

**MEMO# 1609**

December 22, 1989

# **IRS ANNOUNCES NON-ENFORCEMENT POSITION CONCERNING CERTAIN PROHIBITED TRANSACTIONS INVOLVING IRAS**

- 1 - December 22, 1989 TO: PENSION COMMITTEE NO. 20-89 RE: IRS ANNOUNCES NON-ENFORCEMENT POSITION CONCERNING CERTAIN PROHIBITED TRANSACTIONS INVOLVING IRAs \_\_\_\_\_ As you know, the U.S.

Department of Labor earlier this year issued an advisory opinion stating that a bank's provision of a free checking account to an IRA participant constitutes a prohibited transaction under section 4975(c)(1) of the Internal Revenue Code. (See Institute Memorandum to Pension Members No. 36-89, dated August 1, 1989.) Attached is a copy of IRS Announcement 90-1, which states that the IRS will not raise issues concerning possible prohibited transactions arising from certain cash, property, or services offered by banks to IRA and Keogh plan participants. This non-enforcement posture will remain in effect until the Department of Labor makes a final determination concerning a recent class exemption request covering a broad range of "relationship banking" services. The services covered by the announcement are those offered to the individual for whom the IRA or Keogh is maintained, consistent with and incidental to the business of banking, and permitted under the banking laws. In order to qualify under the announcement, the rate of return offered by the investment must be within reasonable range of the prevailing rates of return of comparable investments generally offered by the bank to all customers regardless of whether they avail themselves of the services. Effective April 17, 1990 (or January 1, 1990, for any services that were not offered on December 31, 1989), three additional conditions will apply. First, IRA and Keogh accounts must be treated in the same manner as other accounts in determining eligibility for the services. Second, the provision of services may not result in a lower return on the IRA or Keogh investment. Third, the services must be generally available (with or without a service charge or fee) to other bank customers. - 2 - We will keep you informed of further developments. Kathy D. Ireland Associate General Counsel Attachment