Mr. John J. Dempsey

Manager, Documents Section

New York Stock Exchange, Inc.

55 Water Street New York, New York 10041

Dear Mr. Dempsey:

This is with reference to your letters of August 24, October 21 and October 28, 1976 wherein you request the Division's views concerning certain questions pertaining to Appendix D to Rule 15c3-1 (17 CFR 240.15c3-1d) (the "Appendix") under the Securities Exchange Act of 1934.

I understand from your letters and our meeting of October 18, 1976, that member organizations of the Exchange generally employ either of two methods of extending the maturity date of existing satisfactory subordination agreements.

The first method ("Method A") involves amending an existing agreement to postpone its scheduled maturity date until a time mutually agreeable to the parties thereto. The alternative technique ("Method B") consists of the bilateral termination of the existing agreement, and the execution of a new agreement embodying a later scheduled maturity date and terms otherwise identical to those of the former agreement.

From time to time, parties employing either technique also increase the principal amount of the subordinated indebtedness outstanding between them. I understand that in the usual case, where both the former agreement and its successor consist of duly executed copies of the Exchange's standardized forms for such agreements, Method B generally proves the more simplified and less expensive of the two procedures.

Your inquiries addressed the utilization of these techniques within one year from the effective date of the subordination agreement in question. In this connection, paragraph (b)(7) of the Appendix provides that no subordination agreement may be prepaid wholly or in part within one year from its effective date, and paragraph (b)(1) of the Appendix prohibits the cancellation, termination or rescission of a subordination agreement where the effect thereof would be inconsistent with the Appendix or Rule 15c3-1.

In as much as Method A involves merely the amendment of an existing subordination agreement, its utilization in such circumstances creates no conflict with paragraphs (b)(7) or (c)(1) of the Appendix, and is not subject to the filing requirements of paragraph (c)(6) thereof. 1/ However, parties wishing to increase the principal amount of the subordinated indebtedness between them should subject the incremental amount to a new subordination agreement conforming in all respects to the Appendix.

Analytically, Method B necessarily involves either prepayment or cancellation of the existing subordination agreement; it would therefore appear that the terms of paragraphs (b)(7) and (c)(1) of the Appendix prohibit the use of Method B during the agreement's first year in existence. However, where it can be demonstrated that the substance and effect of such a transaction, and the intent of the parties thereto, are merely to postpone the scheduled maturity date of the existing agreement, it is appropriate that the form of the transaction not control the application thereto of Appendix D.

Accordingly, it is the Division's view that no conflict with paragraphs (b)(7) or (c)(1) of the Appendix arises where the parties to a subordination agreement employ Method B solely to postpone the agreement's scheduled maturity date, while simultaneously executing a rider to the new agreement which recites (i) their intent merely to effect a renewal of the existing agreement, and (ii) that the new agreement involves no transfer of funds or securities between the parties. The draft form rider annexed to your letter of October 28, 1976, will suffice for this purpose.

Three corollaries to our position respecting Method B should be noted. First, this technique can operate as an amendment of an existing subordination agreement only if execution of the "new" agreement (and the rider thereto) does not follow the scheduled maturity of the existing agreement. Second, where Method B is intended to and does operate as a renewal in the manner outlined above, the new agreement will be deemed an amendment which need not be filed pursuant to paragraph (c)(6) of the Appendix; similarly, the one-year limitation of paragraph (b)(7) of the Appendix will run from the effective date of the original agreement. Finally, parties wishing to increase the subordinated indebtedness between them should make the incremental principal amount the subject of a second new subordination agreement, which should be filed in accordance with paragraph (c)(6) of the Appendix and which should otherwise conform in all respects to the provisions of the Appendix.

Please contact us if we may be of further assistance.

Very truly yours,

Edmund P. Bergan, Jr.

Attorney-Adviser (Finance)