

MEMO# 7353

October 19, 1995

AGENCY CROSS-TRANSACTIONS - REQUEST FOR DATA

October 19, 1995 TO: PENSION COMMITTEE No. 21-95 RE: AGENCY CROSS-TRANSACTIONS - REQUEST FOR DATA

_____ As we discussed at the October 11 Committee meeting, the Institute is considering seeking a class exemption from the Department of Labor regarding agency cross-transactions for employee benefit plans, provided there is sufficient industry support for such an exemption. By way of background, in 1983, the Institute asked the Department for an advisory opinion that Prohibited Transactions Exemption 79-1 (class exemption covering executing securities transactions) applied to cross-transactions involving employee benefit plans where an investment adviser served as a fiduciary to parties on both sides of the transaction, e.g., between a plan and fund or two plans managed by the same adviser. The Department did not issue such an opinion. In 1985, when the Department was replacing PTE 79-1 with PTE 86-128, the Institute again asked that such cross-transactions be expressly included within the scope of the exemption. The Department again refused. The Department has, however, granted some individual exemptions permitting certain types of cross-transactions, although these exemptions have imposed restrictive conditions. Given this history it is essential that the Institute first collect compelling data demonstrating that the class exemption would be beneficial to employee benefit plans and plan participants in the form of cost-savings and increased efficiencies before submitting an additional request. Data would include reliable estimates of fees that plans would save, explanations of the circumstances in which these trades would occur, and details of the processes by which appropriate pricing would be assured. If you could provide data that could assist the Institute in this matter, please contact the undersigned (202-326-5835) as soon as possible. Russell G. Galer Assistant Counsel - Pension

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