

**MEMO# 9956**

May 21, 1998

## **INSTITUTE FILES COMMENT LETTER WITH 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. [9956] May 21, 1998 TO: INVESTMENT ADVISERS COMMITTEE No. 19-98 PENSION COMMITTEE No. 29-98 CROSS-TRADES AD HOC WORKING GROUP RE: INSTITUTE FILES COMMENT LETTER WITH THE DEPARTMENT OF LABOR ON CROSS-TRADES

\_\_\_\_\_ On May 19, the Institute filed a comment letter with the Department of Labor in response to the Department's request for information on cross-trades.<sup>1</sup> In its letter, the Institute urges the Department to issue a class exemption modeled on Rule 17a-7 of the Investment Company Act of 1940 to permit accounts subject to the Employee Retirement Income Security Act of 1974, as amended, to enter into cross-trades transactions. The letter consists of four points: (1) cross-trading can benefit clients; (2) the Department's overly restrictive conditions are harmful to plan clients; (3) Rule 17a-7 provides a model for an appropriate class exemption; and (4) consistent regulatory requirements for cross-trades would be consistent with Administration policy. In addition, an addendum to the comment letter discusses the background and operation of Rule 17a-7, as well as other provisions of the federal securities laws that govern cross-trading of securities. Specifically, the letter addresses various issues of concern raised in the Department's request for information including the following: dumping and cherry-picking; unfair allocations of cross-trading opportunities; improperly influencing portfolio management decisions; precluding clients from benefiting from market impact costs; and concerns over pricing methodology. Finally, the Institute's comment letter suggests that a Department class exemption on cross-trades should include requirements similar to those in Rule 17a-7. However, the Institute urges the Department not to include other conditions that it has required in previous individual exemptions that it has granted for actively managed accounts, including a pre-approval requirement, volume limitations and the restriction on changes in the price of the security. We will follow-up with the Department regarding its request for information on cross-trades and the Institute's comment letter in the near future. A copy of the comment letter is attached. Kathryn A. Ricard Assistant Counsel Attachment