MEMO# 9905

May 5, 1998

DRAFT COMMENT LETTER TO THE DEPARTMENT OF LABOR ON CROSS-TRADES

1 See Institute Memorandum to Pension Members, No. 22-98 and Investment Adviser Members, No. 8-98, dated March 24, 1998. [9905] May 5, 1998 TO: INVESTMENT ADVISERS COMMITTEE No. 17-98 PENSION COMMITTEE No. 25-98 CROSS-TRADES AD HOC WORKING GROUP RE: DRAFT COMMENT LETTER TO THE DEPARTMENT OF LABOR ON CROSS-TRADES ____ As you were previously informed, the Department of Labor recently published a request for information on the cross-trading of securities by investment managers where the trades involve pension plan assets.1 Cross-trades involving pension plans are subject to the prohibited transaction rules of the Employee Retirement Income Security Act of 1974 (ERISA). Historically, the Department has granted limited individual exemptive relief from the ERISA prohibitions for cross-trades of securities by investment managers on behalf of employee benefit plan accounts or pooled funds that contain plan assets. In the notice, the Department provides background information on cross-trades, reasons why certain cross-trades may benefit pension plans and potential abuses that the Department believes may arise from cross-trades involving pension plan assets. The Department has requested that interested parties submit information regarding cross-trades and has included a list of 25 questions designed to help the Department develop future exemptive relief. The Institute has drafted a comment letter in response to the DepartmentGs request for information on cross-trades. In the letter, we make four points: (1) cross-trading can benefit clients; (2) the DepartmentGs overly restrictive conditions are harmful to plan clients; (3) Rule 17a-7 provides a model for an appropriate class exemption; and (4) separate regulatory requirements for cross-trades transactions is not good government. In addition, the comment letter includes an addendum that provides historical background on Rule 17a-7 and a discussion of SEC enforcement actions involving Rule 17a-7. Please review the attached draft comment letter and addendum and provide your comments to the undersigned by COB, Tuesday May 12. You may fax your comments to (202) 326-5841, email them to ricard@ici.org or call me at (202) 218-3563. We are looking for specific comments in the following areas: (1) estimated savings per cross-trade transaction (see page 3 of the letter); (2) effect of volume limitations imposed by the Department (see page 6 of the letter); (3) market impact issues (see page 10 of the letter); and (4) whether small plans should be required to have an independent plan fiduciary approve cross-trades procedures and review periodic reports detailing cross-trades transactions. Note that the Institute does not support a requirement that small plans pre-approve each cross-trade. Thank you for your attention to this matter. Kathryn A. Ricard Assistant Counsel Attachments