

July 17, 2000

Mr. Ivan Strasfeld
Director of Exemption Determinations
Office of Exemption Determinations
Pension & Welfare Benefits Administration
Room N-5649
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Scope of Eligible Securities to be Included in Possible Active Cross-Trading Exemption
from ERISA Section 406(b)(2)

Dear Mr. Strasfeld:

The Securities Industry Association ("SIA")¹ has previously responded to a number of cross-trading questions posed by the Department through individual and joint written submissions, as well as through testimony at active cross-trading hearings conducted by the Department in February, 2000. We believe that it would assist the Department in its further consideration of whether an active cross-trading exemption should be proposed, for SIA to provide you with this additional submission, which addresses the question of what types of securities should fall within the scope of such an exemption, and what pricing mechanism should apply. Since a major component of our members business is effectuating securities transactions on behalf of investors, we are thoroughly familiar with the characteristics of the marketplaces in which such transactions occur, and thus well positioned to provide

¹ The Securities Industry Association brings together the shared interests of more than 740 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50-million investors directly and tens of millions of investors indirectly through corporate, thrift, and pension plans. The industry generates more than \$300 billion of revenues yearly in the U.S. economy and employs approximately 700,000 individuals.

guidance on the scope of securities which would be appropriate to include in a proposed active cross-trading exemption.

SIA believes that an agency cross-trading exemption should cover only securities for which substantial price transparency exists (i.e., those for which contemporaneous quotations are readily available). Specifically, the exemption should allow cross-trades for (1) securities that conform with the requirements of Rule 17a-7 of the Investment Company Act of 1940 and (2) for securities with an available price mechanism that allows one to determine a fair and reasonable price. This latter category refers primarily to fixed income securities, many of which, although not actively traded, have objective and verifiable prices.

Securities that meet one or both of the above categories would include the following:

Equity Securities

1. Securities listed or with unlisted trading privileges on a U.S. exchange.
2. Securities quoted on the NASDAQ NMS or Small Cap systems.
3. Foreign equity securities listed on major foreign exchanges or included in recognized foreign indices such as the Financial Times Actuaries World Indices. Such securities are recognized as having a “ready market” under the federal securities laws.
4. Other equity securities for which a current independent quote information can be determined after reasonable inquiry.

Agency cross transactions in the equity securities described above would be subject to pricing guidelines substantially identical to Rule 17a-7.

Fixed Income Securities

1. Investment grade fixed income securities rated BBB or better by a Nationally Recognized Securities Rating Organization (NRSRO).
2. Other fixed income securities that meet one of the criteria below:
 - a. The security has a fair “current market price” established by:
 - i. the prices reflected on independent dealer offering sheets or inter-dealer trading systems at the time of the transaction;
 - ii. quotes obtained from one or more independent dealers;

Mr. Ivan Strasfeld
July 17, 2000
Page 3

- iii. the prices of other trades in that security are made from the dealer's inventory at the time of the transaction; or
 - iv. the prevailing market bid or offer for securities reported on a National Market System.
- b. The trade price (1) results in a yield to the customer equivalent to the yield on comparable securities, and (2) this equivalent yield can be referenced to nationally disseminated generic yield curves or to contemporaneous prices offered by other dealers for securities of similar investment grade, maturity, and call provisions.

Additionally, U.S. Government Securities, Money Market Investments, and short-term commercial paper should be included because of their low risk and creditworthiness characteristics.

We believe that inclusion of the above described securities in an active cross-trading exemption will enable ERISA plans to broadly enjoy the economic benefits of cross-trading, while assuring that such transactions will only be effectuated in circumstances where a price has been obtained which is fair to both parties to the transaction.

If you have any questions regarding this letter, or we can otherwise assist you in your consideration of this important subject, please contact SIA staff members Michael Udoff (212-618-0506) or Elizabeth Liess (202-326-5353). We appreciate the opportunity to make this submission.

Respectfully submitted,

Stuart J. Kaswell
General Counsel

cc: Michael S. Caccese, Esq.
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