

March 30, 1976

Dear :

This is in response to your letter of December 1, 1975, regarding the Employee Retirement Income Security Act of 1974 (ERISA).

Specifically, you request a ruling that the term "investment manager" under ERISA section 3(38) (B) includes a broker or dealer registered under the Securities and Exchange Act of 1934. You support your request with statements upon which you conclude as follows:

. . . a broker-dealer registered under the Exchange Act comes under much more intensive surveillance than a person registered under the Advisers Act. A violation of any of the provisions of the Advisers Act (whether or not a person is registered under the Advisers Act) is a violation of the Exchange Act. The Exchange Act, by its terms and by interpretation, in effect encompasses all of the provisions of the Advisers Act.

Upon consideration of the arguments presented in your letter, I see no reason to modify the position taken in FR-6 of ERISA Interpretive Bulletin 75-5 (29CFR 2509.75.5). The provision in ERISA section 3(38) (B) (i) is clear on its face in requiring registration under the Investment Advisers Act of 1940. Also, the Securities and Exchange Act of 1934 does not encompass in effect all of the provisions of the Advisers Act. For instance, registration under the 1934 Act does not subject a person to the same regulation of fees provided under the Advisers Act. Further, there is always the possibility that regulation under the Advisers Act may be extended in the future to new matters not covered by the other statute.

Your understanding of our position will be appreciated.

Sincerely,