

that any sale of the Notes on the open market would have produced significant losses for the Funds and for the individual employee benefit plan investors involved.<sup>13</sup>

9. Bankers Trust represents that it took all appropriate actions necessary to safeguard the interests of the Funds, and the employee benefit plans invested therein, in connection with the transactions. Bankers Trust ensured that each Fund received the appropriate amount of cash from BTNY in exchange for such Fund's interests in the Notes at the time of the transactions. Bankers Trust reviewed the latest information regarding the fair market value of the Notes, based on bid quotations received from independent broker-dealers. Bankers Trust also ensured that the Funds did not pay any commissions or other expenses for the sale of the Notes to BTNY.

10. In summary, the applicant represents that the transactions satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) Each sale of the Notes by the Funds was a one-time transaction for cash; (b) each Fund received an amount which was equal to the greater of either (i) the par value of the Notes

owned by the Fund at the time of sale, (ii) the purchase price paid by the Fund for its interest in each of the Notes, or (iii) the fair market value of the Notes owned by the Fund as determined by bid quotations for the Notes obtained by Bankers Trust from independent broker-dealers at the time of sale; (c) the Funds did not pay any commissions or other expenses with respect to the sale; (d) Bankers Trust, as trustee of the Funds, determined that the sale of the Notes was in the best interests of each Fund, and the employee benefit plans invested in the Fund, at the time of the transaction; (e) Bankers Trust took all appropriate actions necessary to safeguard the interests of the Funds in connection with the transactions; and (f) the Funds received a reasonable rate of return during the period of time that the Funds held the Notes.

#### Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate Plan fiduciaries for each employee benefit plan participating in the Funds at the time of the transactions. Notice to the plan fiduciaries shall be made within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. This notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

#### General Electric Pension Trust (the Trust) Located in Fairfield, Connecticut; Proposed Exemption

[Application No. D-09880]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of

the Code, shall not apply effective August 3, 1994, to the past and continued lease (the Lease) by the Trust of office space in a commercial office building located at 201 Mission Street in San Francisco, California (the Property), to GE Capital Aviation Services, Inc. (GE Aviation), a party in interest with respect to employee benefit plans participating in the Trust, provided the following conditions are met:

(a) All terms and conditions of the Lease are at least as favorable to the Trust as those which the Trust could have obtained in an arm's-length transaction with an unrelated party at the time the Lease was executed;

(b) The rent paid by GE Aviation to the Trust under the Lease is not less than the fair market rental value of the office space, as established by an independent qualified real estate appraiser;

(c) David P. Rhoades (Mr. Rhoades), acting as a qualified, independent fiduciary for the Trust reviewed all terms and conditions of the Lease prior to the transaction, as well as any subsequent modifications to the Lease, and determined that such terms and conditions would be in the best interests of the Trust at the time of the transaction; and

(d) Mr. Rhoades represents the interests of the Trust for all purposes under the Lease as a qualified, independent fiduciary for the Trust, monitors the performance of the parties under the terms and conditions of the Lease and the exemption, and takes whatever action is necessary to safeguard the interests of the Trust throughout the duration of the Lease.

**EFFECTIVE DATE:** This proposed exemption, if granted, will be effective for the period from August 3, 1994, until the scheduled termination date of the Lease (i.e. September 16, 1999) or, if earlier, the date the Lease is actually terminated by the parties.

#### Summary of Facts and Representations

1. The Trust holds assets of the General Electric Company Pension Plan (the GE Pension Plan), the Knolls Atomic Laboratories Pension Plan, ERC Retirement Plan, GE Components Pension Plan For Puerto Rico, and Neutron Devices Department Pension Plan (collectively, the Plans). The Plans are all defined benefit plans that cover employees of General Electric Company (GE) and various GE subsidiaries. There are a total of over 488,000 participants and beneficiaries under the Plans. As of December 31, 1993, the Trust held approximately \$27.3 billion in assets.

The trustees of the Trust are five individuals (the Trustees) who are

<sup>13</sup>The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Notes by the Funds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a-1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

officers of GE and its subsidiaries. The Trustees are appointed by the GE Benefit Plans Investment Committee, an oversight committee that determines the investment policies of the Trust. The Trustees maintain overall responsibility for investment of the Trust's assets. The Trustees have delegated specific responsibility for investment management of most of the Trust's assets to the General Electric Investment Corporation (GEIC).

GEIC, a Delaware corporation and a wholly-owned subsidiary of GE, is a registered investment adviser under the Investment Advisers Act of 1940. GEIC provides investment management services to a variety of GE-affiliated entities. As of January 1, 1994, GEIC managed approximately \$40.4 billion in assets.

