

October 21, 1975

Dear :

This is in reply to your letter of August 9, 1975, in which you request a determination as to the fair market value of the common stock of , Inc., for purposes of sections 3(18) and 408(e) of the Employee Retirement Income Security Act of 1974 (the Act).

Your letter represents that , Inc., maintains a profit sharing and savings plan for its employees which permits plan participants to elect to purchase Inc., common stock. Purchases and sales of such stock by plan participants are first made from or to the plan trustee, or, secondly, from or to other , Inc., shareholders, or, finally, from or to the company itself. Your letter states that such transactions would constitute prohibited transactions unless exempt from such prohibitions pursuant to the provisions of section 408(e) of the Act.

In this regard, your letter represents that the transactions referred to above would satisfy the conditions of section 408(e) requiring that the securities involved be qualifying employer securities within the meaning of 407(d)(5) of the Act, that no commission be charged with respect to such transactions, and that the plan be an eligible individual account plan within the meaning of section 407(d)(3) of the Act. Your letter inquired however, whether such transactions would meet the condition of section 408(e) requiring that the transactions be for adequate consideration if, in view of the fact that there is no generally recognized market in , Inc., common stock, such stock is valued once annually at net book value by a plan advisory committee pursuant to the terms of the plan.

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As your letter notes, section 3(18) of the Act defines the term "adequate consideration" in the case of a security for which there is no generally recognized market as the fair market value of the security as determined in good faith by the trustee or named fiduciary with respect to a plan pursuant to the terms of the plan and in accordance with regulations promulgated by the Department. The Department of Labor has not as yet issued such regulations and does not, at the present time, contemplate making advance determinations as to adequate consideration in the case of individual purchases and sales of stocks. Such guidelines as will be issued will be general guidelines in the form of regulations under section 3(18) of the Act.

In view of the fact that no regulations have been issued under section 3(18), the-plan advisory committee should make a good faith determination with respect to the fair market value of the common stock of                      Inc., utilizing recognized methods of determining the value of stock in closely held corporations.

Sincerely,