

INTERPRETATION OF LAW OR REGULATION

(Copies to be sent to all Federal Reserve banks)

September 24, 1937.

Mr. _____, Vice President,
Federal Reserve Bank of _____,
_____, _____.

Dear Mr. _____:

Reference is made to your letter of September 14, 1937, relating to the effect, under Regulation T, of the stamping of Convertible \$6.50 Cumulative Preferred Stock of the _____ Company with a legend to indicate the acceptance by the stockholder of a certain offer to exchange this stock for other securities. The question presented is, in effect, whether a customer with a restricted account containing the stock in question may be permitted, without the deposit of additional margin, to have such stock stamped in this manner, and thereafter to consummate the exchange offer.

Since the inquiry involves the question of whether and at what time the stock becomes a different security and hence, in the absence of a separate registration, an unregistered security, the views of the Securities and Exchange Commission were requested on this point.

There is attached a copy of a self-explanatory letter, dated September 22, 1937, from Mr. Harold H. Neff, Director of the Forms and Regulations Division of the Securities and Exchange Commission. It will be noted that Mr. Neff is of the opinion that the stamping of the stock here in question does not cause the stock to become a different security, that the stock does become a different security when the exchange offer becomes finally effective, but that the different security would then have a special exemption under Rule AN19.

The Board sees no reason to differ with the views expressed by the Director of the Commission's Forms and Regulations Division. Accordingly, the Board is of the opinion that a customer with a restricted account containing the stock in question may be permitted, without the deposit of additional margin, to have such stock stamped to indicate the acceptance of the exchange offer. The Board is also of the opinion that in the circumstances the consummation of the proposal by accepting the new \$5.50 Prior Preferred Stock in exchange for the stamped stock would not require the obtaining of additional margin regardless of whether or not the new Prior Preferred Stock is registered.

Very truly yours,

(Signed) L. P. Bethea

L. P. Bethea,
Assistant Secretary.

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON

September 22, 1937.

Board of Governors of the
Federal Reserve System
Washington, D. C.

Gentlemen:

This will acknowledge the receipt of your letter of September 17, 1937, in which you request an opinion as to whether the Convertible \$3.50 Cumulative Preferred Stock of the _____ Company will become a new security if the certificates are stamped with a legend evidencing the holder's acceptance of a certain exchange offer.

From the material which accompanied your letter, I understand the facts to be as follows: On September 30, 1937, the Preferred Stock will be in arrears on dividends in the amount of \$38.44 per share. It is proposed to amend the Certificate of Incorporation to authorize a new issue of \$5.50 Prior Preferred Stock, which is to be offered in voluntary exchange to the holders of the present Preferred. Preferred stockholders desiring to accept the exchange offer are required to forward their stock certificates to the _____ Trust Company, agent for the issuer, to be stamped as follows:

"The holder of the shares of stock represented by this certificate has accepted, and every successive holder or registered owner thereof by becoming such accepts, the exchange offer . . . and each such holder or registered owner agrees to be, and is, bound by all the terms and provisions of said exchange offer and Letter of Transmittal; subject, however, to said exchange offer's becoming finally effective and to the right of such holder or registered owner to revoke or withdraw such acceptance, as provided in said exchange offer and said Letter of Transmittal."

The Letter of Transmittal provides that the acceptance may be revoked by written notice at any time before the Board of Directors declares the exchange offer effective. After the exchange offer is declared effective, the acceptance may be withdrawn by written notice until the close of business on the third

business day following the date of mailing the notice that the exchange offer has become effective. The exchange offer becomes finally effective at the close of such three-day period unless the holders of more than 5% of the shares withdraw, in which event the plan may, nevertheless, be declared effective at any time within 15 days. If the exchange offer does not become finally effective within 15 days after the expiration of the withdrawal right, or in any event, on or before December 1, 1937, holders of stamped certificates are entitled to turn them in and receive instead unstamped certificates.

Under the circumstances the acceptance of the exchange offer by the preferred stockholder would not appear to create a binding obligation upon either the corporation or the stockholder, and in my opinion, the stamping of an endorsement evidencing the acceptance upon the certificates would not make the Preferred Stock a new security as to which a new application for registration is required. On the other hand, when the exchange offer becomes finally effective, stamped certificates come to represent a new or additional security which would have to be registered, if trading is to continue on a national securities exchange, unless an exemption is available. It is my opinion, on the basis of the facts stated, that the temporary exemption under Rule AN19 would be available to this new security. It should be pointed out, however, that unless registration were effected with reasonable promptness, proceedings would be in order under paragraph (c) of Rule AN19 to terminate this exemption.

If you have any further question, I shall be glad to be of service.

Very truly yours,

(Signed) Harold H. Neff

Harold H. Neff
Director
Forms and Regulations Division