



August 3, 1993

Mr. Richard Bentley  
Investment Executive  
PaineWebber Incorporated  
1000 East St. Mary Boulevard  
Lafayette, Louisiana 70503

93-21A  
ERISA SECTION  
103(a)(3)

Dear Mr. Bentley:

This is in response to your request concerning the application of the annual reporting requirements of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have inquired whether the term "similar institution," as used in 29 C.F.R. § 2520.103-8, includes securities brokerage firms.

Section 103(a)(3)(A) of ERISA requires the administrator of an employee benefit plan to engage an independent qualified public accountant to conduct an examination of the financial statements and other books and records of the plan and to prepare an opinion as to whether the financial statements (and schedules required to be included in the annual report) are presented fairly in conformity with generally accepted accounting principles. The independent qualified public accountant's opinion must be made part of the plan's annual report as required by section 103(a)(1)(A).

Section 103(a)(3)(C) of ERISA further provides that the accountant's opinion need not extend to any statements required by section 103(b)(3)(G) that are prepared by a bank or similar institution or insurance carrier regulated, supervised, and subject to periodic examination by a state or Federal agency, if such statements are certified by the bank, similar institution, or insurance carrier as accurate and made part of the plan's annual report.<sup>1</sup> See also 29 C.F.R. § 2520.103-8.

As set forth in section 103(a)(3)(C), a crucial element of eligibility for the "limited scope audit" permitted by section 103(a)(3)(C) is that the "bank or similar institution or insurance carrier ... is regulated and supervised and subject to periodic examination by a [s]tate or Federal agency." 29 C.F.R. § 2520.103-8(b).

Inasmuch as securities brokerage firms are not regulated, supervised, and subject to periodic examination by a state or Federal agency, it is the Department's position that the term "similar institution," as used in 29 C.F.R. § 2520.103-8, does not extend to such entities.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of that procedure, including section 10 thereof, relating to the effect of advisory opinions.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

<sup>1</sup> Section 103(b)(3)(G) requires the annual report of any plan some or all of the assets of which are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee to include the most recent annual statement of assets and liabilities of the common or collective trust and, for a separate account or trust, such other information as is necessary for the administrator to comply with section 103(b).