

**MEMO# 21028**

April 3, 2007

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

URGENT/ACTION REQUESTED

[21028]

April 3, 2007

TO: PENSION COMMITTEE No. 10-07  
PENSION OPERATIONS ADVISORY COMMITTEE No. 10-07  
INVESTMENT ADVISERS COMMITTEE No. 9-07  
EQUITY MARKETS ADVISORY COMMITTEE No. 18-07  
SEC RULES COMMITTEE No. 35-07  
CHIEF COMPLIANCE OFFICER COMMITTEE No. 10-07    RE: DRAFT INSTITUTE COMMENT  
LETTER CONCERNING DOL INTERIM FINAL REGULATION ON CROSS TRADES FOR ERISA  
PLANS

Attached for your review is a draft comment letter to the Department of Labor regarding its interim final regulation on cross trading. [\[1\]](#) The Pension Protection Act of 2006 (PPA) added a prohibited transaction exemption for cross trades to section 408(b)(19) of ERISA for plans with assets of at least \$100 million. The Department was required to publish guidance by February 13, 2007 on the content of cross trading policies and procedures that must be adopted by investment managers. In publishing the interim final regulation, which is effective April 13, 2007, the Department requested comments on the guidance and indicated that it will issue a final regulation that takes those comments into account.

Our draft letter recommends several clarifications and changes to the interim final rule, including (1) clarification that the exemption applies to cross trading between accounts managed by affiliated investment managers; (2) clarification of how the statute's "fair and equitable" standard applies to the written policies and procedures; (3) elimination of the duplicative requirement that policies and procedures contain a description of how the

manager will mitigate any potentially conflicting division of loyalties; and (4) clarification of the role of the compliance officer in reviewing cross trades. As the draft indicates, we would like your comments on whether our letter should request guidance on the effect of non-compliance with the policies and procedures. The letter also addresses various aspects of the exemption's \$100 million asset size requirement: we ask the Department to revise the interim rule to permit annual determinations on whether a plan meets the \$100 million requirement and clarify that the statutory exemption covers pooled funds where at least one participating plan has assets of at least \$100 million. Finally, we recommend that the Department use its exemptive authority to permit plans of all sizes to enjoy the benefits of cross trading.

As comments are due to the Department by April 13, 2007, please review the draft letter and provide any comments to us by Tuesday, April 10, 2007. Please contact the undersigned at 202/326-5821 or [ebarone@ici.org](mailto:ebarone@ici.org) or Mary Podesta at 202/326-5826 or [podesta@ici.org](mailto:podesta@ici.org) with any comments or questions.

Elena Barone  
Assistant Counsel

[Attachment](#)

**endnotes**

[\[1\]](#) See 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.