

**MEMO# 11590**

January 28, 2000

## **DRAFT COPIES OF INSTITUTE COMMENT LETTER ON PASSIVE CROSS-TRADES AND TESTIMONY ON ACTIVE CROSS-TRADES**

1 See Institute Memorandum to Investment Advisers Committee No. 17-99 and Pension Committee No. 71-99, dated December 17, 1999. [11590] January 28, 2000 TO: INVESTMENT ADVISERS COMMITTEE No. 5-00 PENSION COMMITTEE No. 9-00 AD HOC COMMITTEE ON CROSS-TRADES RE: DRAFT COPIES OF INSTITUTE COMMENT LETTER ON PASSIVE CROSS-TRADES AND TESTIMONY ON ACTIVE CROSS-TRADES

As you are aware, the Department of Labor has requested comments on its proposed class exemption on passive cross-trades and has scheduled a hearing to discuss active cross-trades issues.<sup>1</sup> We have attached for your review, draft copies of the comment letter to the Department on passive cross-trades and of the testimony on active cross-trades. The hearing is scheduled for Thursday, February 10, 2000 and if necessary Friday, February 11, 2000 and the comment letter is due Monday, February 14, 2000. In order to ensure that we receive and are able to process all member comments before the hearing and the comment letter due date, we request that you forward your comments on the comment letter and testimony to me via fax at (202) 326-5841, email at [ricard@ici.org](mailto:ricard@ici.org) or telephone at (202) 218-3563 by COB Friday, February 4, 2000. We understand that this is a relatively short time frame, but we want to ensure that we are able to address all member comments in a timely fashion. I.

**Comment Letter Issues** The Institute's comment letter is divided into two major sections: (1) requested modifications, and (2) requested clarifications. With respect to the requested modifications section, we make the following points: (1) a black-out period is unnecessary and burdensome; (2) the requirements that equity securities be "widely-held" and "actively-traded" are not appropriate for inclusion in a passive cross-trades exemption; (3) the passive cross-trades class exemption should permit cross-trades between Large Accounts; (4) the definition of "trading adviser" should facilitate the provision of investment advice; and (5) the class exemption should permit cross-trades of manager-issued securities. We are requesting specific member feedback on the following issues: (1) frequency of changes to model-driven funds and description of related procedures; and (2) potential issues related to submitting the abovementioned comment on the definition of trading adviser. With respect to requested clarifications, we request that the Department clarify the following issues: (1) that the disclosure provision for "new" funds requires investment advisers to provide disclosure of new Funds only to those "relevant" independent plan fiduciaries whose plans have invested in those Funds; and (2) that the independent fiduciary authorization conditions do not apply to plans maintained by the investment manager. We are requesting specific member feedback on the following issues related to "requested clarifications:" (1) that a broader reading of the disclosure

requirements for “new” Funds, as described in the comment letter, would raise privacy concerns with clients; and (2) whether the Institute should comment on inconsistencies between conditions included in the class exemption and in prior individual exemptions. Because this issue affects individual members differently, we did not include a specific recommendation in the comment letter. II. Testimony The testimony addresses the following four points: (1) general background concerning the process of cross-trading; (2) the benefits associated with cross-trades transactions; (3) how overly restrictive conditions on cross-trades are harmful to ERISA-covered pension plans; and (4) the Institute’s recommended conditions for a class exemption on active cross-trades. We request member feedback on the following specific issues: (1) data on cost-savings associated with cross-trades; (2) whether the Institute should recommend that the Department include its definition of equity and fixed-income securities (currently included in the proposed class exemption on passive cross-trades) in a class exemption for active cross-trades; (3) the feasibility of a disclosure provision that would require investment advisers to provide independent plan fiduciaries with quarterly reports on all cross-trades executed on behalf of the plan, listing each cross-trade transaction, the price of the security at the time of the cross-trade and the closing price of the security at the end of that day, or that security’s high and low price for the day; and (4) whether the Institute should propose a volume limit as a condition in a class exemption for active cross-trades. For your convenience, we have flagged each issue involving specific member feedback in the comment letter and testimony. We thank you in advance for your attention to this matter. If you have any questions concerning the comment letter or the testimony, please call me at (202) 218-3563. Kathryn A. Ricard Associate Counsel Attachments