

MEMO# 15383

November 22, 2002

INSTITUTE LETTER CONCERNING DOL GUIDANCE ON BLACKOUT PERIOD NOTICES

[15383] November 22, 2002 TO: PENSION MEMBERS No. 56-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 77-02 RE: INSTITUTE LETTER CONCERNING DOL GUIDANCE ON BLACKOUT PERIOD NOTICES The Institute recently filed the attached letter with the Department of Labor with regard to its regulatory guidance implementing section 306(b) of the Sarbanes-Oxley Act of 2002.¹ Under these rules, a plan administrator of an individual account plan must provide notice of a blackout period generally 30 days in advance of the blackout to all affected participants and beneficiaries. The recommendations made in the letter include the following. First, the letter requests 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 letter notes that 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 clarify that the definition of “blackout period” does not include suspensions required under current law upon a plan administrator’s receipt of a domestic relations order, or restrictions resulting from other judicial or government agency-imposed orders. Finally, the letter recommends 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 1 See Institute Memorandum to Pension Members No. 50-02, dated October 23, 2002; see also Institute Memorandum to Pension Members No. 35-02 and Pension Operations Advisory Committee No. 51-02, dated July 30, 2002. 2 (3) reflect our recommendation regarding the alternative methods of satisfying the ending date notice requirement. Thomas T. Kim Associate Counsel 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 15383, or call the ICI Library at (202) 326-8304 and request the attachment for memo 15383. Attachment (in .pdf format)

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