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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
INVESTMENT MANAGEMENT

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

Dear Ms. Berg:

You have asked for our advice with respect to the status under the Investment Advisers Act of 1940 ("Advisers Act") of employer sponsors of defined contribution plans that provide certain types of investment-related information to employees who are participants in those plans. This question arises in the context of a draft Interpretive Bulletin (the "Bulletin") being prepared by the Department of Labor ("Department"), which describes various categories of investment-related information that employer sponsors may provide to their employees, and concludes that the information does not constitute "investment advice" as defined in the Employee Retirement Income Security Act of 1974 ("ERISA") and the rules thereunder. We understand that, if the information provided by the employer is deemed not to be investment advice, the employer would not be subject to the fiduciary standards imposed under ERISA by reason of providing that information to participants in a participant-directed defined contribution plan. You have asked us to confirm that employers that provide their employees with investment information of the type described in the Bulletin would not be subject to registration or regulation under the Advisers Act.

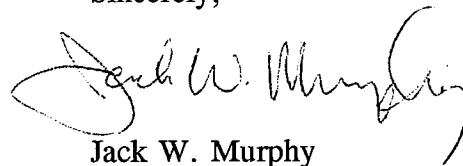
Registration and regulation under the Advisers Act is applicable to any person whose activity causes the person to meet the Act's definition of "investment adviser," unless the person qualifies for an exemption. Section 202(a)(11) of the Advisers Act defines investment adviser as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. . . ." To meet the definition of investment adviser, therefore, a person must meet three requirements: (i) the person must provide advice, or issue reports or analyses, regarding securities; (ii) the person must be in the business of providing those services; and (iii) the person must provide the services for compensation.

The employer-employee relationship is unlike the commercial relationship between an investment adviser and its client that the Advisers Act was intended to regulate. Employers that provide investment-related information to their employees about the employers' defined contribution plans typically do so not with a profit motive but in an attempt to educate those employees about retirement plans and the investment alternatives available through those plans. These employers are typically not "in the business" of providing investment advice to their employees. Rather, an employer generally engages in such activities to provide a service to its employees. In light of the employer-employee relationship, we believe that an

employer sponsor that provides investment information to employees who participate in its defined contribution plan would not be "in the business" of providing investment advice, unless it (i) holds itself out to the public as one who provides investment advice; or (ii) receives separate or additional compensation from employees or third parties that represents a clearly definable charge for providing advice about securities. 1/ Thus, in our view, an employer that provides investment-related information to its employees who participate in the employer's participant-directed defined contribution 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. 2/ Such an employer would not be required to register or be subject to regulation under the Advisers Act. Our analysis in this regard is not affected by the nature of the investment information provided by the employer. 3/

We appreciate the opportunity to provide guidance to sponsors of employee benefit plans that may be concerned about their status under the Advisers Act. Questions regarding the issues raised in this letter may be directed to me or to Amy R. Doberman, Assistant Chief Counsel of the Division of Investment Management, at (202) 942-0660.

Sincerely,



Jack W. Murphy  
Associate Director  
(Chief Counsel)

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- 1/ In this context, an employer would not be deemed to receive separate or additional compensation if the provision of investment information merely provides it with intangible benefits, such as the ability to attract and retain satisfied employees.
- 2/ As indicated above, this position would not apply to an employer that holds itself out to the public as one that provides investment advice, or to an employer that receives separate or additional compensation for providing investment advice.
- 3/ We note, however, that certain types of investment information described in the Bulletin may not constitute investment advice under the Advisers Act.