PRICE, WATERHOUSE & CO.

56 PINE STREET

NEW YORK January 17, 1934

Hon. James M. Landis,
Federal Trade Commission,
Washington, D. C.

133-60

Dear Mr. Landis:

As requested in your letter of December 19, I am sending you a draft of a regulation covering the question of truth in accounts. I am sorry that this was not sent to you earlier, but as you will realize, the pressure over the year-end is very considerable, and some delay has been occasioned by my desiring to get other opinions on the draft before sending it to you. The form is modelled on the sort of regulations we used to draw when the Revenue Acts of 1917 and 1918 were first coming into force. However, I have assumed that any value the draft may have to you would be in suggesting the substance of a regulation which you would phrase in conformity with the general practice which the Commission develops.

I think such a regulation would do much to relieve the apprehensions of accountants. Even if it were not binding on the courts, it could scarcely fail to have great influence with them. Today, accountants feel, I think, that the courts do not understand accounts and are apt to reach the most extraordinary conclusions in relation to them. To an accountant, the decision of the highest court of Massachusetts in United Oil Company v. Eager Transportation Co., and the decisions of tax cases from the Board of Tax Appeals to the Supreme Court, afford ample evidence of the fact that frequently not even the fundamental character of the accounting problem is appreciated. In these circumstances, and with the law conferring jurisdiction on courts of every kind and quality and imposing a liability bearing no relation to the injury caused even though there is no suggestion of anything more vicious than honest error, it seems to me that hesitation to accept the responsibilities of the Act on the part of the accountant is (if he has the prudence which is the first requirement of his profession) inevitable.

I mention this point because, in conversation with Mr. Brandi of Dillon, Read & Co. recently, he told me that you seemed to have some difficulty in understanding the basis of this hesitation. Incidentally, Mr. Brandi said that you had inquired of him whether he understood my firm to have a settled policy of refusing to undertake accounting work in connection

with registration statements. Our position on this question is very much what it was when I last discussed the matter with you. Frankly, we are still not anxious to assume the responsibilities imposed by the Act. At the same time, we recognize the necessity for some regulation, and we recognize, also, a moral obligation to our clients, and have therefore concluded that we must certify accounts for registration statements for them in any cases in which we feel that the hazards can be reduced to the limits of a reasonable -- even if considerable -- business risk. Each case has to be decided on its merits; and assuming the parties back of the issue to be of high standing, our decision depends upon a number of considerations, of which the following are perhaps the most important:

1. The possibilities of material misstatements occurring as a result either of oversight or error by employees which the review by a partner would not disclose, or otherwise;

2. The degree of probability of loss to investors from other and unrelated causes for which we would not be responsible (but for which we might become liable);

3. The extent to which we could rely on others who might be jointly liable with us;

4. The expense that might be involved in defending ourselves against an unfounded claim.

You will readily perceive that in the case of an issue by a German steel company the position in each of these respects would be unfavorable. The investigation would necessarily be made in Germany by accountants who would be unfamiliar either with German practice or with American requirements; the room for controversy regarding the results would be unusually extensive because of the artificial and complicated situations in respect of exchange, cartels, etc.; the hazards of shrinkage in value of German securities through changes in German conditions would be great; we might find ourselves in the position of being the only persons concerned in the issue who could easily be sued and in no position to secure contribution if a claim were successfully asserted against us, and the expense of sustaining the burden of proof, if a claim were made against us, would be enormously increased by the fact that all the necessary evidence would have to be secured from Germany. Obviously, in such circumstances, we could not agree to allow our name to be used in a registration statement without the most careful consideration after a thorough examination; and we so advised Mr. Brandi.

Yours very truly,

George O'May