UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

January 26, 1996

Richard H. Rowe, Esq.
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1233 Twentieth Street, N.W., Suite 800
Washington, D.C. 20036-2396

ACT ICA-40
SECTION 3(a)
RULE
PUBLIC AVAILABILITY 1/26/96

RE: TOTAL

Dear Mr. Rowe:

In regard to your letter of January 25, 1996 our response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter.

Sincerely,

Martin P. Dunn

Martin P. Dunn
Chief Counsel

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January 25, 1996

1933 Act Section 2(1)
1933 Act Form S-8
1940 Act Section 2(a)(36)
Rel. 33-4790

BY HAND DELIVERY

Martin Dunn
Chief Counsel
Division of Corporation Finance

Jack W. Murphy
Associate Director (Chief Counsel)
Division of Investment Management

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: TOTAL
File No. 1-10888
Employee Share Subscription Arrangement

Dear Messrs. Dunn and Murphy:

We are writing on behalf of TOTAL, a foreign private issuer organized under the laws of the Republic France, to request a no action or interpretive response from your Divisions, with respect to an aspect of TOTAL's contemplated share subscription arrangement for employees of certain of its U.S. subsidiaries (the "Plan"). Specifically, we request that the Divisions concur in our view that a provision of the Plan, required by French law, that prohibits transfers

of shares acquired by employees under the Plan for a period of five years would not result in the creation of separate interests under the Plan, which interests would constitute separate securities for purposes of Section 2(1) of the Securities Act of 1933, as amended (the "1933 Act"), or Section 2(a)(36) of the Investment Company Act of 1940 (the "1940 Act"), as interpreted in Securities Act of 1933 Release No. 4790 (July 13, 1965) ("Rel. 33-4790") and subsequent releases. In the alternative, we request that the Divisions indicate that they would not recommend any action to the Commission should TOTAL proceed to implement the Plan as described herein, including imposition of the required five year restriction on transfers of shares acquired under the Plan.

The shares to be acquired under the Plan will be TOTAL Shares, nominal value 50 Francs each ("Shares"), represented by American Depository Shares ("ADSs"), in turn represented by American Depository Receipts ("ADRs"). Each ADS will represent one-half of a Share. The Shares will be registered under the 1933 Act on Form S-8.

TOTAL wishes to commence offers under the Plan to U.S. employees in early 1996 (the "Offer Date"). This commencement date is necessary to coordinate offers under the Plan with offers under TOTAL's global plan (the "Global Plan") to non-U.S. employees. Certain aspects of the Global Plan vary from country to country. The variations for the offering to U.S. employees are reflected in the Plan.

Accordingly, TOTAL would appreciate a response to this request as soon as is feasible.

Background

TOTAL is a foreign private issuer, organized under the laws of the Republic of France. As reflected in its Annual Report on Form 20-F for the year ended December 31, 1994, it is a leading international integrated oil and gas company based in France with operations in approximately 80 countries, including the U.S. TOTAL has over 50,000 employees world-wide, approximately 8,800 of whom are located in the U.S. It is expected that approximately 2,500 U.S. employees will be offered Shares under the Plan.

TOTAL is subject to the periodic reporting provisions of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), as the result of public offerings in the U.S. in 1991 and 1992 and the listing of its

Shares and ADSs, represented by ADRs, on the New York Stock Exchange ("NYSE"). Each ADS represents one-half of a Share. The Shares and ADSs sold under the Plan also will be listed on the NYSE. The principal market for the Shares is the Paris Bourse. The Shares also are listed on the London Stock Exchange and quoted on SEAQ International.

Filings by TOTAL under the 1934 Act are reviewed by Branch 3.

The Plan

TOTAL's shareholders authorized issuance of Shares to employees at their Annual General Meeting on June 2, 1993. It has not yet been determined whether the Plan will be qualified as a stock purchase plan under Section 423 of the U.S. Internal Revenue Code.

