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Sec. 408(a) – PTE 75-1, 408(b)(2)

Mr. Richard D. Belford
Donovan, Leisure, Newton & Irvine
30 Rockefeller Plaza
New York, NY 10112

Re: PaineWebber, Incorporated
        Identification Number: F-3592A

Dear Mr. Belford:

This responds to your letter of January 23, 1987, requesting an advisory opinion regarding the
application of Part V of Prohibited Transaction Exemption 75-1 (40 FR 50845, October 31,
1975) (PTE 75-1) and section 408(b)(2) of the Employee Retirement Income Security Act of
1974 (ERISA). Your letter concerns extensions of credit by PaineWebber, Inc. (PaineWebber) to
employee benefit plans as defined in section 3(3) of ERISA, plans qualified under section 401(a)
of the Internal Revenue Code of 1986 (the Code) which are not subject to Title I of ERISA, and
individual retirement accounts described in section 408(a) of the Code (individually, a Plan,
collectively, the Plans).

You represent that PaineWebber is a member of the New York Stock Exchange and other
exchanges and is registered as a broker-dealer under the Securities Exchange Act of 1934.
PaineWebber provides various services to Plans, including effecting or executing securities
transactions, rendering investment advice for a fee, and acting as a nondiscretionary, nonbank
custodian.

You further represent that PaineWebber has received requests from time to time from
independent fiduciaries acting on behalf of the Plans to make loans to the Plans secured by
securities of the Plans held by PaineWebber in accordance with PaineWebber's normal practices.
PaineWebber believes that the purpose of these loans is to provide the Plans with funds to permit
them either to make unanticipated distributions to participants and their beneficiaries or to pay
unexpected expenses, in both cases without necessitating the liquidation of existing securities
positions. In these instances, a Plan typically has invested its assets in a mix of stocks and/or
bonds selected by an independent fiduciary, presumably taking into account the expected cash
flow needs of the Plan, but then some event will occur, such as a participant's death or

termination of employment, which necessitates the distribution to the participant (or his beneficiary) of benefits under the Plan. The Plan, after establishing an appropriate portfolio mix and selecting the particular securities in which to invest, may prefer not to liquidate its investments in order to make distributions, particularly since most Plans would anticipate receiving additional contributions in the future for investment. Instead, such Plans prefer to borrow the amount required to be distributed until additional funds are received.

You further state that all loans which PaineWebber would offer to the Plans would be made at the request of an independent fiduciary who would be informed of the terms and conditions of such loans, including fees and other charges. The loans would be made in accordance with the applicable substantive rules of the Federal Reserve Board, the Securities and Exchange Commission and any stock exchange which has jurisdiction over the account established for the Plan and would be lawful under the Securities Exchange Act of 1934 and any rules and regulations thereunder. Moreover, all such loans would be on such terms and at such interest rates as PaineWebber customarily requires of and charges its other unaffiliated customers in connection with similar loans. Any such loans would not constitute a "prohibited transaction" within the meaning of section 503(b) of the Code and would satisfy the requirements described in paragraph (c) of Part V of PTE 75-1. Finally, you represent that PaineWebber is a party in interest under section 3(14) of ERISA and/or a disqualified person under section 4975(e)(2) of the Code with respect to the Plans but not a fiduciary as defined in ERISA section 3(21) or Code section 4975(e)(3).

You ask our opinion whether the exemption contained in Part V of PTE 75-1 applies to the extensions of credit as described above by PaineWebber to the Plans. You also inquire whether such extensions of credit by PaineWebber constitute a provision of services necessary for the operation of the plan within the meaning of section 408(b)(2) of ERISA and section 4975(d)(2) of the Code.

Under Presidential Reorganization Plan No. 4 of 1978, effective December 31, 1978, the authority of the Secretary of the Treasury to issue interpretations regarding section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor and the Secretary of the Treasury is bound by the interpretations of the Secretary of Labor pursuant to such authority. Therefore, the references in this letter to specific sections of ERISA refer also to the corresponding sections of the Code.

PTE 75-1 permits various classes of transactions involving employee benefit plans and certain broker-dealers, reporting dealers and banks, provided the relevant conditions specified in the class exemption are met. Part V of PTE 75-1 provides that the restrictions of section 406 of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to any extension of credit to an employee benefit plan by

a party in interest or disqualified person with respect to the plan, if the following conditions are met:

(a) The party in interest or disqualified person –

(1) Is a broker or dealer registered under the Securities Exchange Act of 1934; and

(2) Is not a fiduciary with respect to any assets of such plan, unless no interest or other consideration is received by such fiduciary or any affiliate thereof in connection with such extension of credit.

(b) Such extension of credit –

(1) Is in connection with the purchase or sale of securities;

(2) Is lawful under the Securities Exchange Act of 1934 and any rules and regulations promulgated thereunder; and

(3) Is not a prohibited transaction within the meaning of section 503(b) of the Code.

Conditions (c) and (d) of Part V impose certain requirements involving the retention of records and availability of records on the part of plans engaging in transactions in reliance on the exemption.

The preamble to Part V of PTE 75-1 states that a normal part of the execution of securities transactions by broker-dealers on behalf of their customers, including employee benefit plans, is the extension of credit to the customers in order to permit settlement within the usual five-day period. The preamble further states that extensions of credit by broker-dealers also are customary in connection with certain kinds of security transactions, such as short sales and the writing of option contracts.

You contend that the phrase "in connection with the purchase or sale of securities" should encompass an extension of credit as a result of a prior purchase of securities by a Plan, regardless of the period of time that has elapsed since the purchase of securities by the Plan.

It is the Department's opinion that the exemption provided by Part V of PTE 75-1 does not encompass extensions of credit that do not arise directly in connection with the purchase of specific securities.[1] We are of the opinion, therefore, that the broad interpretation you suggest of Part V is incorrect.

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[1] See the Preamble to Section V, PTE 75-1, 40 FR 50850 (October 31, 1975).

With respect to your second issue, section 408(b)(2) exempts from the prohibitions of section 406(a) of ERISA any contract or reasonable arrangement with a party in interest, including a fiduciary, for services necessary for the establishment or operation of a plan if no more than reasonable compensation is paid therefor. It is the opinion of the Department that this statutory exemption does not extend to loans or other extensions of credit.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Section 10 of the procedure describes the effect of advisory opinions.

Sincerely,

Elliot I. Daniel
Associate Director for Regulations and Interpretations