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March 19, 1992

BY MESSENGER

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1934 Act/§16 and Rules 16a-1(c), 16b-3 and 16b-6(b)

RECEIVED
MAR 19 1992
OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

Re: Lincoln National Corporation
Executive Value Sharing Plan

Dear Mr. Morley:

We are writing on behalf of Lincoln National Corporation ("Lincoln," "LNC" or the "Company") to request that you advise us that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") concurs with our interpretation of Section 16 and Rules 16a-1(c) and 16b-3 under the Securities Exchange Act of 1934 to the effect that (i) neither the right to participate in nor a grant of awards under the Company's proposed Executive Value Sharing Plan (the "EVS Plan") will be deemed a derivative security for purposes of Section 16, (ii) the grant of restricted stock in payment of such awards and the issuance of such stock will be exempt pursuant to Rule 16b-3, (iii) no shareholder approval is required for the amendment of the 1986 Incentive Stock Plan (the "ISO Plan") to include the EVS Plan, and (iv) receipt of restricted stock by EVS Plan participants will be exempt under Rule 16b-6(b). This letter replaces the no-action letter request submitted on February 7, 1992.

I. Background

Lincoln is a publicly-held company whose stock is listed on the New York, Midwest, Pacific, London and Tokyo Stock Exchanges. Both its common and preferred stock are registered under the Securities Exchange Act of 1934 and, in accordance therewith, the Company files reports, proxy statements and other information with the Commission.

The Company maintains a number of retirement, benefit, profit-sharing and incentive plans for its employees; in particular, it maintains three plans relevant to this request.

A. Lincoln National Corporation Executive Value Sharing Plan

Beginning in 1992, the LNC EVS Plan (copy attached as Exhibit 1) will provide rights to participate in a plan under which individual awards of cash and/or restricted shares of Lincoln common stock in amounts which are meant to reflect the Company's performance over a three-year period (the "Performance Cycle") are made to selected key executives, managers, supervisors, and professionals of LNC or its direct or indirect subsidiaries or a person holding an agent's or broker's contract. The amount of such awards is based upon Lincoln's relative attainment of specific goals over three years (i.e., increase in the Company's book value) compared to a selected peer group of companies. The total awards and the amount of individual cash and/or restricted stock awards based on certain performance criteria are determined by those members of the Lincoln Board of Directors' Personnel Committee, who are "disinterested persons" as defined in paragraph (c)(2)(i) of Rule 16b-3, which is primarily responsible for administering the ISO Plan (the "ISO Committee").

The Chief Executive Officer of the LNC is always eligible for participation in the EVS Plan and is permitted to recommend executives to the Committee who he or she believes are eligible for plan participation under the criteria established by the Committee. However, the selection of participants is solely within the discretion of the ISO Committee.

The aggregate amount available as awards to participants is measured by the extent to which the increase in book value of Lincoln as a whole or the book value attributable to a strategic business unit of Lincoln during a Performance Cycle exceeds the benchmark book value established by reference to the average changes in book value of peer companies selected by the ISO Committee during the Cycle.

The right of individuals to participate in awards (including their relative percentage interests in the amount awarded) will be determined at the beginning of each Cycle by the ISO Committee according to three criteria: (1) the importance of the individual to his or her business unit; (2) the willingness of the individual to go above and beyond his or her job description; and (3) the importance of the individual's business unit to LNC. At any time prior to the end of the Performance Cycle, the Committee reserves the right to reduce, increase or withhold an award it deems inappropriate based on the performance of the individual's business unit. The ISO Committee has complete discretion as to whether an award will be settled in cash, restricted stock or both. (*See* Sections 5.2 and 5.3 of the EVS Plan.) Calculation of the amount by which the Lincoln book value exceeds the benchmark book value, the total amount available for awards to participants, and the cash value of individual awards to participants is determined and made by the ISO Committee after the end of the three-year Performance Cycle, December 31st of every year, but not later than March 15th. The Committee will make its final determination as to the percentage of an individual award that will be paid in shares of restricted stock on a date between (and including) March 1 and March 15 of the fiscal year following the end of a Performance Cycle.