The Plan provides for a one-time purchase of newly issued Shares by employees of designated U.S. subsidiaries of TOTAL who have been employed by TOTAL or a subsidiary for at least six full months for the U.S. Dollar equivalent on a designated business day preceding the first day of the subscription period, of 245 French francs per Share. The per Share price in French francs represents a 20% discount from the benchmark stock price (the average trading price for the Shares on the Bourse for the 20 trading days prior to September 5, 1995, the date of the meeting of TOTAL's Board Directors that decided to implement the offering to employees). The Shares, represented by ADSs, may be paid, at the option of the employee, either in full in cash upon execution and delivery of the subscription agreement or through payroll deduction in equal installments over two years. An employee may not acquire Shares under the Plan for a purchase price in excess of 25% of the employee's gross annual remuneration and the market value (price on the Paris Bourse multiplied by the U.S. dollar/French franc exchange rate on the Offer Date multiplied by the number of Shares to be purchased) of the Shares purchased may not exceed $25,000.

TOTAL anticipates that for convenience in administration, the ADSs so purchased will be issued for the account of the purchasing employee and deposited with The Bank of New York, the depository under TOTAL's ADR arrangement. The ADRs representing the ADSs will be held for the employee's benefit in a custodial account at the Bank of New York (the "Custodian"), under a custody agreement (the "Custody Agreement") with TOTAL on behalf of the plan participants. The Custodian will have no investment management functions. Its sole functions will be to hold the ADRs in safekeeping, receive dividends on the Shares and pay the dividends over to the beneficial owners, exercise any voting rights with respect to the Shares provided to holders of ADRs solely upon the instructions of the beneficial owner (the Custodian may not vote any shares with respect to which no such instructions are received) and deliver ADRs upon the instructions of the beneficial owner or his or her representative upon termination of the required holding period.

However, based upon considerations of cost, TOTAL may determine to forego the custodial arrangement described above and, instead, provide for issuance to the employees who subscribe for Shares under the Plan of ADRs bearing legends disclosing the restrictions on transfer of the deposited Shares described below. Employees would be permitted to withdraw their Shares from the ADR depositary at any time, but the Shares would remain subject to the applicable restrictions on transfers and bear appropriate legends describing those restrictions.

Employees who subscribe for Shares under the Plan will become holders of ADRs, with all the rights of ADR holders, including the right to receive dividends and other distributions on their Shares and to instruct the Custodian to exercise any voting rights they have as ADR holders. Employees who subscribed for shares under the Plan may elect to receive their dividends in cash or Shares under TOTAL's dividend reinvestment plan ("DRIP") to the same extent as other ADR holders. (TOTAL's DRIP was the subject of a no action letter, dated March 2, 1993, from the Division of Corporation Finance.)

However, as required by French law and for purposes of equitable treatment of TOTAL's employees worldwide and fairness to all its shareholders, the Plan provides that Shares acquired by an employee may not be transferred for a period of five years from the date of issuance, except that fully paid shares may be transferred as the result of the employee's retirement or other termination of employment, marriage, birth or adoption of a third or subsequent child, divorce, if the employee has custody of at least one child. This five year holding period is

compelled by French law. Also, since Shares sold at a discount pursuant to TOTAL's Global Plan for non-U.S. employees are required to be held for five years, with certain exceptions, it would be unfair to participants in the Global Plan and TOTAL's other shareholders, including many in the U.S., for U.S. employees to be able to acquire shares at a substantial discount and not be subject to comparable restrictions on transfers of their Shares.

Upon termination of the five-year holding period, the Shares will be freely transferable by the employee.

Although the Plan contemplates a one-time offering, TOTAL may from time-to-time make other offerings to its U.S. employees on terms substantially similar to those of the Plan.

Basis For Five Year Holding Period

We are advised that, pursuant to the French statute authorizing this type of share purchase plan (i.e. containing the discount from market price and other terms and restrictions, including favorable tax treatment in France), the Shares purchased under the Plan must be held for a minimum of five years from the date on which they are purchased, with the exceptions described under "the Plan" above.

