



SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

SEP 29 1982

Lawrence C. Bickford, Esq.
Frederic W. Cook & Co., Inc.
90 Park Avenue
New York, New York 10016

Dear Mr. Bickford:

The staff has carefully considered your recent letters raising two issues with respect to the application of Rule 16b-3 to stock appreciation rights ("SARs") under the Securities Exchange Act of 1934. In the course of our analysis, we have re-examined the staff interpretive responses which you cite, as well as a number of related letters bearing on these questions.

For purposes of this discussion, we adopt the definitions of the various types of SARs used in your letter. A "typical" SAR confers upon a plan participant the right to receive the existing option spread in cash and/or stock in lieu of the exercise of a stock option. Exercise of a typical SAR usually cancels the related stock option. A "tax offset" SAR is a right which entitles the optionee upon exercise of a stock option to realize, in addition to the option shares, a cash payment equal to the option spread. 1/ A "limited" SAR confers the right to the cash payment of an option spread, generally in situations involving a tender offer, takeover, or other change in control. The exercise of a limited SAR does not require exercise of the related option, nor is such option cancelled upon exercise of the limited right.

Your first question is whether the addition of limited SARs constitutes a material increase in the benefits accruing to participants in a stock option plan under which only tax offset SARs are already attached to the options. The staff is of the view that the addition of limited SARs, to a stock option plan that provides for only tax offset SARs, constitutes a material increase in benefits to participants, and thus

1/ The staff would include in this definition any right which entitles the optionee to realize, upon exercise of an option, a cash payment equal to the federal income tax incurred. Other variations, of course, are possible. See, e.g., letter re Cone Mills Corporation (available May 8, 1981).

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would require shareholder approval pursuant to Rule 16b-3(a). 2/
To the extent that the views expressed in our letter to
Southland Royalty Company (available November 27, 1981) are
inconsistent with this position, they should not be relied upon
in the future.

Your second question is whether the exercise of a stock
option, which triggers a cash payment pursuant to a related
tax offset SAR, must take place during a window period as
defined by paragraph (e)(3)(iii) of Rule 16b-3, in order to
qualify for the safe harbor afforded by the Rule. The staff is
of the view that cash payments in such situations involve an
exercise of volition on the part of the plan participant that
properly should occur during a window period for purposes of
Rule 16b-3. Accordingly, the exercise of the related options
should take place within a window period. To the extent that
the views expressed in our letter to Martin Marietta Corporation
(available January 7, 1982) are inconsistent with this position,
they should not be relied upon in the future.

Sincerely,

Peter J. Romeo
Chief Counsel

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2/ See, e.g., letter re Champion International Corporation
(available August 13, 1979); Release 34-18114
(September 22, 1981).