

MEMO# 21055

April 16, 2007

Institute Comment Letter Concerning DOL Interim Final Regulation on Cross Trades for ERISA Plans

[21055]

April 16, 2007

TO: PENSION MEMBERS No. 22-07
INVESTMENT ADVISER MEMBERS No. 12-07
SEC RULES MEMBERS No. 46-07
EQUITY MARKETS ADVISORY COMMITTEE No. 21-07
CHIEF COMPLIANCE OFFICER COMMITTEE No. 11-07 RE: INSTITUTE COMMENT LETTER
CONCERNING DOL INTERIM FINAL REGULATION ON CROSS TRADES FOR ERISA PLANS

The Institute submitted the attached comment letter to the Department of Labor on April 13, 2007, making several recommendations on the Department's interim final regulation on cross trading. The Pension Protection Act of 2006 (PPA) includes an ERISA prohibited transaction exemption for cross trading by investment managers of plans with assets of at least \$100 million. [\[1\]](#) The PPA requires the Department to issue regulations on the content of cross trading policies and procedures that investment managers must adopt pursuant to the exemption. The Department issued an interim final regulation on February 12, 2007 and requested comments on the interim rule. [\[2\]](#)

Our letter urges the Department to clarify that the exemption applies to cross trading between accounts managed by affiliated investment managers and to pooled funds where at least one participating plan has assets of at least \$100 million. The letter makes several suggestions to streamline the required policies and procedures and enhance their compatibility with SEC Rule 17a-7, which governs cross trading by mutual funds. We also request that the Department revise the interim rule to permit annual determinations on whether a plan meets the \$100 million asset requirement. Finally, we recommend that the

Department use its existing exemptive authority to go beyond the statutory exemption and permit plans of all sizes to enjoy the benefits of cross trading.

Elena Barone
Assistant Counsel

[Attachment](#)

endnotes

[1] See [Memorandum](#) to Pension Members No. 48-06, Federal Legislation Members No. 5-06, and 529 Plan Members No. 13-06 [20250], dated August 4, 2006.

[2] See [Memorandum](#) to Pension Members No. 11-07, Investment Adviser Members No. 3-07, and SEC Rules Members No. 18-07 [20865], dated February 13, 2007; [Memorandum](#) to Pension Committee No. 5-07, Pension Operations Advisory Committee No. 5-07, Investment Advisers Committee No. 3-07, Equity Markets Advisory Committee No. 6-07, and SEC Rules Committee No. 14-07 [20866], dated February 13, 2007.

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