We have been advised that the five year withdrawal restriction is set forth in the French statute (Ord. No. 86-1134, October 21, 1986) that authorized the implementation by French companies of group savings plans having the characteristics of Total's Global Plan as described in this letter.

Article 26 of that statute reads as follows:

> Except in the cases listed by the decree of the Conseil d'Etat contemplated by Article 13 [withdrawals in certain special circumstances], the shares or interests acquired for the account of the employees (Law No. 94-640 of July 25, 1994) "and of ex-employees" are delivered to them at the expiration of a minimum time period of five years counting as of the date of the acquisition of the securities. [Translated]

Thus, the five year holding period is a statutory requirement of the Global Plan pursuant to which Total's U.S. Plan will be implemented and is applicable to U.S. employees participating in the Plan.

The Staff may be familiar with offerings of shares at a discount by other French companies, Société Nationale Elf Acquitaine, for example, to their U.S. employees where the employees' holding period was less than five years. However, the shares that were sold to those employees were sold in secondary offerings by the French State. We are advised that those offerings were not governed by Ord. No. 86-1134, but by the French "Privatisation" law, Ord. No. 93-923, July 19, 1993.

As indicated, although required by French law, TOTAL also believes it would be unfair to the participants in the Global Plan and its other shareholders to permit U.S. employees to receive a discount from the prevailing market price for Shares without imposing the same five year holding period on them.

Discussion

Rel. 33-4790 principally addressed the applicability of Section 2(3) of the 1933 Act to open market employee stock purchase plans. However, under the caption "Plan Participations as Separate Securities," the Commission indicated that where, among other factors, limitations exist "on the rights of employees to withdraw . . . securities held in custody . . . a separate security may be created, which will be required to be registered under the Securities Act of 1933 and the issuer of which may be an investment company required to register under the Investment Company Act of 1940." (A footnote to the quoted passage indicates that provision for reinvestment of dividends on a voluntary basis will not of itself create a separate security.) Subsequently, the Staff, in confirming the foregoing position, stated that the reason for the position "is that such factors tend to place the employee in a position where he is relying on the plan managers to protect [the employee's] investment." Securities Act of 1933 Release No. 6188 (February 1, 1980) ("Rel. 33-6188"), I.A.5.a. Stock Purchase Plans.

In our view, since a participant in the Plan would be in no sense relying on "plan managers" (there are no "plan managers") to protect the participant's investment, there is no principled rational for concluding, as a matter of law or policy, either under the 1933 Act or the 1940 Act, that the feature of the plan prohibiting, as required by French law and for reasons of equity and fairness

to other shareholders, transfers of Shares acquired under the Plan for a five year period, subject to the exceptions described under "The Plan" above, results in the creation of a separate security.

Nor do we believe that the fact that the Shares issued under the Plan may be held in custody during the required holding period, as a means of enforcing the limitations on transfer and for convenience of administration, facilitating payments of dividends on and voting of, the Shares, constitutes the Custodian a "manager" to whom the participants will look to for protection of their investments. The participants will be at risk on their Shares during the entire required holding period and no action by the Custodian can increase or diminish that risk or in any other manner affect the participants' investments or rights in the Shares.

We also note that General Instruction A(1)(iii) to Form F-6 permits an exception from the requirement that a holder of ADRs be entitled to withdraw the deposited securities at any time for restrictions on withdrawal imposed for purposes of "compliance with any laws or governmental regulations relating to ADRs or the withdrawal of deposited securities."

We believe that our position is supported by judicial and administrative interpretations of the term "security" and the policies underlying the 1933 Act and the 1940 Act and apparent administrative acquiescence in plans with holding period features compelled by law, economic considerations, such as tax consequences, or by considerations of equity.

