

MEMO# 1676

January 24, 1990

PRIVATE LETTER RULING PERMITTING DIRECT PAYMENT OF MARKET-TIMING FEES FROM IRA

January 24, 1990 TO: PENSION MEMBERS NO. 2-90 INVESTMENT ADVISER MEMBERS NO. 4-90 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 4-90 RE: PRIVATE LETTER RULING PERMITTING DIRECT PAYMENT OF MARKET-TIMING FEES FROM IRA

Attached is a copy of IRS Private Letter Ruling 8951010, which addresses the direct payment of market-timing fees from an IRA. The taxpayer's IRA trustee entered into an agreement with a market-timing service, which transfers investments between various mutual funds. Under the agreement, the IRA is solely liable for the payment of the fee, and the IRA pays the fee directly to the service. The taxpayer never paid the fee personally. The IRS concluded that, since the IRA is solely liable for the payment of the fee, the direct payment constitutes a trust expense. Accordingly, the IRS held that this payment would not be included in gross income under section 408(d)(1) of the Code and would not be subject to the additional tax under section 72(t). The IRS added, however, that the ruling would not apply if, at any subsequent time, the IRA is not solely liable for subsequently incurred fees or if the IRA does not actually pay the fees. We will keep you informed of further developments. Kathy D. Ireland Associate General Counsel Attachment

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