



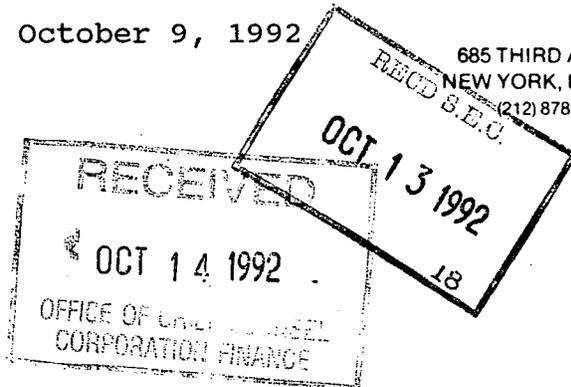
AMERICAN HOME PRODUCTS CORPORATION

October 9, 1992

LAW DEPARTMENT

685 THIRD AVENUE
NEW YORK, N.Y. 10017
(212) 878-5000

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549



Dear Sirs:

I am writing to request interpretive advice from the staff of the Division of Corporation Finance (the "Staff") with respect to the applicability of the rules promulgated under Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as they relate to the dividend equivalent right feature of the Management Incentive Plan of American Home Products Corporation (the "Company"). The matter on which we seek advice involves contingent awards of shares based on the value of cash dividends that would have been paid on contingent award shares held in the accounts of Plan participants who are subject to Section 16. The Plan effectively treats such shares as if they had been outstanding during the year, using the dividends that would have been paid on these shares to purchase additional shares at a year-end market based value. It is the Company's belief that these transactions may be exempted under Rule 16b-2 since all of the Company's shareholders have a similar investment opportunity through participation in a dividend reinvestment plan made available to investors in the Company's Common Stock par value \$.33 $\frac{1}{2}$ per share (the "Common Stock").

The Management Incentive Plan (the "Plan"), which was originally adopted by the Company's shareholders in 1966, is designed to provide current incentive compensation and deferred contingent compensation to a select group of management and key employees of the Company and is administered by the Compensation and Benefits Committee (the "Committee"), the members of which are non-employee members of the Board of Directors of the Company. The Plan provides for awards to individuals each year out of an amount determined to be available for the award fund under the Plan. An aggregate of 12 million shares of Common Stock may be awarded under the Plan, of which 3,495,002 shares remained available as of February 1, 1992.

Under current Committee policy, participants under the Plan may request, subject to Committee approval, that up to 50% of any award that may be granted for any year be paid currently in cash with the remainder being delivered in the form of a contingent stock award. Participants in the Plan who are subject to Section 16 of the Exchange Act are required to make such requests at least six months in advance of the effective date of the corresponding award. Each participant may also indicate a preference, subject to Committee approval, to have the contingent stock portion of the award delivered either in the third year following the year in respect of which the award was granted or after retirement or termination of employment. All deliveries of contingent awards under the Plan are subject to forfeiture and other conditions as described in the Plan. The Plan further provides that no employee to whom a contingent award has been made shall have any rights to his or her contingent award other than to receive the award at the time and in the form determined by the Committee, subject to the conditions of the Plan, which right may not be assigned, transferred or pledged during the employee's lifetime.

Shares of Common Stock that are contingently awarded to an employee under the Plan are credited to a contingent award account for the employee. No shares of Common Stock are issued or earmarked for the employee's account at the time of award, nor does the employee have any rights of a stockholder with respect to the shares credited to the account before actual issuance and delivery of such shares. The dividends that would have been paid during a calendar year with respect to shares credited to an employee's contingent award account if the shares had been outstanding are calculated at the end of each year and the employee's account is then credited with the largest full number of shares of Common Stock that such an amount of dividends could have purchased at the average closing market price of the Common Stock for the last five business days of the year (the "Dividend Contingent Shares").¹ Any amounts remaining are carried forward

¹ The Dividend Contingent Shares credited to contingent award accounts at the end of each year are based on the actual dividends per share paid during the year to the Company's common stockholders which, in 1991, totalled \$2.375 per share. The Dividend Contingent Shares based on the 1991 dividends were credited with respect to the shares in the contingent award accounts of all participants on December 31, 1991. Participants in the Plan who are subject to Section 16 of the Exchange Act, as a group, were credited with 828 shares (ranging from a minimum of 10 to a maximum of 219 shares per individual) with respect to their 1989 contingent stock award and previously credited

in the employee's account and applied to the calculation of Dividend Contingent Shares for the employee's account at the end of the next year. For purposes of this letter, the Dividend Contingent Shares feature of the Plan will be referred to as a dividend equivalent right or "DER".