Interests in the Plan, if any, clearly would not constitute any of the instruments, agreements or rights enumerated in Section 2(1) of the 1933 Act or Section 2(a)(36) of the 1940, except possibly an "investment contract." In our view, the plan will not result in the creation of an investment contract. An investment contract requires: (1) an "investment of money;" (2) in a "common enterprise;" (3) "with an expectation of profits;" (4) "from the efforts of others." See Rel. 33-6188. II.A.2.d. Voluntary, Contributory Plans. While release 33-6188 addressed issues under the 1933 Act, there is no apparent reason why there should be a different analysis for purposes of the 1940 Act.

The "investment of money" under the Plan will be in the Shares, not in a separately managed plan.

Once the Shares are purchased, there will be no "common enterprise" either horizontally among the participants, except as shareholders, or vertically with TOTAL or any manager, except the relationship between TOTAL and all its shareholders.

Any "expectation of profit" will be from owning the Shares; not a separate interest in the Plan.

Any profits will not be "from the efforts of others," other than TOTAL's efforts to enhance the value of Shares held by all of its shareholders equally.

Thus, interests in the Plan, if any, will not be investment contracts and, thus, will not be securities for purposes of the 1933 Act or the 1940 Act.

This view is supported by various interpretive or "no action" letters issued since 1980 by the Staff of both Divisions with regard to both the 1933 Act and the 1940 Act, examples of which are discussed below.

In Gifford-Hill Company, Inc. (avail. January 8, 1988), the Staff of both Divisions took no action positions with respect to an employee stock purchase plan under which employees could not withdraw from the plan for the first 12 months of participation and could not sell any security purchased under the plan for six months after its purchase. Those limitations were imposed solely to comply with the Companies Act of 1985 of Great Britain, as the result of the financial assistance provided to the employees to purchase shares under the plan. Securities to be issued under the plan were to be registered on Form S-8.

In E.I. dupont de Nemours & Co. (avail. September 27, 1982), the Staff of both Divisions to no action positions, based on the facts presented and "policy considerations," with respect to an employee stock ownership plan that imposed a minimum two-year holding period on shares paid for either with employee or matching employer contributions that was mandated by U.K. tax law as to employer contributions. Indeed, in order to obtain the most favorable tax treatment under U.K. law a holding period of seven years would be required, although not mandated under the plan. See also, discussion of TRASOPs below.

The contractual limitations on withdrawals of shares purchased with employee contributions was designed to coincide with the statutory restrictions and preserve the matching employer contribution feature of the plan. For a five business day period prior to the commencement of the holding period, employees could withdraw the shares purchased with their own funds if they were willing to forego matching employer contributions; incur adverse tax consequences; and pay brokerage commissions and charges. It would appear, therefore, that acceptance of the two-year holding period for such shares was economically compelled and the early withdrawal right illusory.

A letter, dated April 16, 1982, from Dupont's counsel concerning their request refers to an attached no action letter from the Staff to Beneficial Corporation, U.K. regarding a plan similar to the Dupont plan, which provided for a three-year withdrawal restriction. However, we have been unable to locate the Beneficial letter on any of our research systems.

In Roadway Express, Inc. Employee Stock Savings Plan (avail September 20, 1982), the Division of Corporation Finance took a no action position with respect to a plan that prohibited withdrawal for a period of six months of shares purchased with matching employer contributions by employees with less than five years service. These limitations were imposed by the Internal Revenue Service as a condition to qualification of the plan under Section 401 of the Internal Revenue Code. The request did not address any 1940 Act issues nor was any 1940 Act issue raised by the Staff in its letter.

In B.P. America (avail June 5, 1989), a no action letter was issued by the Staffs of both Divisions with respect to a plan similar to that involved in the Dupont letter described above, except that to two year holding period was imposed on B.P. employees seconded to the U.S., not due to U.K. tax law, but to allow seconded employees to participate in a plan with substantially the same features as the share scheme available to B.P. employees in the U.K.

In addition to the no action letters discussed above, which are by way of example, but by no means all of the favorable letters addressing the issue (we are not aware of any relevant unfavorable responses), there are instances where there has been open disclosure of plans with holding periods of up to five years, where no "no action" position has been sought, but no action has been taken by the Commission.

