a provision requiring the IRA owner to pledge his or her personal assets handled in accounts maintained by the broker, including non-IRA accounts, to cover indebtedness that the IRA may incur.

Code section 4975(c)(1)(B) prohibits the direct or indirect lending of money or other extension of credit between a plan and a disqualified person. [\[2\]](#) DOL concluded that this

granting of a security interest in the IRA owner's personal accounts to cover indebtedness of, or arising from, the IRA constitutes an extension of credit. DOL analogized this situation to a loan to a plan being guaranteed by a disqualified person, which is specifically mentioned in the legislative history of ERISA as a prohibited transaction.

Even though this was not specifically raised by the requestor, DOL stated that a prohibited transaction could also occur if the IRA owner granted to the broker a security interest in the IRA's assets to cover the indebtedness of the IRA owner. DOL reasoned that this would constitute the transfer or using of the IRA's assets for the benefit of the IRA owner, in violation of Code section 4975(c)(1)(D), and the dealing with the IRA's assets by a disqualified person in his own interest or for his own account, in violation of Code section 4975(c)(1)(E).

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endnotes

[1] A copy of Advisory Opinion 2009-03A is available here:
<http://www.dol.gov/ebsa/regs/aos/ao2009-03a.html>.

[2] DOL concluded that the IRA owner was a disqualified person because the IRA was self-directed, and thus the owner was a fiduciary within the meaning of Code section 4975(e)(3).