

MEMO# 20438

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DOL Issues Additional Guidance on LM-10 Filing Requirements

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20438] October 5, 2006 TO: COMPLIANCE ADVISORY COMMITTEE No. 14-06 INVESTMENT ADVISER MEMBERS No. 26-06 INVESTMENT ADVISER ASSOCIATE MEMBERS No. 13-06 PENSION MEMBERS No. 62-06 RE: DOL ISSUES ADDITIONAL GUIDANCE ON LM-10 FILING REQUIREMENTS The Department of Labor has issued new guidance on the filing requirements of the Labor- Management Reporting and Disclosure Act of 1959 (LMRDA) relating to service providers to unions and union-affiliated plans. The new guidance takes the form of four additional questions and answers posted on DOL's website.¹ This is the second time DOL has updated the Q&As since they were first released in November 2005.² Advertising. (Q&A 31A). DOL states that paid advertisements in union magazines and publications and payments for a trade booth at a union conference are not exempt from reporting on Form LM-10 under the statutory exemption for payments "with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business."³ Because a blanket exemption from reporting could be inferred from DOL's LMRDA Interpretative Manual, DOL will not require Form LM-10 reports of expenditures for advertisements in labor organization journals or payments for booths at union conferences for fiscal years commencing on or before December 31, 2006. ¹ The new questions and answers are available at http://www.dol.gov/esa/regs/compliance/olms/LM10_FAQ.htm. Questions and answers that have been added since the last update (March 2006) are marked "NEW." ² See Memorandum to Compliance Advisory Committee No. 55-05, Investment Adviser Members No. 22-05, Investment Adviser Associate Members No. 17-05 and Pension Members No. 53-05 [19361], dated November 11, 2005. See also Memorandum to Compliance Advisory Committee No. 8-06, Investment Adviser Members No. 11-06, Investment Adviser Associate Members No. 5-06 and Pension Members No. 15-06 [19821], dated March 10, 2006. ³ In response to member questions, the Institute had informally asked DOL about the application of LM-10 rules to advertisements in union magazines. ² Service providers as agents. (Q&As 7A, 7B). The LMRDA requires reporting of payments to "agents" of labor unions and union-affiliated plans. The guidance states that payments to a service provider whose contract creates an agency relationship with a union or union-affiliated plan would not ordinarily be reportable. A payment would be reportable if made as a result of, or pursuant to, the agency relationship. For example, according to DOL, a payment to a law firm hired by a labor organization would be reportable if the payment was made with the intent or purpose of influencing the manner in which the law firm executed its agency obligations, such as the positions it would advocate while representing the labor

organization in collective bargaining. The new guidance also addresses service providers to companies that employ union members. DOL states that, except in unusual circumstances, it will not require Form LM-10 reports based solely on the service provider's agency relationship unless the payment is made as a result of, or pursuant to, the agency relationship. Board members of financial institutions. (Q&A 49A). DOL's prior Q&As stated that compensation to a union member for service on a board of directors is reportable. There was some question whether this applied to directors of certain financial institutions because the LMRDA exempts "[p]ayments or loans made in the regular course of business as a national or state bank, credit union, insurance company, savings and loan association or other credit institution." DOL concludes that this exemption is not available, because, while integral to business operations, payments for board service are not of the kind that financial institutions "exist to make." Michael L. Hadley Assistant Counsel

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