

MEMO# 19649

January 26, 2006

JOINT COMMENT LETTER TO DOL ON LM-30 RULEMAKING

©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. [19649] January 26, 2006 TO: COMPLIANCE ADVISORY COMMITTEE No. 4-06 INVESTMENT ADVISER MEMBERS No. 7-06 INVESTMENT ADVISER ASSOCIATE MEMBERS No. 3-06 PENSION MEMBERS No. 7-06 RE: JOINT COMMENT LETTER TO DOL ON LM-30 RULEMAKING The Institute has filed the attached comment letter with the Department of Labor regarding proposed amendments to Form LM-30. The letter, organized by the Institute, was filed jointly with the American Council of Life Insurers, the Investment Advisers Association, and the Securities Industry Association.¹ As you are aware, in DOL's recently published guidance² on the filing requirements on Form LM-10 of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), DOL invited those affected by LM-10 requirements to comment on the LM-30 proposal. DOL has provided no forum for public comment on the new LM-10 requirements. The letter argues that the dramatic shift in DOL policy will impose an extraordinary burden on service providers without equivalent public policy gain. Specifically, the letter argues:

- The LMRDA was enacted to address relations between union officials and employers who employ union members, not the services that are provided to pension plans. DOL's interpretation is overreaching and inconsistent with a reasonable reading of the LMRDA, and represents a sea change in DOL's interpretation of the statute for the past 40-plus years.
- There is no regulatory gap to be filled here. The conduct DOL is concerned about – buying the influence of pension plan trustees – is clearly wrong and is already illegal ¹ See Memorandum to Compliance Advisory Committee No. 48-05, Investment Adviser Members No. 14-05, Investment Adviser Associate Members No. 12-05 and Pension Members No. 33-05 [19051], dated August 1, 2005. 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. ² under ERISA. The relationship between trustees of pension plans – both union and non- union – is comprehensively regulated by ERISA, which imposes strict fiduciary duties, prohibits self-interested transactions, and requires reporting of prohibited transactions. Other laws and self-regulatory organization rules also govern this conduct.
- DOL cannot legally and should not impose onerous new filing requirements without giving affected parties an opportunity for public comment and adequate time to come into compliance. The new LM-10 requirements deserve their own rulemaking.
- Retroactive application of LM-10 reporting is unfair. In addition, the aggregate \$250 de minimis exception is inadequate in relieving the compliance burden because service providers are still required to track each cup of coffee and minor courtesy.

Michael L. Hadley Assistant Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit

our members website (<http://members.ici.org>) and search for memo 19649, or call the ICI Library at (202) 326-8304 and request the attachment for memo 19649.

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