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February 1, 1972

Mr. Neal McCoy  
 Chief Counsel's Office  
 Division of Corporate Finance  
 Securities & Exchange Commission  
 500 North Capitol Street  
 Washington, D. C. 20549

1933 Act Section 4(1);  
Rule 144

Dear Mr. McCoy:

The intent of this letter is to request an interpretation of the operation of Rule 144 with respect to control persons.

In the Securities & Exchange Commission Release No. 5223 under the Securities Act of 1933 (January 11, 1972), it is stated, on page 9 thereof, that for the purposes of Rule 144, the doctrine of "fungibility" will not be applicable except in certain situations not herein relevant. Specifically, the Release states on page 9 that the acquisition during the two year period of other securities of the same issuer, whether restricted or non-restricted, will not start the holding period running anew.

On page 12 of the Release No. 5223 under the Securities Act of 1933, under the caption "Operation of the Rule", it is stated that with respect to restricted securities acquired by a non-controlling person prior to the effective date of the Rule, such persons would have the choice of complying with the new Rule or the administrative interpretations in effect at the time of his resale. This portion of the Release does not go on to specifically discuss whether controlling persons who purchased restricted securities prior to the effective date of the Rule and desire to sell the securities after the effective date of the Rule must comply with the administrative interpretations in effect at the time of his resale or must comply with Rule 144. This issue is especially crucial when considering the application or non-application of the doctrine of "fungibility" as the below hypothetical example indicates.

pg. 4