U.S. Department of Labor Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210

MAY 6 1985

86-20A
Sec. 407(a)(2) & (3)

Albert G. Moore, Jr., Esq.
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Atlanta Financial Center
3333 Peachtree Road, N.E.
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Re: Oxford Industries, Inc.
Identification Number: F-2877A

Dear Mr. Moore:

This is in response to your request for an advisory opinion regarding the application of section 407 of the Employee Retirement Income Security Act of 1974 (ERISA) to the proposed merger of the Oxford Industries, Inc. Hourly Retirement Plan (the Hourly Plan) and the Oxford Industries, Inc. Retirement Plan (the Retirement Plan), the surviving plan to be referred to herein as the Merged Plan.

Specifically, you ask whether the Retirement Plan and the Hourly Plan may be treated as a single continuing plan for the purpose of applying ERISA sections 407(a)(2) and 407(a)(3) so that the Merged Plan will be deemed to satisfy the holding and acquisition rules of those provisions if the fair market value of the aggregate shares of qualifying employer securities in the Retirement Plan and the Hourly Plan respectively as of any date after 1974 was 10 percent or less of the fair market value of the aggregate assets of each plan.

Your representations include the following: Since 1955, Oxford Industries, Inc. (the Employer) has maintained the Retirement Plan for the salaried and commissioned employees of it and its controlled group of subsidiary corporations. Since 1971, the Employer has maintained the Hourly Plan for the hourly and piecework employees of these entities. Both plans are defined benefit pension plans within the meaning of ERISA section 3(35). The proposed merger is conditioned upon satisfaction of the requirements of section 414(1) of the Internal Revenue Code of 1954, as amended (Code), and qualification of the trust which forms a part of the Merged Plan under Code section 401.

The Hourly Plan and the Retirement Plan each own shares of common stock issued by the Employer (the Shares). The Employer's common stock is publicly traded on the New York Stock Exchange and the Shares are qualifying employer securities within the meaning of ERISA section 407(d)(5). All the Shares have been held by the plans continuously since January 1, 1975, except for shares acquired by reason of stock splits on Shares then owned. Neither plan has acquired or held any employer real property (within the meaning of ERISA section 407(d)(2)) on or after such date. Neither plan made an election under ERISA section 407(c)(3) to utilize the alternative method of calculating the value of employer securities set forth in ERISA section 407(c) for the purpose of satisfying the requirements of ERISA section 407(a)(3).

You represent that the Hourly Plan and the Retirement Plan each satisfied the 10 percent holding rule of ERISA section 407(a)(3)(B) prior to 1980 so that neither plan was required to dispose of any Shares under the 50 percent divestiture rule of ERISA section 407(a)(4) and, if the plans are not merged, neither plan would be required to dispose of any Shares under ERISA section 407(a)(3) after 1984. You assert that if the Retirement Plan and the Hourly Plan are considered on a combined basis by aggregating the total assets of both plans and the Shares of both plans at all times, the combined plans would have satisfied the 10 percent holding rule of ERISA section 407(a)(3)(B) prior to 1980.

You further represent that the value of the Shares has increased substantially since 1976. Because of this increase, the percentage of the fair market value of the Shares held by the Retirement Plan to the total fair market value of Retirement Plan assets as of January 1, 1984 was over 10 percent. Although this percentage for the Hourly Plan remains below 10 percent, if the two plans were merged as of January 1, 1984, the percentage of the fair market value of the Shares held in the Merged Plan also would be over 10 percent of the total fair market value of Merged Plan assets as of January 1, 1984.

ERISA section 407(a)(2) provides that a plan may not acquire any qualifying employer security or qualifying employer real property if immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

Regulation section 29 CFR 2550.407a-2(b) provides that, for the purposes of section 407(a) of ERISA, an acquisition by a plan of qualifying employer securities or qualifying employer real property shall include, but not be limited to, an acquisition by purchase, by the exchange of plan assets, by the exercise of warrants or rights, by the conversion of a security (except any acquisition pursuant to a conversion exempt under ERISA section 408(b)(7)), by default of a loan where the qualifying employer security or qualifying employer real property was security for the loan, or by the contribution of such security or real property to the plan. Under the

regulation, an acquisition of a security is not deemed to have occurred if a plan acquires the security as a result of a stock dividend or stock split.

On the basis of the facts and representations contained in your submission, we have concluded that the merger will not involve a violation of the restrictions of ERISA section 407(a)(2) regarding the acquisition of employer securities and employer real property in excess of the limits specified in that section.

ERISA section 407(a)(3)(A) provides that after December 31, 1984 a plan may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1984 exceeds 10 percent of the greater of the fair market value of the assets of the plan determined on December 31, 1984 or the fair market value of the assets of the plan determined on January 1, 1975.

Under ERISA section 407(a)(3)(B), if at any time between December 31, 1974 and January 1, 1985 the fair market value of qualifying employer securities and qualifying employer real property held by a plan does not exceed 10 percent of the fair market value of total plan assets, the plan will be in compliance with the holding requirement of ERISA section 407(a)(3), notwithstanding any subsequent increase in such percentage above 10 percent which occurs as the result of changes in the fair market value of either the qualifying employer securities or qualifying employer real property or the other assets of the plan. See regulation section 29 CFR 2550.407a-3(b).

ERISA section 407(a)(4) requires that plans must have divested themselves by December 31, 1979 of one-half of the qualifying employer securities which were in excess of the 10 percent limitation of ERISA section 407(a)(3)(A).

On the basis of the facts and representations contained in your submission, we conclude that the Retirement Plan and the Hourly Plan may be treated as a single continuing plan for the purpose of applying ERISA section 407(a)(3) so that the Merged Plan will, by reason of ERISA section 407(a)(3)(B), be deemed to satisfy the holding limitations of ERISA section 407(a)(3)(A) if the fair market value of the aggregate Shares held by the Retirement Plan and the Hourly Plan respectively as of any date after 1974 was 10 percent or less of the fair market value of the aggregate assets of each plan.

Because your submission deals only with issues arising under section 407 of ERISA, this letter deals only with those issues and does not address the implications of any other sections of ERISA. This letter is an advisory opinion under ERISA Advisory Opinion Procedure 76-1

(ERISA Proc. 76-1, 41 FR 36281, August 27, 1976). Section 10 of the procedure explains the effect of advisory opinions.

Sincerely,

Elliot I. Daniel
Acting Assistant Administrator for Regulations and Interpretations