

**Division of Investment Management  
United States  
Securities and Exchange Commission  
Washington, D.C. 20549**

**February 22, 1996**

**The Honorable Olena Berg  
Assistant Secretary  
Pension and Welfare Benefits Administration  
United States Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210**

Dear Ms. Berg:

I am writing in response to your request for additional advice with respect to the status under the Investment Advisers Act of 1940 ("Advisers Act") of employer-sponsors of defined contribution plans that provide investment-related information to their employees who are participants in those plans. In our letter to you dated December 5, 1995, which was subsequently cited by the Department of Labor in a draft Interpretive Bulletin dated December 8, 1995, we stated that an employer that provides investment-related information to its employees who participate in the employer's plan would not, as a result, be in the business of providing investment advice and therefore would not be an "investment adviser" as defined in the Advisers Act. Such an employer would not be required to register or be subject to regulation under the Advisers Act.

We understand that commenters on the draft Interpretive Bulletin raised two issues relating to our position. The first question is whether our position covers only employers that provide the specific types of information described in the draft Interpretive Bulletin. Our position is not limited in this respect; it applies regardless of the type of investment-related information provided.

The second question is whether the position stated in the December 5th letter is intended to address the status under the Advisers Act of a person other than an employer who provides investment-related information to plans or plan participants. As noted in the letter, our position is based on the unique nature of the employment relationship. Consequently, our position is not intended to address whether a third-party service provider meets the definition of investment adviser under the Advisers Act. Whether such a person meets the definition of investment adviser continues to depend on the application of all the factors set out in Section 202(a)(11), including the type of information provided.<sup>1/</sup> We note, however, that as a general matter, information that simply describes or explains the various investment options available through a plan, without including any analysis or recommendation with respect to those options, would not constitute "investment advice" as that term is used in the Advisers Act.

We hope this information has been helpful. Any questions relating to the status under the Advisers Act of a particular person should be addressed to this Office.

Sincerely,  
Jack W. Murphy  
Associate Director  
(Chief Counsel)

**Footnote**

1/ Investment Advisers Act Release No. 1092 (October 8, 1987) provides the staff's views regarding the scope of Section 202(a)(11) and thus should assist in determining whether such a third-party service provider is an investment adviser.