2. GE Aviation, a Delaware corporation formerly known as the Polaris Corporation, is a wholly-owned subsidiary of General Electric Capital Corporation. The primary business of GE Aviation is airplane equipment leasing. GE Aviation's employees are participants in the GE Pension Plan.

3. The transaction for which an exemption is requested involves the leasing of office space between the Trust, as landlord, and GE Aviation, as tenant, in the office building located at 201 Mission Street in San Francisco, California (the Property).

The Property is a 30-story office building located in the southern financial district of San Francisco. The Property is part of a series of high-rise buildings developed during the 1980s on the fringes of the city's traditional financial district. The ground floor is leased to retail businesses and the other floors are leased as office space. The rentable area of the Property is approximately 475,675 square feet. The current value of the Property is approximately \$40 million.

Construction of the Property was completed in 1981. The Trust financed the acquisition of the Property by an unrelated party that subsequently went into receivership. The Trust acquired the Property by deed in lieu of foreclosure in April 1993. The Trust currently owns the Property through a real estate title holding company, Pacific Gateway Realty Corporation.

Most of the office space in the Property was originally rented by Bank of America. Bank of America subsequently decided to relocate and consolidate its offices, and vacated one-half of the office space it occupied in the Property in 1991. At that time, the vacated area was leased on a short-term basis to Pacific Gas & Electric (PG&E), which was making repairs to its existing

offices as a consequence of earthquake damage. While there were negotiations in 1993 for PG&E to extend its existing lease and to lease additional space, PG&E's board of directors ultimately decided against remaining in the Property. PG&E intends to vacate the Property in January 1996, when the repairs to its original offices are expected to be completed.

Bank of America vacated the other half of the office space it occupied in the Property in late 1993 upon completing its relocation. As a result, about 34 percent (i.e. 160,014 square feet) of the rentable area in the Property was vacant as of early 1994, compared to a general vacancy rate in San Francisco-area office buildings of around 12 percent at that time.

In the months after Bank of America vacated, the managers of the Property actively searched for tenants, in an effort to lease the vacant space as quickly as possible before PG&E leaves. As of June 1994, tenants had been found for approximately 77,000 square feet of space, or about 16 percent of rentable area, leaving around 18 percent of the Property vacant. One of the tenants was GE Aviation.

4. The applicant represents that in early 1994 GE Aviation had its offices at Four Embarcadero Center in San Francisco's main business district. However, GE Aviation was in the process of downsizing its operations and was looking for smaller space in a less expensive part of San Francisco. In the course of its search for office space, GE Aviation contacted Sentre Partners (Sentre), the independent property manager retained by the Trust to manage the Property. GE Aviation decided that it was interested in leasing space in the Property and entered into negotiations with Sentre.

The Lease was executed by GE Aviation in July 1994, after which the documents were sent to Sentre. The Lease was executed by Pacific Gateway Realty Corporation as landlord on August 3, 1994, following receipt of the report by Mr. Rhoades, the independent fiduciary acting for the Trust in connection with the subject transaction. The applicant states that once the Lease was signed by all of the parties, the landlord began making extensive improvements to the space in order to accommodate a planned occupancy date for GE Aviation of September 1, 1994.

5. Under the Lease, GE Aviation has leased approximately 9,376 square feet of space located on the eastern and southern portions of the 27th floor of the Property. This space constitutes approximately two percent of the rentable square footage in the Property.

The term of the Lease is five years, which commenced on September 16, 1994, the date that work on the premises was substantially completed. The annual rent is \$20 per square foot of rentable area, or \$187,520, for the first three years of the Lease, and \$21 per square foot of rentable area, or \$196,896, for the fourth and fifth years, payable monthly. The Lease requires that GE Aviation pay its proportionate share of the Trust's real estate taxes and expenses relating to the Property for years after 1995, to the extent these taxes and expenses exceed those for 1995 (the "base" year) or to the extent any additional taxes or expenses are properly chargeable solely to GE Aviation in connection with its activities with the leased space.

Late payments are subject to a 5% late payment charge after written notice is given. If the late payment becomes an event of default, or in the event of any failure by GE Aviation to perform its obligations under the Lease, GE Aviation will be obligated for interest charges and other amounts necessary to compensate the Trust for damages caused by GE Aviations' failure to perform.

GE Aviation does not have any options or rights to expand or extend the Lease, nor has it received any period of free rent. Any assignments or subleases by GE Aviation are void unless the Trust has provided prior written consent and, if consented to, are subject to additional charges.

