

September 2, 1976

Dear :

This is in reply to your letter requesting a ruling that the acquisition of common stock of Inc. (the Corporation) by the Trust for the Stock-Bonus Plan for Employee of Inc. (the Trust) from certain parties in interest would not be a prohibited transaction within the meaning of sections 406 and 407 of the Act, provided that the transaction if effected in compliance with the provisions of section 408(e) of the Act.

Your letter represents that such common stock is traded on the American Stock Exchange and that the parties in interest involved are, inter alia, shareholders who own more than 10 percent of the stock of the Corporation. Your letter requests a specific ruling with respect to the requirements of section 408(e) of the Act that the acquisitions will be for adequate consideration within the meaning of section 3(18) of the Act, if the purchase price is the price prevailing on the American Stock Exchange at the time of purchase, or if no shares are traded on the date of purchase, the closing price of such shares on the last preceding date on which shares were so traded.

In this regard, your letter states that all shares of stock purchased by the Trust will be subject to restrictions on sale under the federal securities laws, whether such shares are purchased by the Trust from parties in interest or from other persons. Thus, all shares purchased by the Trust could be sold by the Trust only if registered under the Securities Act of 1933, or if sold pursuant to the restrictions and limitations set forth in Rule 144 under the Securities Act of 1933.

Section 3(18) of the Act defines the term "adequate consideration" in the case of a security for which there is a generally recognized market as either the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, or, if the security is not traded on such a national securities exchange, a price not less

favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest. In the case of a security for which there is no generally recognized market, section 3(18) (B) of the Act defines the term "adequate consideration" as the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Department of Labor.

Although the common stock of the corporation is traded on the American Stock Exchange, your letter indicates that the stock purchased by the Trust will be subject to restrictions on sale under the federal securities laws. Accordingly, it appears that the "adequate consideration" issue raised in your letter is not subject to resolution without further clarification of the provisions of section 3(18) of the Act in the form of regulations. The Department has not yet issued such regulations. Further, you should be aware that the Department does not, at the present time, contemplate making advance determinations as to what constitutes adequate consideration in the case of individual purchases and sales of securities. In the absence of regulations under section 3(18) of the Act, determination as to "adequate consideration" must be made on a case by case basis by the plan trustees or other appropriate named fiduciaries in light of all relevant facts and circumstances.

Sincerely,