PNC BANK

February 9, 2007

Office of Exemption Determinations
Employee Benefits Security Administration
Room N-5700
U.S. Department of Labor
200 Constitution Ave. NW
Washington, D.C 20210

Attention: IRA Investment Advice RFI

Dear Sir or Madam:

This letter and the attachments hereto are being submitted to the Department of Labor ("Department") in response to its letter to James E. Rohr, Chairman and CEO of The PNC Financial Services Group, Inc. dated December 12, 2006 and the enclosed Request for Information ("RFI") regarding computer model investment advice programs for IRAs.

By way of background, The PNC Financial Services Group, Inc. ("PNC") is one of the nation's largest diversified financial services organizations, providing consumer and business banking; specialized services for corporations and government entities, including corporate banking, real estate finance and asset-based lending; wealth management; asset management and global fund services. PNC provides investment and wealth management, fiduciary services, FDIC-insured banking products and services and lending and borrowing of funds through its subsidiaries, PNC Bank, National Association and PNC Bank, Delaware, which are members FDIC. Securities products and brokerage services are offered through J.J.B. Hilliard, W.L. Lyons, Inc. and PNC Investments LLC, which are registered broker-dealers and members of the NASD and SIPC. J.J.B. Hilliard, W.L. Lyons, Inc. is also a member of the NYSE.

Various affiliates of PNC provide custodial and investment services to IRAs, although computer programs are not necessarily used in delivering investment services in the manner contemplated by the investment advice exemption under the Pension Protection Act of 2006 and the RFI. Nonetheless, in order to provide meaningful feedback to the Department in response to the RFI, attached are two sets of responses to the specific RFI questions prepared by two indirect wholly-owned subsidiaries of PNC, ADVISORport, Inc. ("ADVISORport") and PNC Investments LLC ("PNC Investments"), respectively.

As explained in more detail in the attached responses, ADVISORport and PNC Investments each use computer software programs to generate asset allocation strategies for clients within the context of programs such as mutual fund "wrap" programs and separately managed account programs; however, the computer software programs do not generate specific investment recommendations.

Please note that the attached responses to the RFI are limited to information with respect to programs made available by ADVISORport and PNC Investments to their respective clients. We did not undertake to research the extent to which other financial institutions may use computer model investment advice programs for their clients.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

Joan C. Zangrilli
Senior Counsel
(412) 762-8250

General ADVISORport Overview

ADVISORport, Inc. ("ADVISORport") is a federally registered investment adviser, which provides investment advisory services to institutions such as financial services firms, investment management firms, other registered investment advisors, broker-dealers, and banks (collectively, the "Advisors"). The Advisors, in turn, provide their investment clients ("Clients") access to ADVISORport's value-added services such as research and performance reporting, or advisory programs sponsored by ADVISORport such as the ADVISORport Separately Managed Account Program, the ADVISORport Unified Managed Account Program (also known as the Multi-Strategy Account Program), and/or mutual fund advisory programs (ADVISORport Fund Select Program and the ADVISORport Fund Select Premier Program), collectively, the ADVISORport Programs. The Separately Managed Account Program and the Unified Managed Account Programs provide clients access to investment management services of various money managers, and the mutual fund advisory programs provide clients access to various mutual funds that correspond to applicable asset allocation models.

Using an investment questionnaire, the Advisors collect financial information from their prospective investment clients ("Clients") for the purpose of assisting Clients in establishing appropriate investment goals, objectives and an investment policy for their investment portfolio(s). Using the responses from the investment questionnaire, the Advisor uses ADVISORport's computer software program to generate a proposed asset allocation strategy for the Client's assets. Note that the computer software program does not generate specific investment product recommendations, just the proposed asset allocation strategy. The Advisor and the Client then determine the appropriate asset allocation strategy and which ADVISORport Program(s) and investment product(s) best suit that Client's needs. As such, Client-level advice is generally performed by an adviser representative, employee, agent, affiliate or other delegated person of the Advisor to which ADVISORport provides services.