For example, in Shaw, Pittman, Potts & Trowbridge (avail. April 14, 1988), the Staffs of both Divisions took a no action position with respect to employee stock purchase plans of several German banks that provided for five year holding periods. The incoming request and the Staff's response addressed issues under Rule 504 of Regulation D and registration of foreign banks under the 1940 Act and expressly addressed neither the separate security nor the holding period issues, although the Staffs' letter states that counsel to the banks represented during a telephone conversation that the plans did not involve the creation of separate investment companies in the manner discussed in Rel. 33-4790.

Also, Société Nationale Elf Aquitaine ("Elf"), another integrated French oil and gas company, on January 27, 1994, registered on Form S-8 (Registration No. 33-74532) shares to be sold under a 1994 Share Participation Plan for U.S. and Canadian Resident Employees and Former Employees, but did not register any separate interests in that plan. The Elf plan provided for three subscription options. Under the first option, shares were acquired at a 20% discount, were paid 50% down and 50% in one year and had to be held in custody for two years. Under the second option shares were acquired at a 20% discount, paid by monthly payroll deductions over two years and had to be held in custody for two years. Under the third option, shares were fully paid, with no discount, and were freely withdrawable. Under all three options, if shares were held for specified periods of time, the employee would receive additional shares for no additional consideration. At the end of any prescribed holding period, shares could be freely withdrawn. (As noted above, under "Basis For Five Year Holding Period", the holding periods for shares offered under the Elf plan are governed by a different French statute than that governing the holding period for Shares issued under the TOTAL Plan.) We are not aware of any no action letter issued to Elf with respect to the holding period issue.

While, with the exception of the German bank plans that were the subject of the Shaw, Pittman letter discussed above, the periods under the plans that have been the subject of the Staff's no action letters have ranged from one to two, or perhaps three, years, we do not believe that differences in the lengths of the holding periods should make a difference, as a matter of policy, particularly where, as in the case of the TOTAL Plan, the Plan permits the exceptions to the withdrawal restrictions described under "the Plan" above.

In each of the letters discussed above that expressly addressed holding periods, the holding periods were imposed to comply with the provisions of corporate or tax law or to conform parallel plans with plans required to comply with those laws. The TOTAL Plan for its U.S. employees imposes a holding period both to comply with French law and for reasons of fairness.

Where the holding period is imposed for such purposes and the plan is not managed within the meaning of Rel. 33-6188, it should not matter whether the holding period is six months, one year, two years, three years, five years, as will be the case with the TOTAL plan, or even longer. Indeed, we note that the Staff of the Division of Corporation Finance in 1980 and again in 1981 took a generic no action position under Section 2(3) of the 1933 Act with respect to registration of employer shares issued under Tax Reduction Stock Ownership Plans ("TRASOPs"), despite the fact that the Internal Revenue Code required shares acquired by employees under a TRASOP to be held for seven years. See Rel. 33-6188, III.B.2. TRASOPs; Securities Act of 1933 Release No. 6281 (January 15, 1991) ("Release 33-6281"), II.A. Release No. 33-6281 expressly states that TRASOPs being subject to a mandated seven year holding period will not, by itself, require registration of employee interests in a TRASOP under the 1933 Act.

We also believe that there is no purpose or policy to be served by registration of interests in the Plan, if any, under either the 1933 Act or the 1940 Act. What is there to register? The employee's interest in the Plan would seem to be inseparable from their interests in their Shares, which are to be registered under the 1933 Act and are issued by a company that is not an investment company by definition. Cf. Rel. 33-6188, III.B.2. Section 3(a)(2) (interest in plan inseparable from an employee's aliquot interest in the plan's share in the funding vehicle, which is exempt; thus, interests in the plan are exempt); Securities Act of 1933 Release No. 6768 (April 14, 1988), n.8 and accompanying text (interests that would be separate securities in compensatory benefit plans also are exempted from 1933 Act registration pursuant to Rule 701).

