

February 13, 1975

Dear :

Your letter of December 12, 1974 to the regional office of the Labor-Management Services Administration, in which you inquired about compliance with section 404(b) of the Employee Retirement Income Security Act of 1974 (the Act), has been referred to me for response. Section 404(b) reads as follows:

"except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States."

This language indicates only that the "indicia of ownership", i.e. evidence of ownership of plan assets (such as bonds or stock certificates), may not be maintained outside the United States. It does not, however, proscribe the investment of employee benefit plan assets outside the United States. With respect to such ownership, the Conference Report states that:

"It is recognized that investment in securities of foreign companies and governments have been and may will continue to be in the best interests of plan participants in appropriate circumstances and with proper safeguards...

The Department of Labor is presently preparing a regulation which will cover those situations in which it is permissible to maintain the indicia of ownership outside the United States.

Sincerely,