The Advisor then submits the appropriate ADVISORport Program paperwork, including the investment questionnaire and advisory agreement, to ADVISORport. The advisory agreement is entered into among the Client, the Advisor and ADVISORport ("Client Agreement"). The client opens a brokerage account with a broker designated in the Client Agreement to provide custody, trade execution, trade confirmations and regular statements of position and account activity. ADVISORport provides Advisors with quarterly performance reports which Advisors, in turn, provide to their Clients, though in some situations ADVISORport will coordinate the distribution of the reports to Clients on behalf of the Advisor.

The responses below are based on ADVISORport's proprietary computer software program and ADVISORport Programs described above, with the caveat that they may not meet the definition of "computer model investment advice program" as contemplated under the Pension Protection Act of 2006 and the RFI.

Specific RFI Questions

1. Are there computer model investment advice programs for the current year and preceding year that are, or may be, utilized to provide investment advice to beneficiaries of plans described in section 4975(e)(1)(B)-(F) (and so much of subparagraph (G) as relates to such subparagraphs) (hereinafter "IRA") of the Code which:

   (a) Apply generally accepted investment theories that take into account the historic returns of different assets classes over defined periods of time;
   a. *ADVISORport's computer software program uses mean variance optimization tools to generate expected risk and return metrics and asset allocation recommendations for various asset classes (e.g., US Equity, International Equity, US Fixed Income, etc). The historical returns, standard deviations and correlation coefficients of the various asset classes are significant contributors to the assumptions used in the optimization software.*

   (b) Utilize relevant information about the beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments;
   a. *The ADVISORport Programs use an investment questionnaire, which asks questions of the prospective client regarding their investment time horizon, their expected income and returns for these assets and their tolerance to risk (variability of returns) to help drive toward a recommended asset allocation.*

   (c) Operate in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser;
   a. *All available investment options are presented to prospective clients side by side, regardless if they are proprietary or affiliated with ADVISORport. However, for the Separately Managed Account program, all available money managers are under a contractual relationship with ADVISORport.*

   (d) Take into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the beneficiary; and
   a. *Yes, clients are able to fulfill their recommended asset allocation guideline through the use of "outside" investments.*

   (e) Allow the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options.
   a. *We are unclear as to this requirement; however, under the ADVISORport Programs, the client is free to consult with whomever he or she deems appropriate in order to evaluate and select investment*

options. In addition, as described above, client-level advice is generally performed by an adviser representative, employee, agent, affiliate or other delegated person of the Advisor to which ADVISORport provides services.

2. If currently available computer models do not satisfy all of the criteria described above, which criteria are presently not considered by such computer models? Would it be possible to develop a model that satisfies all of the specified criteria? Which criteria would pose difficulties to developers and why?
   a. *The item listed under (c) above might be considered challenging due to the lack of clarity with respect to what would be considered "biased." For instance, with respect to subadvised separately managed account programs, it the industry standard (and required to define roles/responsibilities) to enter into a contractual relationship with the third party money manager providing its advisory services. It is not practical to offer this type of investment program and include the whole universe of money managers. Thus, every third party manager in such a program will have a contractual relationship with the sponsor of the program, which sponsor potentially could be the "fiduciary adviser" with respect to the IRA beneficiary. The third party money managers typically do not pay fees to the managed account program sponsor, however. See also response to number 4 below.*

3. If there are any currently available computer model investment advice programs meeting the criteria described in Question 1 that may be utilized for providing investment advice to IRA beneficiaries, please provide a complete description of such programs and the extent to which they are available to IRA beneficiaries.
   a. *See General ADVISORport Overview and previous responses above. The ADVISORport Programs are available to IRA Clients.*