Moreover, no purpose would be served by registration of the Plan under the 1940 Act. The Plan, as opposed to the participants, will not be investing, reinvesting or trading in securities. There are no managers of the plan and the plan will not be organized, operated, and managed in the interests of officers, directors, investment advisers of TOTAL or affiliated persons or present any of the other risks that the 1940 Act was enacted to regulate. See 1940 Act Sec. 1.

Employees will receive full and fair disclosure about the terms of the Plan and about TOTAL and the Shares in accordance with the provisions of Form S-8 and participants will receive annual account statements from the Custodian. However, if interests in the Plan were deemed separate securities required to be registered under the 1933 Act, the Plan would be required to file annual reports on Form 11-K pursuant to Section 15(d) of the 1934 Act.

No purpose would be served by the Plan filing annual reports on Form 11-K under the 1934 Act, since all the Plan's assets would consist of Shares, it would have no liabilities or revenues or income, and its expenses, principally custodial fees, will be the obligations of TOTAL not the Plan.

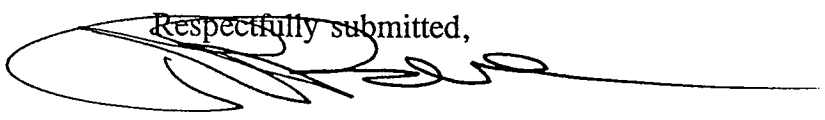
Conclusion

Based on the factors discussed above, we do not believe that interests in the Plan would be separate securities for purposes of either the 1933 Act, or the 1940 Act or that the plan would be required to register under the 1940 Act. Accordingly, we respectfully request that the Division concur in our view that no separate interests in the Plan would be created that constitute separate securities for purposes of the 1933 Act or the 1940 Act, or indicate that they will recommend no action to the Commission should TOTAL proceed to implement the Plan as described herein.

For the convenience of the Staff, seven copies of this letter are enclosed for each Division.

Should the Staff have any questions or desire any additional information, please telephone the undersigned at (202) 416-6820 or Ronald R. Papa, Esq. at (212) 969-3325.

Respectfully submitted,



Richard H. Rowe

Enclosures (7 for each addressee)

cc: Charles de Bollardiére
Emmanuel de Guillebon
Ronald R. Papa, Esq.
Delia Spitzer, Esq.
Jeffrey P. Riedler, Chief, Branch 3
Paul Dudek, Chief, Office of International
Corporate Finance

PUBLIC

January 26, 1996

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: TOTAL
Incoming letter dated January 25, 1996

Based on the facts presented, the Division will not recommend enforcement action to the Commission if TOTAL, in reliance on your opinion as counsel that registration is not required, operates the share subscription arrangement for employees of certain of its U.S. subsidiaries (the "Plan") in the manner described in your letter without registration under the Securities Act of 1933 of participation interests in the Plan.

The Division of Investment Management has asked us to inform you that, on the basis of the facts presented in your letter and your representations that the Plan complies with the conditions set forth in Lucky Stores Inc. (pub. avail. July 6, 1974), 1/ except with respect to the five-year withdrawal restriction that is required under French law, 2/ the Division of Investment Management would not recommend enforcement action to the Commission if TOTAL implements the Plan without registering the Plan under the Investment Company Act of 1940.

Because these positions are based upon the representations made in your letter and in telephone conversations with the staff, it should be noted that different facts or conditions might require different conclusions. Moreover, the responses only express the Divisions' positions on enforcement action and do not purport to express legal conclusions with respect to the questions presented.

Sincerely,

Anita Klein

Anita Klein
Special Counsel

1/ See also First Arkansas Bankstock Corp. (pub. avail. Sept. 8, 1977); Ameribanc, Inc. (pub. avail. Sept. 17, 1982).

2/ Telephone conversation on January 5, 1996 between Richard Rowe of Proskauer Rose Goetz & Mendelsohn, counsel to TOTAL, and Natalie Bej of the staff.