

**MEMO# 2242**

October 3, 1990

## **PRIVATE LETTER RULING ON MARKET-TIMING FEES FROM IRAS**

- 1 - October 3, 1990 TO: PENSION MEMBERS NO. 38-90 INVESTMENT ADVISER MEMBERS NO. 49-90 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 44-90 RE: PRIVATE LETTER RULING ON MARKET-TIMING FEES FROM IRAs

The Institute has received numerous recent inquiries regarding IRS rulings on payments from IRAs to investment advisers for market timing and other advisory services. As we previously informed you, the IRS ruled that when a taxpayer's IRA enters into an agreement with a market-timing service, which transfers investments between various mutual funds, and under the agreement the IRA is solely liable for the payment of the fees, such payment is not a taxable distribution from the IRA. (See Institute Memorandum to Pension Members No. 2-90, Investment Adviser Members No. 4-90 and Investment Adviser Associate Members No. 4-90, dated January 24, 1990.) The IRS also ruled that a nonbank trustee or custodian of an IRA may remit from the assets of the IRA any fees due to an unrelated investment adviser on the account owner's instructions without causing a taxable distribution to occur from the IRA. IRS Private Letter Ruling 9005010 involved a situation where the account owner, at his or her discretion, could designate and authorize another person, such as a broker or other investment adviser, who may or may not be an adviser related to the nonbank custodian of the IRA, to direct the investment activity of the account. A copy of this ruling is attached. The ruling provides that the administrative expenses or investment advisory fees paid by the IRA are considered fees of the IRA trust, deductible to the IRA and not reportable on Form W-2P as a distribution. It also states that payment by the account owner of the adviser's fee or of the custodian's annual fee was not an addition to the IRA for purposes of sections 219, 408 or 4973 of the Code. - 2 - We will keep you informed of further developments. W. Richard Mason Assistant General Counsel Attachment