4. With respect to any programs described in response to Question 3, do any of such programs permit the IRA beneficiary to invest IRA assets in virtually any investment? If not, what are the difficulties, if any, in creating such a model?
   a. *Although theoretically a computer advice program could be used to include virtually any type of investment, the ADVISORport Programs are limited to those investments that ADVISORport is able to operationally support and are available. These operational considerations place a variety of limitations on the available investments. As noted above, in the Separately Managed Account Program, the universe is limited to money managers with whom ADVISORport has a contractual relationship, given the operational considerations of these accounts and ADVISORport's role to perform initial and ongoing due diligence on these money managers. For ADVISORport's mutual fund advisory programs, the universe is limited to those mutual funds that have a distribution agreement with the broker-dealer of record, therefore again limiting the universe. Finally, certain investment types (e.g., private placements, hedge funds) require unique operational processes that ADVISORport may not be able to support within its programs. As such, clients would be precluded from including those investments within the*

ADVISORport Programs.

5. If computer model investment advice programs are not currently available to IRA beneficiaries that permit the investment of IRA assets in virtually any investment, are there computer model investment advice programs currently available to IRA beneficiaries that, by design or operation, limit the investments modeled by the computer program to a subset of the investment universe? If so, who is responsible for the development of such investment limitations and how are the limitations developed? Is there any flexibility on the part of an IRA beneficiary to modify the computer model to take into account his or her preferences? Are such computer model investment advice programs available to the beneficiaries of IRAs that are not maintained by the persons offering such programs?
   a. *As noted in the responses to 2 and 4 above, the ADVISORport Programs place limits on the available investment options. As sponsor of the Programs, the limitations are based primarily upon the types of investments that can be supported in our Programs. There is no flexibility for the IRA beneficiary to modify the computer model itself, although of course the IRA beneficiary is solely responsible for the information/answers provided into the computer model and can include his or her preferences within our available universe of options. With respect to the last question in number 5, we believe there are a wide variety of resources available (e.g., via the internet, via software available for purchase, or from other advice providers) that the IRA beneficiaries can choose to use on their own accord at any time.*

6. If you offer a computer model investment advice program based on nonproprietary investment products, do you make the program available to investment accounts maintained by you on behalf of IRA beneficiaries?
   a. *The ADVISORport Programs include nonproprietary investment products and are available to IRA beneficiaries.*

7. What are the investment options considered by computer investment advice programs? What information on such options is needed? How is the information obtained and made part of the programs? Is the information publicly available or available to IRA beneficiaries?
   a. *The ADVISORport computer software program is focused on helping the investor to establish an appropriate asset allocation policy, using a standard mean variance optimization program to generate an efficient frontier of investment portfolios, given their risk and reward objectives. As such, the investment options in the model include the following asset classes: US Large Cap Equity, US Small/Mid Cap Equity, International Developed Markets Equity, Emerging Markets Equity, US Gov/Credit Fixed Income and US Municipal Fixed Income. ADVISORport is also in the process of introducing expanded investment options (at the client's discretion) in more non-traditional or more specific investments such as Commodities, REITs, Convertibles, International Fixed Income and Floating Rate debt.*

The information required for each asset class option in the mean variance optimizer is the expected return, expected standard deviation and expected correlation coefficient for each asset class. Personnel in ADVISORport's research department generate the required information using a variety of sources of data, all of which is publicly available generally.

8. How should the Department or a third party evaluate a computer model investment advice program to determine whether a program satisfies the criteria described in Question 1 or any other similar criteria established to evaluate such programs?
   a. *The Department should recognize that trying to apply a "one size fits all" guideline toward providing advice to IRA beneficiaries may actually work to the detriment of investors. For example, it is generally in the investors' best interest to provide advice solutions at different fee structures for different investment types due to the different cost structures of "manufacturing and delivering" such solutions (e.g., Equity vs. Fixed Income solutions). Also, many proprietary investment options may be very good solutions for clients. Just because the opportunity for bias may exist in certain situations, an advice provider should not be precluded from providing its services as long as they are upholding their fiduciary responsibilities. Ideally the Department would synchronize its approach with the regulatory and fiduciary responsibilities under which advisors already operate under the SEC and other applicable regulatory bodies. Providing good advice and solutions to the mass of IRA Beneficiaries requires flexibility and tailoring that may be difficult to implement under broad standardized rules. Under the fiduciary responsibility standard, there is flexibility to tailor each client's advice solution based upon the best interest of the client.*