Awards may be distributed either in cash or shares of restricted stock subject to the ISO Plan discussed below. The conversion of an award to restricted stock is based on the average of the fair market value of LNC's common stock as of the close of the business day immediately preceding January 1, February 1 and March 1 of the fiscal year following the end of a Performance Cycle. The amount, if any, of the EVS Plan award not paid in stock is payable in cash. The EVS Plan awards are not transferable by the participant except by will or the laws of descent and distribution.

B. Lincoln National Corporation Management Incentive Plans

Currently, LNC maintains two management incentive plans. The Lincoln National Corporation Management Incentive Plan ("MIP I") (copy attached as Exhibit 2) is a cash-only plan, which provides individual awards based on annual and/or long-term performance goals. These goals may be based upon the financial performance of the Company, upon the financial performance of an LNC business unit or upon the attainment of an individually determined goal. The ISO Committee and/or LNC's Chief Executive Officer establish all goals and awards. Awards for meeting goals are made annually prior to the end of the first quarter after the close of the fiscal year to which the award pertains.

The LNC Management Incentive Plan II ("MIP II") (copy attached as Exhibit 3) currently provides individual awards of cash or restricted stock or both to selected senior executives of Lincoln in amounts which are meant to reflect the Company's performance over a three-year period. The amount of such awards is based upon Lincoln's relative attainment of specific goals over three years (*i.e.*, stock price appreciation and dividends) compared to a selected peer group of companies, in accordance with a schedule which sets forth at the beginning of the three-year period the range of awards given different Company results. The ISO

Committee sets performance goals for the three-year Performance Cycle, the selection of a peer group of companies for comparative purposes, the selection of executive personnel deemed eligible to become participants in MIP II (based on job title and length of service), the amount of award to be granted to particular individuals based upon the relative contribution of the participant in the achievement of performance goals, and the form of award (cash or restricted stock) to be granted.

It is anticipated that LNC's Chief Executive Officer, who is always eligible for participation in MIP II, and other senior officers of the Company, will make recommendations as to the matters determined by the Committee as listed above. However, the ISO Committee is not compelled to follow any recommendation from the CEO or any senior officer. Corporate goals, eligibility, individual awards and other matters are within the sole discretion of the ISO Committee. Depending upon Lincoln's position (i.e., percentile ranking) with respect to its selected peer group of companies, the amount of each award, expressed as a percentage of the participant's salary, can be determined under the schedule of awards. The ISO Committee can only determine and make individual awards after the end of the three-year Performance Cycle, December 31st of every year, but not later than March 15th.

Awards may be distributed either in cash or shares of restricted stock subject to the ISO Plan discussed below. The conversion of an award is based on the LNC common stock's fair market value on the date of the restricted stock award, which is the average of the highest and lowest price of LNC's common stock on the date next preceding the award date. MIP II awards are not transferable except by will or the laws of descent and distribution.

For those individuals who become participants, the EVS Plan will in effect replace MIP I and MIP II. Participation by these persons in MIP I was discontinued as of December 31, 1991. With respect to Performance Cycles commencing in 1992, they will participate in the EVS Plan rather than MIP II.

C. <u>1986 Stock Option Incentive Plan</u>

Lincoln created the ISO Plan, a copy of which is attached as Exhibit 4, to provide an incentive to select key management-level employees to continue their employment and to realize a direct proprietary interest in Lincoln's success through newly acquired or increased stock ownership. The ISO Plan was approved by the shareholders of Lincoln in 1986 and is administered by the ISO Committee. The ISO Committee may select salaried employees (including officers who may also be directors) of Lincoln and its subsidiaries, as well as agents or brokers of such subsidiaries, to participate in the Plan.

Up to 2,500,000 shares of Lincoln common stock, $1.25 par value, are issuable under the ISO Plan (subject to adjustment in the event of stock splits or other changes of capitalization). The ISO Committee may select any key employee of Lincoln or its subsidiaries to participate in the ISO Plan. Within the limits of the ISO Plan (and, to the extent applicable, MIP II and the EVS Plan), the ISO Committee has full discretion to determine the type, amount, terms and conditions of each award. The ISO Plan provides for awards of stock options (both nonqualified and incentive options), stock appreciation rights and restricted stock. However, only the award of restricted stock is relevant to MIP II and the EVS Plan. (MIP I awards are payable only in cash.)