Pursuant to the revised rules under Section 16 of the Exchange Act published in Release No. 34-38869, each share credited to the employee's contingent award account in respect of a DER constitutes a derivative security the grant of which is exempt under Rule 16b-3 if the security to which it relates (i.e., the underlying contingent stock award) was acquired in an exempt manner under Rule 16b-3, provided that the six-month holding period is complied with. See Hewitt Associates (avail. May, 1, 1991). According to the Staff, "[t]he six-month holding period does not relate back to the initial grant or award, but commences on the date the dividend ... is granted or allocated to the participant." Id.

With respect to the Dividend Equivalent Shares credited following the 1991 Plan year, Rule 16b-3 provided a sufficient exemption for the crediting of shares related to the 1990 deferred contingent stock awards because the requirements of the Plan impose a holding period of more than six months (i.e. the underlying deferred contingent stock awards, together with these Dividend Contingent Shares, will not be deliverable until January 1993). However, the Dividend Contingent Shares related to the 1989 deferred contingent stock awards (other than those that may have been deferred until retirement or termination of employment), which would have been delivered in January 1992, raised the issue of the six month holding period of Rule 16b-3. As a result of the new rules under Section 16, the Company delivered to the Plan participants subject to Section 16 their 1989 deferred contingent stock awards (together with Dividend Contingent Shares credited in 1990) without the Dividend Contingent Shares credited in 1990, which shares were separately delivered in July 1992 in order to ensure compliance with the Rule 16b-3 requirement of a six month holding period.

Due to the administrative inconvenience caused by this procedure, and in light of the limited number of shares involved

dividend shares (an aggregate of 29,626 contingent award shares, representing less than .01% of the approximately 315.6 million shares of common stock outstanding on December 31, 1991). Also, as of December 31, 1991, the Section 16 participants as a group were credited with 735 shares with respect to their 1990 contingent stock awards (ranging from 10 to 225 shares per individual).

(see note 1, above), the Company would like to be in a position in the future to release Dividend Contingent Shares together with the underlying contingent stock awards without exposing the participants to liability under Section 16 if they dispose of these shares in less than six months from the date of crediting. The Company believes that Rule 16b-2 should be available to exempt these awards without the need to satisfy a six month holding period requirement.

According to Rule 16b-2, an "acquisition of securities resulting from the reinvestment of dividends or interest on securities of the same issuer shall be exempt from Section 16(b) of the [Exchange] Act if made pursuant to a plan, available on the same terms to all holders of that class of securities, providing for the regular reinvestment of dividends or interest."

In Simpson, Thacher & Bartlett (avail. June 19, 1991), the Staff took the position that if an issuer has a dividend reinvestment plan available to all shareholders and offers "the same right to reinvest dividends to participants in its benefit plan, the plan participants are eligible to use Rule 16b-2 to exempt acquisitions of equity securities of the same class." This would be the case regardless of whether the six-month holding period is complied with or the transactions otherwise do not comply with Rule 16b-3. See also Thacher Proffitt & Wood (avail. December 20, 1991).

All shareholders of the Company are offered the right to reinvest dividends on shares of Common Stock pursuant to the Master Investment Plan. This right (the "Dividend Reinvestment Plan" or "DRP") is, of course, not identical to the DER feature of the Plan, which by its terms applies not to actual dividends but to dividends that would have been paid with respect to shares credited to a contingent award account if such shares have been outstanding. However, the Company believes that the differences between these programs are not substantial and do not present an opportunity for speculative abuse on the part of the Plan participants.

First, the DRP is entirely optional, with shareholders being given the opportunity to reinvest the cash dividends on all or any portion of the shares they hold or to forgo this opportunity entirely. In addition, under the Master Investment Plan, shareholders may elect to terminate participation in the DRP at any time (upon payment of a nominal termination fee). The DER, on the other hand, is an integral feature of a contingent stock award under the Plan, with participants having no discretion as to whether they wish to accept the DER.