      Also, it is not practical for an advice provider to include <u>any</u> type of investment option for investors, as the advice providers need to have the applicable contractual and operational infrastructure in place to be able to access and support such investment types.

9. How do computer model investment advice programs present advice to IRA beneficiaries? How do such programs allow beneficiaries to refine, amend or override provided advice?
   a. *The ADVISORport Programs assist clients with establishing an appropriate asset allocation policy given their risk and reward objectives. The clients are solely responsible for providing the information that feeds into the computer software program, and as such, clients can refine and amend the asset allocation solution from that perspective. However, clients are not able to alter the inputs into the optimization software (e.g., expected returns, standard deviations or correlation coefficients), nor are they able to alter the weighting/scoring methodology of their responses used to recommend an asset allocation solution. However, if clients are not comfortable with the recommended asset allocation solution, we would expect that they would choose another provider or develop their own investment solution. Once the*

asset allocation policy is approved by the client, the Advisor then provides recommendations regarding specific investment options for the account as described above in the General ADVISORport Overview.

PNC Investments LLC General Overview

PNC Investments LLC ("PNC Investments") provides continuous and regular investment advisory services to clients in connection with individual accounts and IRAs under Capital Directions[SM], an asset allocation service. Based upon the client's risk tolerance, funding abilities, time horizons and financial goals, PNC Investments advisor representatives work with the Capital Directions program to recommend a strategy of investing in individual mutual fund portfolios. PNC Investments advises clients in establishing an initial investment strategy and provides ongoing counseling to clients by reviewing the strategy with clients at least annually and more frequently as clients' needs require. Clients are reminded quarterly to contact a PNC Investment adviser representative if they have any questions or if there have been any changes in their investment strategy or needs. PNC Investments adviser representatives are available to clients to discuss any changes in clients' financial situations or investment objectives. PNC Investments has an ongoing responsibility to make investment recommendations to clients regarding changes in their financial situations, investment objectives, or allocation strategy, which changes can result in the purchase and sale of mutual fund shares in clients' Capital Directions accounts.

1. Are there computer model investment advice programs for the current year and preceding year that are, or may be, utilized to provide investment advice to beneficiaries of plans described in section 4975(e)(1)(B)-(F) (and so much of subparagraph (G) as relates to such subparagraphs) (hereinafter "IRA") of the Code which:

   (f) Apply generally accepted investment theories that take into account the historic returns of different assets classes over defined periods of time;

   (g) Utilize relevant information about the beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments;

   (h) Operate in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser;

   (i) Take into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the beneficiary; and

   (j) Allow the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options.

Answer: *PNC Investments does not offer a computer model investment advice program. As described above, Capital Directions is a mutual fund asset allocation service made available through PNC Investments. As part of the Capital Directions program, there is proprietary front-end software available to the adviser representatives, which assists in*

the suitability of the appropriate asset allocation model for each client including age, retirement age, risk tolerance, other assets or sources of income and preferences as to types of investments.

2. If currently available computer models do not satisfy all of the criteria described above, which criteria are presently not considered by such computer models? Would it be possible to develop a model that satisfies all of the specified criteria? Which criteria would pose difficulties to developers and why?