The grant of restricted stock to satisfy MIP II and EVS Plan awards are and will be drawn from shares authorized under the ISO Plan. The stockholders in approving the ISO Plan in 1986 were advised that restricted stock could be issued in conjunction with MIP II, which provides performance-based awards over a three-year cycle to executive officers. The ISO Plan was amended in 1989 to authorize the ISO Committee to grant restricted stock to satisfy MIP II awards and will be further amended to include EVS Plan awards as well. (A copy of the proposed amendment is attached as Exhibit 5.)

The decision to distribute restricted shares of Lincoln common stock in lieu of a cash award under the EVS Plan and MIP II is made by the ISO Committee pursuant to the ISO Plan. In such event, shares with restrictions on transfer may be issued to the participant no earlier than six months after the award. Such shares, once issued, will be deposited with the secretary of Lincoln until delivery can be made free of restrictions or possibility of forfeiture, which, except in the event of death, disability or retirement of the participant, may be no earlier than the first anniversary nor later than the tenth anniversary of the award. It is anticipated that the restricted shares issued in satisfaction of the EVS Plan awards will vest three years after the award date (subject to continued employment), at which time all restrictions lapse. Restricted stock awarded in satisfaction of MIP II awards generally vests three years after the award date. During this three-year period, the ISO Committee is empowered, in its discretion, to credit to the participant any dividends paid on the stock. An amount equivalent to accumulated dividends may, in the discretion of the ISO Committee, be paid to the recipient at the time the restrictions lapse.

II. Discussion

A. Participation in and Awards under the EVS Plan Should Not Constitute Derivative Securities

In Release 34-28869 dated February 8, 1991, the Commission adopted amendments to its rules and forms under Section 16 of the Exchange Act, which amendments encompass a new approach to the treatment of derivative securities. Derivative securities are defined in Rule 16a-1(c) as

> any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege at a price related to an equity security, or similar securities with a value derived from the value of an equity security.

The right to participate in the EVS Plan and the granting of awards under the Plan do not involve any "exercise or conversion privilege" or any act of volition on the part of the participant. Under the EVS Plan the ISO Committee has the right to deliver cash and/or LNC restricted stock to Pool participants in payment of awards and the participants are obligated to accept the cash and/or stock. The ISO Committee, however, is by no means obligated to make an award to every participant and may choose not to do so in any given case. Hence, the right to participate and the awards under the EVS Plan do not fit within the first part of the foregoing definition of a derivative security.

Pursuant to Rule 16a-1(c), securities that derive their value from the value of an equity security are also considered derivative securities. However, only securities that derive their value from the market price of common stock or similar equity security will be deemed derivative securities. See General Mills (reconsideration available January 31, 1992) in which the Staff found that performance units deriving their value from earnings per share and return on equity are not derivative securities unless their value is tied to the market price of an equity security. A participant in the EVS Plan will derive value based on a number of factors described above, none of which is the market price of the LNC common stock. Because the value of the right to participate and the performance award are not derived from the market price of LNC common stock, neither participation in the EVS Plan nor the award should be deemed a derivative security.

The right to participate in the EVS Plan is also exempt from the definition of a derivative security under Rule 16a-1(c)(5) which excludes the right to participate in the issuer's employee benefit plan from the derivative security definition. Such exemption extends to the participation right of employees of the issuer's direct and indirect majority-owned subsidiaries. See Chadbourne & Parke (available January 10, 1992).

