

June 12, 1979

Dear :

This is in response to your letter of March 29, 1976 and your supplemental memorandum of December 14, 1976 in which you request, on behalf of (named), Inc., a determination that the (named) Savings and Retirement Supplement Plan (the Plan) is an "eligible individual account plan" within the meaning of section 407(d) (3) of the Employee Retirement Income Security Act of 1974 (the Act) and that certain debentures purchased and held by the Plan are "marketable obligations" within the meaning of section 407(e) of the Act. On August 25, 1976, you met with representatives of the Department of Labor (the Department) in connection with these matters. We regret the delay in responding to your submission.

With respect to the question of whether the Plan is an "eligible individual account plan" within the meaning of section 407(d) (3) of the Act, we note that on June 11, 1979, the Department issued a Notice of Intent to Propose a Regulation, a copy of which is enclosed, which discusses certain issues that have arisen in developing a regulation clarifying the definition of the term "eligible individual account plan". In view of the pendency of this rulemaking proceeding, and pursuant to section 5.03 of ERISA Procedure 76-1, the Department has decided not to respond at this time to your inquiry concerning whether the Plan is an "eligible individual account plan" within the meaning of section 407(d) (3) of the Act.

As to the issue of whether certain debentures acquired by the Plan are "marketable obligations", your submissions include the following representations. On August 29, 1975, the Plan purchased \$1,250,000 principal amount of (the debentures). The debentures were purchased from (X), Inc., a subsidiary of (named), Inc., at a price of 80-1/4, which was the closing price of the debentures on the New York Stock Exchange on the date of purchase. The total amount paid, including accrued interest from June 2, 1975, was \$1,036,805. No commission was paid in connection with the purchase. At the time of acquisition, there was \$109,038,000 principal amount of these subordinated debentures issued and outstanding; therefore, the debentures purchased by the Plan represented approximately 1.14 percent of the aggregate amount of debentures outstanding; also, more than 50 percent of the aggregate amount of the debentures was and is held by persons independent of (named), Inc. Immediately after the acquisition, the value of the debentures represented approximately 22 percent of the aggregate value of the

Plan assets.1/

Based upon the facts and representations contained in your letter and supplemental memorandum, it is the view of the Department that the debentures acquired by (named), Inc. on August 29, 1975 are marketable obligations within the meaning of section 407(e) of the Act.

Again, we regret the long delay in responding.

Sincerely,

1/ Your supplemental memorandum of December 14, 1976 indicates that the Plan made four additional purchases of the debentures during January and April of 1976 from a broker acting as principal at the then prevailing New York Stock Exchange prices (ranging from \$91.75 to \$100.25), and no commissions were charged; this opinion does not address the status of these debentures under section 407 of the Act.