Answer: *The Capital Directions asset allocation program currently does not model for life expectancy. The Capital Directions model was built for the intention of the accumulation phase of a client's assets and is not designed to have a guaranteed post retirement payout.*

PNC Investments has not determined if it has the capabilities to enhance the existing Capital Directions program to meet all of the above criteria (specifically life expectancy). The life expectancy criteria could pose difficulties for our developers given the number of assumptions that are required to model a client's portfolio years out. Small variances in the actual numbers versus assumed numbers could have a material impact on the expected return.

3. If there are any currently available computer model investment advice programs meeting the criteria described in Question 1 that may be utilized for providing investment advice to IRA beneficiaries, please provide a complete description of such programs and the extent to which they are available to IRA beneficiaries.

Answer: *PNC Investments has not identified any computer model investment advice programs meeting all the criteria above.*

4. With respect to any programs described in response to Question 3, do any of such programs permit the IRA beneficiary to invest IRA assets in virtually any investment? If not, what are the difficulties, if any, in creating such a model?

Answer: *If these models were available, only asset classes that are beneficial to the IRA beneficiary would be included. For example, tax–efficient mutual funds and municipal funds should not be included.*

5. If computer model investment advice programs are not currently available to IRA beneficiaries that permit the investment of IRA assets in virtually any investment, are there computer model investment advice programs currently available to IRA beneficiaries that, by design or operation, limit the investments modeled by the computer program to a subset of the investment universe? If so, who is responsible for the development of such investment limitations and how are the limitations developed? Is there any flexibility on the part of an IRA beneficiary to

modify the computer model to take into account his or her preferences? Are such computer model investment advice programs available to the beneficiaries of IRAs that are not maintained by the persons offering such programs?

Answer: *Capital Directions has an approved list of mutual funds that are available to the adviser representatives. These funds go through a rigorous screening and due diligence process. At this time, our models only allow for mutual funds. We are considering expanding our offering to include exchange traded funds and possibly other investment options. See also PNC Investment LLC Overview above.*

6. If you offer a computer model investment advice program based on nonproprietary investment products, do you make the program available to investment accounts maintained by you on behalf of IRA beneficiaries?

Answer: *Capital Directions employs an open architecture program with both proprietary and non-proprietary fund options that are identified by our Investment Advisor Research team.*

7. What are the investment options considered by computer investment advice programs? What information on such options is needed? How is the information obtained and made part of the programs? Is the information publicly available or available to IRA beneficiaries?

Answer: *The investment options considered are not applicable since we do not offer a computerized investment advice program at this time. The program is currently a mutual fund asset allocation program consisting of 12 fund families (both non-proprietary funds and funds advised by an entity in which PNC owns a minority interest). A prospectus is mailed at time of purchase. Clients are also provided the PNC Investments Form ADV.*

8. How should the Department or a third party evaluate a computer model investment advice program to determine whether a program satisfies the criteria described in Question 1 or any other similar criteria established to evaluate such programs?

Answer: *The program should ensure that the products that are being offered are appropriate investment options including:*

b. Conflicts of interest are disclosed
c. Fees are transparent
d. Flexibility for the client to override the model if they are not comfortable with any of the investment options or the recommended asset allocation model

Model should also ensure that 2 clients that input identical information would lead the clients to the same outcome.

9. How do computer model investment advice programs present advice to IRA beneficiaries? How do such programs allow beneficiaries to refine, amend or override provided advice?

Answer: *As indicated above, PNC Investments does not use a computer model investment advice program and has not identified such programs used by other financial institutions. The Capital Directions program is described in the PNC Investments LLC General Overview above. Having stated that, PNC Investments believes that any computer model investment advice program should include an investment policy statement that is prepared for each client based on their unique circumstances including their willingness and ability to take risk. If a client is directed to an aggressive model, but does not have the appetite to take risk, they should have the flexibility to select a more appropriate model.*

The underlying assumptions that are embedded into the computerized model should be disclosed to clients so they have the ability make adjustments and understand the basis of the output. For example if the model is based on a 2 standard deviation confidence interval, a risk adverse client may want to run the model at 3 standard deviations.