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June 27, 1975

Dear :

This is in reply to your letter and that of requesting a determination as to whether a specimen non-qualified employee stock purchase plan is either an "employee pension benefit plan" or "pension plan" as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (ERISA) or an "employee welfare benefit plan" or a "welfare plan" as defined in section 3(1) of that Act. You also raise a number of questions in relation to Part 4 of Title I - Fiduciary Responsibility.

The purpose of the Plan is to give employees wishing to do so a means of purchasing stock in the Company through payroll deductions, and to allow employers to contribute to purchase of company stock for participants in the plan. A participant may withdraw from the plan upon written notice to the Company and the Agent ( Bank). Upon withdrawal, the participant may receive the net proceeds from the sale of the stock held in the participant's stock account or may receive certificates for such shares in his own name. After withdrawal, a participant is ineligible to rejoin the Plan for at least six months from the withdrawal date.

Section 3(1) defines an "employee welfare benefit plan" and "welfare plan" as any plan, fund, or program which. . . was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1974 (other than pensions on retirement or death, and insurance to provide such pensions)."

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Section 3(2) defines an "employee pension benefit plan" and "pension plan" as "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program -

- (A) Provides retirement income to employees, or
- (B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, . . ."

The specimen stock purchase plan does not fall within any of the categories of welfare plans set forth in section 3(1) of ERISA, and consequently is not a welfare plan under the Act. The specimen plan does not provide retirement income or result in deferral of income, because a participant may withdraw the contents of his individual account at any time and therefore realizes the income upon its deposit in the account. The plan agent (the bank) renders monthly statements to each participant stating the current balance of his individual account. In these circumstances, the specimen plan is not a pension plan under section 3(2) of ERISA. Accordingly, the plan is not covered by Title I of the Act and would not have to comply with the fiduciary rules or other requirements of that Title.

As requested, the copy of your April 29, 1975 letter is returned herewith.

Sincerely,