

**MEMO# 15347**

November 8, 2002

## **DRAFT INSTITUTE LETTER CONCERNING DOL GUIDANCE ON BLACKOUT PERIOD NOTICES**

ACTION REQUESTED [15347] November 8, 2002 TO: PENSION COMMITTEE No. 43-02  
PENSION OPERATIONS ADVISORY COMMITTEE No. 72-02 RE: DRAFT INSTITUTE LETTER  
CONCERNING DOL GUIDANCE ON BLACKOUT PERIOD NOTICES Attached for your review is a  
draft comment letter in response to the Department of Labor's guidance implementing the  
blackout period notice provisions of the Sarbanes-Oxley Act of 2002.<sup>1</sup> The draft letter  
makes the following points. First, we request clarification that plan administrators may  
satisfy the requirement to include an expected ending date in a blackout period notice by  
providing (1) a single expected ending date, where that date is determinable, (2) a range of  
dates in which the end date is expected, where the specific expected end date cannot be  
determined with reasonable accuracy, or (3) a description of the circumstances under  
which the blackout period is expected to end, in those rare situations where even a range  
of expected ending dates would be essentially meaningless. In situations where a single  
expected ending date is not included in the blackout period notice, the plan administrator  
should be required to provide a subsequent notice identifying the ending date once it has  
been determined. Second, the letter urges the Department to exclude from the definition of  
"blackout period" suspensions required under current law upon a plan administrator's  
receipt of a domestic relations order. Finally, we recommend that the model notice be  
modified to (1) expressly permit plan administrators to exclude portions of the model notice  
that are irrelevant to the plan at issue, (2) clarify that the beginning and end dates of the  
blackout period are expected dates, and (3) reflect our recommendation regarding the  
alternative methods of satisfying the ending date notice requirement. Please review the  
attached draft and contact me with any comments or suggestions by Friday, November 15,  
2002. In addition, to the extent that you have comments regarding the 1 See Institute  
Memorandum to Pension Committee No. 42-02 and Pension Operations Advisory Committee  
No. 69- 02, dated October 22, 2002; 67 Fed. Reg. 64766 (October 21, 2002). 2  
Department's civil penalty rules<sup>2</sup> issued in conjunction with the blackout notice guidance,  
please provide them to me as well. I can be reached by phone (202-326-5837), fax  
(202-326- 5841) or e-mail (tkim@ici.org). Thomas T. Kim Associate Counsel Attachment (in  
.pdf format) 2 See Institute Memorandum to Pension Committee No. 42-02 and Pension  
Operations Advisory Committee No. 69- 02, dated October 22, 2002; 67 Fed. Reg. 64774  
(October 21, 2002).

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.