

MEMO# 1951

June 5, 1990

INVESTMENT ADVISER GUIDELINES FOR FIDUCIARIES MEETING

- 1 - June 5, 1990 TO: INVESTMENT ADVISERS COMMITTEE NO. 18-90 RE: INVESTMENT ADVISER GUIDELINES FOR FIDUCIARIES MEETING

As you recall, the United States Court of Appeals for the Eleventh Circuit recently found a retirement plan's investment adviser liable for breach of his fiduciary duties under ERISA because he failed to diversify the plan's assets adequately to meet cash-flow needs. (See Institute Memorandum to Investment Adviser Members No. 18-90 dated May 7, 1990.) In another recent case, the United States Court of Appeals for the Fifth Circuit found that an investment adviser to a retirement plan may be liable for fraud as a fiduciary under Rule 10b-5 of the Securities and Exchange Act. (See Institute Memorandum to Investment Adviser Members No. 19-90 dated May 21, 1990.) Finally, the Department of Labor has indicated that it intends to vigorously enforce ERISA civil penalties against fiduciaries and non-fiduciaries who are involved with pension plan breaches of duty under ERISA Section 502(l). In light of the above, the Institute intends to prepare operational and contractual guidelines for investment advisers to use to ensure compliance with their fiduciary responsibilities. We have scheduled a meeting for Thursday, June 28, 1990, to discuss these matters and develop parameters for the proposed guidelines. The meeting will also address the scope of these guidelines to determine whether they should also include state pension plan fiduciary requirements, ERISA bonding, prohibited transactions, etc. It would be useful if you could bring a copy of your contracts for advisory services to retirement plans and any guidelines that your firm has established for managing these accounts. The June 28 meeting is scheduled for 10:00 a.m. at the Institute. Please contact Wynetta Culbreath at (202) 955-3525 by June 25, 1990, if you or another member of your organization will be able to attend the meeting. - 2 - I look forward to meeting you on June 28th and welcome any related comments you may have in advance of the meeting. W. Richard Mason Assistant General Counsel

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