B. The Award of Restricted Stock under the ISO Plan to Satisfy Awards under the EVS Plan Should Be Exempt under Rule 16b-3

At the time individual awards are finally determined, a participant may be awarded cash or restricted stock or both. No derivative security is created when a cash award (based on Lincoln's book value, not on the market price of its securities) is made by the ISO Committee. However, a derivative security is created when the Committee makes the final determination of the number of shares of restricted stock to be awarded to a Plan participant. Specifically, a derivative security for a particular Performance Cycle is created on the date between (and including) March 1 and March 15 of the fiscal year following the end of the Performance Cycle when the ISO Committee makes its final decision as to the percentage of an individual award that will be paid in restricted stock. The Committee's decision as to the number of shares of restricted stock to be awarded will be made after the average LNC common stock value is ascertained, and will therefore represent the last action needed prior to the actual award. The awarded shares of restricted stock will be issued no earlier than six months after the date following the award date on which the award recipient signs an agreement imposing restrictions on the shares.

We recognize that the six-month delay in issuance of the restricted stock creates a derivative security. The required six-month period is contained in the original ISO Plan and LNC does not propose any change in the Plan's procedures, benefits, or restrictions. However, no change is necessary since the creation of a derivative security (the grant of restricted stock) and the issuance of restricted stock are made under the ISO Plan and thus will be exempt under Rule 16b-3 which exempts transactions in connection with certain employee benefit plans. Actual receipt of restricted stock by EVS Plan participants is exempt under Rule 16b-6(b).

C. Rule 16b-3 Exemption Available for the EVS Plan

The derivative securities created upon conversion of the ISO Committee cash award into shares of LNC restricted stock and the issuance of restricted stock under the EVS Plan operating in tandem with the ISO Plan should be exempt under Rule 16b-3. As explained below, we believe that the EVS Plan operates under the ISO Plan and is therefore exempt under Rule 16b-3.

By its own terms, the EVS Plan does not provide for the issuance of any equity security. Instead, the EVS Plan establishes a mechanism for making awards expressed in cash based on certain performance criteria. Section 4.2 of the EVS Plan specifically states that the conversion of a cash award into a restricted stock award shall be made "under the terms of Section 6 of the Lincoln National Corporation 1986 Stock Option Incentive Plan" (i.e., the ISO Plan). The actual award of restricted stock will be made pursuant to the ISO Plan which gives the ISO Committee broad discretion to designate and award restricted stock to any executive, managerial, supervisory or professional employee of the Company or a person holding an agent's or broker's contract. Moreover, the determination of eligibility to participate and the amount of awards to individuals will be made entirely by the same persons who have the authority to select participants and determine the amount of awards under the ISO Plan. Without the ISO Plan, EVS Plan participants could not receive awards of restricted stock. Thus, to the extent the EVS Plan leads to the grant of stock, it is merely an adjunct of the ISO Plan under which restricted stock is actually awarded. Because the viability of the EVS Plan depends on the ISO Plan, the EVS Plan should be considered to operate under the ISO Plan and the Rule 16b-3 exemption.

D. No Shareholder Approval Required for Amendment of the ISO Plan

The ISO Plan will be amended to authorize the grant of restricted stock to satisfy awards under the EVS Plan in addition to awards under MIP II. Previously, the Staff took a no-action position with respect to the award of restricted stock to satisfy awards under LNC's MIP II provided that MIP II was administered by the ISO Committee. The Staff specifically noted that shareholder approval of those plan amendments would not be required. Lincoln National Corporation (available November 4, 1989). Because the EVS Plan is the successor to MIP II, we ask the Staff to reconfirm its prior position that amendment of the ISO Plan to include the award of restricted stock (and derivative securities representing the right to receive restricted stock after the award date) pursuant, in this instance, to the EVS Plan would not require shareholder approval.

1. EVS Plan Compared to MIP II

The Staff should reconfirm its position that shareholder approval of the ISO Plan amendment is not required because the EVS Plan provides the same nature of benefits as MIP II. Each uses a three-year Performance Cycle during which the performance of LNC measured against that of a peer group of companies is used as a basis for determining awards. The ISO Committee under each plan determines which executives are eligible to participate (although based on slightly different criteria) and which peer companies will be used for comparison. While the total amount available for awards under the EVS Plan is based on the increase in LNC book value rather than stock price appreciation used for MIP II, the ISO Committee determines the amount of each individual awards for both plans. The Committee also reserves the right under each plan to reduce or withhold an award. The ISO Committee also determines the form of award (cash and/or restricted stock or both) under both the EVS Plan and MIP II.

