

CIEBA

Committee on Investment of Employee Benefit Assets

March 13, 1992

Mr. Jonathan G. Katz, Esq.
Secretary
Securities and Exchange Commissions
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Mr. Katz:

This letter on behalf of CIEBA is in response to your notice, Release No. IA-1299 (published in the Federal Register of February 20, 1992). The Committee of Investment of Employee Benefit Assets (CIEBA) is a technical committee of Financial Executives Institute, a professional association of over 14,000 senior financial executives representing more than 7,000 U.S. companies. CIEBA's 40 members represent a broad cross-section of U.S. corporate pension fund officers who manage over \$350 billion in ERISA-governed assets.

Although our members were not named in the notice, nor are they primarily engaged in the business of managing real estate, many of our members will be adversely affected as a consequence of the revocation of "investment adviser" status of entities which primarily advise with respect to real estate assets. We would like to apprise you of the financial and administrative burdens revocation of "investment adviser" status would impose on the employee benefit plans sponsored by our members.

Many of our members employ investment managers, as defined in section 3(38) of ERISA, because of the size of their plans. The investment managers assist the plan sponsors in executing their fiduciary responsibility to manage plan assets. In order to qualify as an investment manager under section 3(38) of ERISA, an entity must be either a bank, an insurance company or a registered investment adviser under the Investment Advisers Act of 1940. The SEC action could force certain plan sponsors subject to ERISA to replace superior real estate investment managers with other possibly less effective managers who would not be affected by the SEC action.



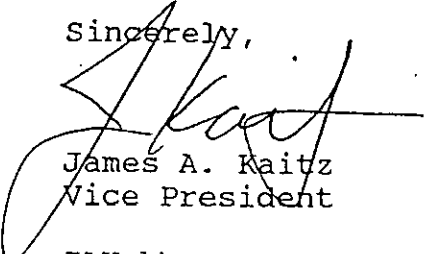
There are many reasons for a plan sponsor to choose to delegate responsibility for the management of some of a plan's real estate to an investment manager. Among these are a desire on the part of a plan sponsor to delegate some of its responsibility for assets which the plan sponsor believes it may not have sufficient expertise or resources to manage effectively. In addition, other plan sponsors use such managers to take advantage of the Qualified Professional Asset Manager (QPAM) exemption issued by the Department of Labor (49, Fed. Reg. 9494, March 13, 1984).

The QPAM exemption offers relief from many technical violations of the prohibited transaction rules under ERISA and the Internal Revenue Code. Such relief is available for many common real estate transactions so long as a QPAM is responsible for the management of the plan assets involved. For example, without the QPAM exemption, a law firm that counsels a pension plan (and is therefore a party in interest to such plan) could not lease office space in a building that is owned by the plan without violating section 406 of ERISA and section 4975 of the Internal Revenue Code. The revocation of investment adviser status results in termination of QPAM status and thus, effectively renders the exemption useless and subjects plans to the possibility of countless technical violations of the ERISA rules and a possible excise tax penalty. Such a result would be directly counter to the Department of Labor's intent in issuing the QPAM exemptions.

Although we understand the Commission's regulatory oversight responsibility in general and with respect to specific entities, we wish to make you aware of the significant hardships and "ripple effect" that would result from an abrupt change in "investment adviser" status of entities that have been managing real estate for employee benefit plans. In addition to the potential for prohibited transactions under ERISA and the significant additional administrative and fiduciary burdens described above, an abrupt change in the status of investment managers could have a chilling effect on plan investment in real estate. This chilling effect would counteract the proposals, contained in the President's State of the Union Address, which were intended to encourage plan investments in real estate in the United States.

We appreciate your attention to this issue, and we are available to meet with you to discuss further our concerns.

Sincerely,



James A. Kaitz
Vice President

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