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June 24, 1976

Dear :

This is in reply to your letter of April 15, 1976, requesting a ruling on behalf of (Corporation) with respect to the applicability of certain of the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act) to a proposed transaction involving the sale or assignment by the Common Stock Trust of rights to receive certain debentures. By the same letter, you have also requested the Internal Revenue Service to rule under section 4975 of the Internal Revenue Code of 1954 (the Code) with respect to the same issues raised before the Department of Labor.

You have represented in your letter that the facts and information set forth below are pertinent to our consideration of the proposed transaction. The Common Stock Trust (the Trust) is a qualified stock bonus trust maintained by (Corporation). The Trustees under the Trust presently are . (Corporation) is included in the consolidated Federal income tax return filed by , Inc. (Parent) which owns 100 percent of the shares of (Corporation).

Trust assets presently are invested in common and preferred stock of (Parent) and common stock of Oil Corporation (Oil). (Oil) owns 54 percent of the stock of (Parent). Trust assets also are invested in cash equivalents such as time deposits in the banks, United States treasury bills and notes and prime commercial paper.

Under a proposed plan of reorganization (Oil) shareholders will receive stock in a new holding company to be known as X Corporation (X) in exchange for their Oil shares. At approximately the same time, -M Corporation, a new corporation to be wholly owned by (X) and (Oil), will

be merged into (Parent) (the " merger"). Pursuant to the merger, (Parent) shareholders will receive 16/100 of a share of (X) stock and a \$30 (X) debenture in exchange for each share of (Parent) common stock, and 32/100 of a share of (X) stock and a \$60 (X) debenture for each share of (Parent) preferred stock. The (X) debentures will be 25-year sinking fund debentures at 8 1/2 percent. The merger has been approved in principle by directors of (X) and (Parent) but is subject to the approval of (Parent) shareholders.

If the proposed merger becomes effective and the Trust receives (X) stock and (X) debentures in exchange for all its (Parent) stock, then approximately \$36 million in Trust assets will be invested in (X) debentures. This figure represents approximately 42 percent of the market value of the Trust (approximately \$86 million).

Your letter notes that the definition of the term "marketable obligation" in section 407(e) of the Act includes a 25 percent limitation with regard to the percentage of plan assets which may be invested in debentures or other debt obligations of an employer or an affiliate of an employer. In this regard, your letter states that acquisition of debentures of an employer or an affiliate of an employer in excess of such 25 percent limitation may be considered a prohibited transaction under section 406(a)(1)(B), 406(a)(1)(E) and 406(a)(2) of the Act and section 4975(c)(1) of the Code since the exemption otherwise available under section 408(e) of the Act and section 4975(d)(13) of the Code would not apply to the acquisition of debentures which do not meet the definition of the term "marketable obligations".

Your letter further represents that in order to preclude any possibility of a prohibited transaction under section 406(a)(1)(B), 406(a)(1)(E) and 406(a)(2) of the Act, and under section 4975(c)(1) of the Code, (Corporation) is considering amending the Trust (with required membership approval) to authorize the Trustees to sell or assign their rights (in advance of the merger) to a sufficient number of debentures (otherwise to be received by the Trust in the merger) in a private placement so that the 25 percent limitation set forth in section 407(e) of the Act would not be exceeded.

Accordingly, you have requested a ruling from the Department of Labor on behalf of (Corporation), to the effect that the Trust, for purposes of section 406 and 407 of the Act shall not be considered to have acquired or to have held (X) debentures, if the rights to such (X) debentures (which (X) debentures otherwise would be received by the Trust in the merger) are old or assigned by the Trust to any person in advance of the merger. You have requested the identical ruling from the Internal Revenue Service under section 4975(c)(1) of the Code.

For purposes of these rulings, you have asked that it be assumed that the sale of rights to (X) debentures by the Trust will be made for adequate consideration and that no commission shall be charged with respect thereto. You have also requested that such rulings not be limited to the sale of such rights to a person who is not a party in interest (as defined in section 3(14) of the Act) or a disqualified person (as defined in section 4975(e)(2) of the Code). In this regard, your letter states that if some limitations are considered necessary in such rulings with regard to the sale of rights to (X) debentures to parties in interest or disqualified persons, it is requested that a sale to a party in interest or disqualified person be permitted by such rulings provided such party in interest or disqualified person agrees to pay to the Trust, for the rights to such (X) debentures, the greater of (1) par value of the (X) debentures, or (2) the closing price of the (X) debentures on the first day such debentures are traded on a national exchange immediately following the merger.

Finally, you have stated your opinion in the letter that as long as the Trust has sold or assigned its rights to (X) debentures in advance of the merger, you do not believe the Trust can be considered to have acquired or held (X) debentures or to have loaned money or extended credit to (X) in connection with such debentures because an anticipatory sale or assignment would preclude the Trust from having any valid claim of ownership to the (X) debentures issued to accomplish the merger.

Based upon the facts and representations set forth in your letter, we have concluded that:

- (1) For purposes of section 407(e) (3) of the Act, the Trust will not be considered to have acquired or held (X) debentures if, prior to the merger and pursuant to an appropriately amended Trust or plan instrument, the Trust sells or irrevocably assigns the rights to such debentures which it would otherwise receive in the merger; and
- (2) The sale or assignment of such rights by the Trust to a party in interest would constitute a prohibited transaction under section 406 of the Act for which no exemption is currently available. In this regard, although such rights might, arguably, be found to be "employer securities" within the meaning of section 407(d) (1) of the Act, they would not come within the definition of the term "qualifying employer securities" set forth in section 407(d) (5) of the Act because they are neither stock nor marketable obligations. Thus, the exemption provided in section 408(e) of the Act would not be available to permit the sale or assignment of the rights by the Trust to a party in interest. Accordingly, it is not appropriate for the Department to rule with respect to that part of your request relating to the consideration that might be paid to the Trust for the sale or assignment of the rights to a party in interest, or as to whether the rights are employer securities.

We also note that our consideration of the proposed transaction described in your letter does not relate to any provisions of the Act not discussed herein. Thus, for example, we are not hereby rendering any opinion with respect to the prudence of the proposed transaction, nor to whether it would be solely in the interest of the participants and beneficiaries of the Trust, within the meaning of section 404(a) of the Act; nor are we rendering an opinion with respect to whether the sale or assignment of the rights to a person other than a party in interest would nevertheless constitute a prohibited transaction under section 406 of the Act by virtue of, for example, sections 406(a) (1) (D) or 406(b) of the Act.

Sincerely,