

January 26, 1976

Dear :

This is in reply to your letter dated June 4, 1975, requesting a ruling on the applicability of Title I, Parts 1 and 4, of the Employee Retirement Income Security Act of 1974 (ERISA) to the Individual Retirement Accounts offered by the Corporation to the Association (Association) for the executives and employees of its employer members. The Association will review Corporation's proposals and, if their reaction is favorable, recommend them to their members for their employees. The Association will receive a service fee in connection with its introduction activity and be indemnified against any loss arising from the presentation. The Association plans no continuing involvement after the introduction. The individual employers, if agreeable, will permit a representative [a wholly owned subsidiary of the corporation] to make a presentation to their employees and make payroll deductions to be forwarded to . The employers will have no other involvement and may terminate the convenience of payroll deduction at any time after 30 days' notice.

Section 3(5) of Title I defines an employer as "any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity". The Association, therefore, acting for the employers, is an employer within the meaning of section 3(5).

Section 2510.3-2 (d) of regulations issued August 15, 1975 (copy enclosed), states that the terms "employee pension benefit plan" and "pension plan" shall not include an individual retirement account provided that (1) no contributions are made by the employer; (2) participation is completely voluntary for employees; (3) the sole involvement of the employer is without endorsement to permit the sponsor to publicize the program to employees, to collect contributions through payroll deductions and to remit them to the sponsor; and (4) the employer receives no consideration in the form of cash or otherwise, other than for services actually rendered in connection with payroll deductions. Since the Association

plans to review [the subsidiary's] proposals and recommend them to employer members and since the Association will receive payment other than for services actually rendered in connection with payroll deductions, the individual retirement accounts do not fall within the exclusion provided by this section. Therefore, the program constitutes employer-sponsored individual retirement accounts and will be subject to the requirements under Title I, Parts 1 and 4, of the ERISA.

Sincerely,