Second, the DRP reinvests all cash dividends to purchase additional shares at the then current market price while the DER operates on an annual basis, with a deemed reinvestment price equal to the average closing market price of the Common Stock for the last five business days of the year. Accordingly, Plan participants have neither the opportunity to acquire shares at market prices that may fluctuate on a quarterly basis nor the benefits (i.e., additional dividends or Dividend Contingent Shares) of acquiring shares purchased with reinvested dividends (or Dividend Contingent Shares) prior to year end. In addition, if a dividend (together with any optional cash investments that are made under the Master Investment Plan) is not large enough to buy a full additional share under the DRP, the Company's registrar and transfer agent will credit the shareholder with a fractional share, which also accrues its proportionate share of future dividends. By contrast, no fractional shares are credited under the DER, and remaining amounts are carried forward and applied to the calculation of Dividend Equivalent Shares at the end of the next year.

Third, the shares purchased under the DRP will have full voting rights, while the Dividend Equivalent Shares are simply added to the employee's contingent award account under the Plan, which do not entitle the employee to any of the voting or other rights of a shareholder with respect to the shares credited to the employee's account.

Despite these differences, which are attributable primarily to the fact that the DER relates to contingent stock rather than outstanding shares², it is our view that the availability of the DRP to all shareholders should satisfy the requirement of Rule 16b-2 that the dividend reinvestment feature be available on the same terms on which it is available to persons subject to Section 16(a) and (b).

In prior interpretations, the Staff has taken the position that Rule 16a-11 (the predecessor to Rule 16b-2) is satisfied where an employee benefit plan contains an investment opportunity similar to that provided by a dividend reinvestment plan. Exxon Corp. (avail. March 30, 1990); Girard Co. (avail. March 3, 1981);

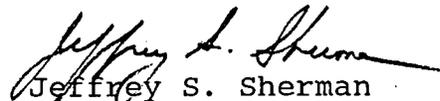
² Another difference is that the DRP involves brokerage costs (which are significantly less than usual brokerage commissions because the administrator of the Master Investment Plan buys Common Stock in bulk for all participants in the DRP) and a nominal quarterly fee of \$1.50 per participant to defray some of the costs of operating this program. Under the Plan, no brokerage costs are incurred and no fees are imposed.

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Release No. 34-18114 (September 23, 1981), Question 76 (which remained the same under the new rules according to Release No. 34-28869 (February 8, 1991)). In Girard, the Staff emphasized the fact the "(1) the dividend reinvestment feature [did] not present an opportunity for short-term trading profits based upon inside information and (2) all of the Company's shareholders have an investment opportunity similar to that provided by the dividend reinvestment feature [of the Company's employee benefit plan] through participation in the Company's dividend reinvestment Plan." In light of the absence of any opportunity for speculative abuse in the case of the DER and the fact that the Company's shareholders have an investment opportunity that is generally similar to the DER, the Company requests the Staff to concur in its view that the availability of the DRP satisfies the requirement of Rule 16b-2 with respect to the DER.³

If the Staff needs any further information or has any questions with respect to the interpretation requested in this letter, please call the undersigned at (212) 878-6150. Pursuant to Release 33-6269, enclosed are seven additional copies of this letter.

Sincerely,


Jeffrey S. Sherman
Senior Attorney

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³ In O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears (avail. Dec. 11, 1991) and Davis Polk & Wardwell (Avail. Aug. 23, 1991), the Staff expressed the view that the grant of a dividend equivalent right is exempt from Section 16(b) if it meets the requirements of Rule 16b-3. In neither letter, however, was the exemption in Rule 16b-2 addressed.

Rule 16b-2, by its terms, requires that the dividend reinvestment plan be available "on the same terms to all holders of that class of securities." We have assumed, for these purposes, that the Common Stock and the contingent stock awards involve the same class of securities. Alternatively, if the contingent stock awards constitute a separate "class of securities", then the DER on its own terms should meet the requirements for the Rule 16b-2 exemption without reliance upon the availability of the DRP.