

Pension Benefit Guaranty Corporation

75-39

October 8, 1975

REFERENCE:

[*1] 4021(b)(9) Plans Covered. Substantial Owner Plans

OPINION:

This letter is in response to your letter of August 29, 1975, (enclosed) and in confirmation of a conversation between you and a member of my staff, * * * on September 9, 1975.

Your letter requested permission from the Pension Benefit Guaranty Corporation (the "PBGC") to change the * * * Pension Trust Plan (the * * *) from an insured, defined benefit plan to a splitfunded, money purchase plan. As justification for this change, you cited the economic and administrative burdens which you would suffer if your were made to comply with the Employee Retirement Income Security Act of 1974 (the "Act").

The PBGC does not have authority under the provisions of Title IV of the Act to prevent you from amending the * * * Plan along the lines you suggest. This is because, even in regard to plans "covered" by the Act, the PBGC has no authority to prevent plan amendments. In this regard, we do not believe that the * * * Plan is "covered" by the Act.

The PBGC insures participants in covered plans (as defined by the Act) as to certain benefits provided by their plans. Section 4021 of the Act defines those plans which are so "covered." This section [*2] provides, in part, that the insurance coverage will not apply to a plan:

". . . which is established and maintained exclusively for substantial owners . . ." (§ 4021(b) (9) of the Act).

A substantial owner is, among other things, an individual who owns more than ten percent in value of the voting stock of that Corporation. (§ 4022(b) (6) of the Act).

Based on the information that you provided -- that is, that the * * * Plan does not have and never had a participant other than you and your brother, and that you each owned 50 percent of the Corporation's voting stock -- we believe that the * * * Plan is maintained "exclusively for substantial owners,;" and is therefore, not covered by the insurance provisions of the Act.

I understand that in conversation between you and * * *, you expressed concern over the effect of the Act on the operation of the * * * Plan, including your obligation to file reports with the Department of Labor. This Corporation does not administer the provisions of the new law relating to those reports. We have, however, enclosed copies of excerpts from recently issued Department of Labor regulations pertaining to that subject. I trust these will prove helpful [*3] to you.

George B. Driesen
Deputy General Counsel