As stated above, the EVS Plan is intended to replace MIP I and MIP II. Based on experience in recent years, LNC estimates that the total amount available for individual awards to executive officers under the EVS Plan will be less than the aggregate amount available under MIP I and MIP II. Hence, the individual awards under the EVS Plan will probably be less than the aggregate of individual awards under MIP I and MIP II and therefore the substitution of the EVS Plan will not result in any material increase in benefits.

2. Shareholder Approval Requirement

Moreover, the proposed amendment of the ISO Plan falls within the Rule 16b-3 exception to the shareholder vote requirement for amendments that do not materially increase benefits or the number of securities which may be issued or modify the requirements as to eligibility. Under the provisions of Section 5 the ISO Plan, the Committee may award stock under any circumstances at any time to any participant. Section 6 of the ISO Plan, which now authorizes restricted stock awards to participants of MIP II and will be amended to cover the EVS Plan as well, is merely a particular application of the broad authority given to the Committee. Such broad authority under the ISO Plan has been approved by a vote of Lincoln's shareholders.

The Commission's interpretive release No. 34-29131 does not require a shareholder vote for amendment of the ISO Plan to accommodate the EVS Plan. That release addresses the requirement in Rule 16b-3(b) that any amendment to a qualified plan must be approved by shareholders if the amendment would materially increase benefits to plan participants, materially increase the number of securities issuable under the plan, or materially modify requirements for eligibility. As explained below, the proposed amendment of LNC's ISO Plan does none of these.

a. Benefits. The release indicates that shareholder approval depends on the nature of the benefits conferred and how comparable they are to those previously authorized by the shareholders. The benefits authorized in this case are the award of restricted stock in accordance with the terms of the existing ISO Plan. That Plan gives the ISO Committee complete discretion to determine such awards (including the number of shares, the time of the award, and conditions to be met for award and delivery of shares), and the EVS Plan in no way enlarges this authority. The EVS Plan (like MIP II before it) merely establishes particular criteria for the amount of awards to those participating in that plan, but it does not change any criteria established under the ISO Plan. Finally, the proposed amendment would have no impact on outstanding awards, grants, or securities.

b. Number of shares issuable. The ISO Plan sets a maximum number of 2,500,000 shares of LNC Common Stock issuable under options and as restricted stock. The EVS Plan does not change, and is subject, to these limitations.

c. Eligibility. All of the persons who would be eligible for awards under the EVS Plan (i.e., any key executive, managerial, supervisory, or professional employee of LNC or of a subsidiary or any insurance agent or broker - Section 2.1 of the EVS Plan) would also be eligible under the ISO Plan (i.e., any key executive, managerial, supervisory, or professional employee of LNC or of a subsidiary or any insurance agent or broker - Section 2.1 of the ISO Plan). Thus, the proposed amendment effects no change in this regard.

Accordingly, we do not believe that the shareholder approval release would require such approval of the proposed amendment.

III. Request

Based on the foregoing, we request your concurrence with our opinion that under the circumstances described above, (i) the right to participate in the EVS Plan and the awards under the Plan will not be subject to the Section 16 reporting and short-swing profit liability provisions until such time as both the amount of the award and the market value of the LNC restricted stock become fixed, (ii) the issuance of restricted stock and of any derivative security resulting from the six-month delay in issuing restricted stock after the award date will be exempt under Rule 16b-3, (iii) no shareholder approval is required for amendment of the ISO Plan to include the EVS Plan, and (iv) receipt of restricted stock by EVS Plan participants will be exempt under Rule 16b-6(b).

* * *

If you have any questions or require any additional information regarding the matters addressed in this letter, please contact the undersigned at (202) 383-0100.

Very truly yours,

D R Woodward

David R. Woodward

Laurence K. Williams

Laurence K. Williams

cc: Jacquelyn Abbott, Esq.
Dennis Schoff, Esq.