

MEMO# 16294

July 14, 2003

ADDITIONAL DISCUSSION TOPIC FOR JULY 16 CONFERENCE CALL -- RECENT DOL ADVISORY OPINION ON DIRECTED TRUSTEES' RECEIPT OF FEES UNDER BUNDLED SERVICES ARRANGEMENTS

[16294] July 14, 2003 TO: PENSION COMMITTEE No. 22-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 42-03 RE: ADDITIONAL DISCUSSION TOPIC FOR JULY 16 CONFERENCE CALL -- RECENT DOL ADVISORY OPINION ON DIRECTED TRUSTEES' RECEIPT OF FEES UNDER BUNDLED SERVICES ARRANGEMENTS As we previously informed you,¹ a conference call has been scheduled for this Wednesday, July 16, 2003 at 2:00 pm EDT regarding the Department of Labor's field assistance bulletin (FAB) on the allocation of expenses in defined contribution plans.² In addition to discussing the interpretive issues arising from the FAB, we plan to discuss the Department's recent advisory opinion concerning a directed trustee's receipt of 12b-1 and subtransfer fees from mutual funds, including proprietary funds, offered under defined contribution plans. As you are aware, Advisory Opinion 2003-09A³ concluded (under the facts represented) that the receipt of such fees by a directed trustee would not violate certain ERISA prohibited transaction restrictions where the decision to invest in mutual funds offered under a plan is made by a plan fiduciary independent of the directed trustee (and its affiliates) or by plan participants. If you have not yet signed up for the July 16th conference call and would like to participate, please complete the attached response form and fax it to Brenda Turner (at 202/326- 5841) or, alternatively, provide a response by email to bturner@ici.org. To participate in the call, dial 1-888-730-9138 and ask for the ICI call, passcode "plan expense guidance" with the undersigned as moderator. Thomas T. Kim Associate Counsel Attachment (in .pdf format) 1 See Institute Memorandum to Pension Committee No. 18-03 and Pension Operations Advisory Committee No. 35-03 (16256), dated July 1, 2003. 2 See Institute Memorandum to Pension Members No. 25-03 and Pension Operations Advisory Committee No. 30-03 (16105), dated May 22, 2003. 3 See Institute Memorandum to Pension Members No. 30-03 and Pension Operations Advisory Committee No. 37-03 (16269), dated July 7, 2003.