

February 25, 1975

Dear :

has referred your letter of February 10, 1975 to me for response.

The Department of Labor interprets paragraph (b)(1) of the interim exemption for the securities industry (published at 40 F.R. 5201, February 4, 1975) as stating that the rendering of mere advice by a broker-dealer to a plan in the situation described in paragraph (b)(1) would not, by itself, cause the broker-dealer to be considered an investment adviser or to be a person exercising discretionary authority or discretionary control over plan assets. However, it is the opinion of the Labor Department that if the broker-dealer actually exercises such discretionary authority or control over plan assets in connection with a transaction (as a broker-dealer who manages a discretionary account does), the transaction would not meet the requirements of the exemption.

Paragraph (b)(4) was deliberately included in the interim exemption to circumscribe the limited discretion that a broker-dealer may exercise under the exemption in executing an order on the part of a plan. Your interpretation of paragraph (b)(1) would render paragraph (b)(4) virtually nugatory and is, in our opinion, inconsistent with both the letter and the spirit of the exemption.

We have been informed by the Office of the Chief Counsel of the Internal Revenue Service that they concur in our interpretation.

Sincerely,