

U.S. Department of Labor

Pension and Welfare Benefits Administration
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Kristine J. Coffey, Chair
Committee on Retirement Products and Estate Services
Securities Industry Association
Everen Securities, Inc.
77 West Wacker Drive, Suite 2400
Chicago, IL 60601-1994

Re: Identification Number: C-9169

Dear Ms. Coffey:

This is in response to your letter of December 31, 1997, in which you request guidance regarding whether a Roth IRA as defined in section 408A of the Internal Revenue Code of 1986 (the Code), will be considered an IRA for purposes of Prohibited Transaction Exemption (PTE) 97-11 (62 FR 5855, February 7, 1997).

Section 302(a) of the Taxpayer Relief Act of 1997 (Pub. L. 105-34, title III, Sec. 302(a), August 5, 1997, 111 Stat. 788) created a new IRA, called the Roth IRA, by adding section 408A to the Code.

You represent that your members and clients will begin offering Roth IRAs beginning in 1998. You further state that you are concerned that the prohibited transaction provisions in the Employee Retirement Income Security Act of 1974 (ERISA) may restrict certain common industry practices or transactions which involve the operation of Roth IRAs. Although these transactions have been the subject of prohibited transaction class exemptions involving (traditional) IRAs, you note that without guidance from the Department of Labor (the Department), it is unclear that such relief would extend to Roth IRAs. Specifically, you have inquired about the availability of relief under PTE 97-11 with respect to Roth IRAs.

PTE 97-11 permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or if self-employed, a Keogh Plan is established or maintained or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that the conditions of the exemption are met. The term "IRA" is defined in section III(b) of PTE 97-11 as:

an individual retirement account described in section 408(a) of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee retirement benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

Section 408A(a) of the Code provides that, except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan. Section 408A(b) of the Code provides that for purposes of this title, the term "Roth IRA" means an individual retirement plan (as defined in section 7701(a)(37)

which is designated (in such manner as the Secretary may prescribe) at the time of the establishment of the plan as a Roth IRA. Such designation shall be made in such manner as the Secretary may prescribe.¹

Section 7701(a)(37) of the Code defines the term "individual retirement plan" to mean: (A) an individual retirement account described in section 408(a), and (B) an individual retirement annuity described in section 408(b) of the Code.

It is the opinion of the Department that a Roth IRA which satisfies the definition of an individual retirement plan in section 7701(a)(37) of the Code is an "individual retirement account" described in section 408(a) of the Code for purposes of the definition of the term "IRA" contained in III(b) of PTE 97-11. Therefore, a Roth IRA, as described above, which is not an employee benefit plan covered by Title I of ERISA (except for certain SEPs and Simple Retirement Accounts described in section 408(k) and 408(p) of the Code, respectively) would be covered by the relief provided in PTE 97-11, if all the conditions therein are met.

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

Sincerely,

Ivan L. Strasfeld
Director
Office of Exemption Determinations

¹ No regulations have been promulgated to date.