6. The Trust has provided agreed-upon improvements to the space which, prior to the Lease, contained only nominal improvements. The total cost of the improvements shall not exceed \$42.50 per rentable square foot (\$398,480), with any additional costs to be paid by GE Aviation.<sup>14</sup> The Trust is responsible to repair any defects in this work of which it is notified by GE Aviation within one year, other than defects resulting from compliance with the specifications provided by GE Aviation's architect or engineer. GE Aviation is responsible at its expense for any additional work it needs or desires that is not part of the agreed-upon

<sup>14</sup> The Department expresses no opinion in this proposed exemption as to whether the expenses incurred by the Trust relating to the tenant improvements provided for GE Aviation would violate any provision of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan's participants and beneficiaries when making investment decisions on behalf of a plan. In addition, section 404(a) of the Act requires that plan fiduciaries act for the exclusive purpose of providing benefits to participants and beneficiaries and to defray reasonable expenses of administering the plan.

improvements. Any alterations to be made during the term of the Lease are subject to the Trust's written consent. Alterations generally become the property of the Trust and remain at the expiration of the Lease, except that the Trust may require the alterations to be removed at GE Aviation's expense.

7. Mr. Rhoades was retained by GEIC to act as an independent fiduciary for the Trust in connection with the Lease. Mr. Rhoades is president of the real estate appraisal and consulting firm of David P. Rhoades & Associates, Inc., of San Francisco, California. Mr. Rhoades represents that he and his firm are independent of, and unrelated to, GE and its affiliates. Mr. Rhoades states that he is a Member of the Appraisal Institute (MAI) and has 22 years experience as a real estate appraiser dealing with the valuation and analysis of all types of property, including urban office buildings similar to the Property. Mr. Rhoades has acknowledged in writing that he is a fiduciary for the Trust and that he understands his duties, responsibilities, and liabilities as a fiduciary under the Act.

8. Mr. Rhoades reviewed the Lease and inspected the Property prior to the transaction. In an appraisal dated July 6, 1994, Mr. Rhoades concluded that the market rent for the space covered by the Lease would be in the range of \$19.00 to \$21.00 per square foot. Thus, Mr. Rhoades determined that the proposed average rental rate under the Lease of \$20.22 per square foot would be at the upper end of the range of rents for comparable leases in the San Francisco area and would not be less than the fair market rental value for the space. Mr. Rhoades states that the terms of the Lease are comparable to the terms that would have been negotiated in arm's-length transactions between unrelated parties. Mr. Rhoades concluded that the Lease would be in the best interest of the Trust because it would yield the Trust a market rate of return, would avoid additional leasing efforts, and would avoid the lost revenue and associated costs of having the space remain vacant.

Mr. Rhoades represents that the tenant improvement allowance for the Lease of \$42.50 per square foot was necessary because of the unimproved condition of the particular space. Mr. Rhoades states that the space on the 27th floor leased by GE Aviation was previously demolished in connection with work that was done for another tenant, who currently occupies part of the 27th floor and the two floors above the 27th floor. In this regard, the applicant represents that the 27th floor space previously was occupied by Bank

of America, which had been a major tenant in the Building from 1981 through 1991. The entire 27th floor, when occupied by the Bank of America, was primarily open space with movable partitions. At the time the Bank of America vacated the 27th floor space, substantial work on the space was needed to satisfy applicable legal requirements, such as current fire and safety codes. In addition, the Bank of America's use of the space was not readily adaptable to a new tenant desiring up-to-date conventional office space and was functionally obsolete. Consequently, the applicant states that it was cost effective to demolish the entire floor when work was being done for a new tenant that would occupy half of the 27th floor and to re-build sufficiently to meet the minimum requirements for the entire floor, including the part that was not yet being leased. As a result, when the other half of the floor was leased to GE Aviation, it was in unimproved condition. Thus, prior to the Lease, the space was effectively "first generation" or unimproved space which required relatively high outlays for tenant improvements.

Mr. Rhoades states that the improvements made to the space leased by GE Aviation are functional and reusable by a wide range of tenants without major costs, and are typical of the types of improvements landlords usually build for such tenants. Mr. Rhoades maintains that the residual value of the tenant improvements at the end of the Lease (i.e. 5 years) will be about 50 percent of the original cost of the tenant improvements, or approximately \$21.25 per square foot.

9. With respect to the overall rate of return to the Trust under the terms of the Lease, Mr. Rhoades conducted an analysis of both the "internal rate of return" (IRR) and the "net present value" (NPV) to the Trust from the Lease.

Mr. Rhoades represents that the "rate of return" on a real estate investment is the ratio of income to the original investment and the "IRR" is the *annualized* rate of return on capital that is generated within an investment over a period of ownership.<sup>15</sup> Thus, the IRR measures the returns from an investment in relation to the original capital outlay. In this case, Mr. Rhoades states that the "returns" consist of the rental income over the Lease term and the pass-through of certain expenses after the first year, as well as the

residual value of the tenant improvements at the end of the Lease. The "original capital outlay" consists of expenses relating to the leased space, including the tenant improvements, operating expenses, brokerage fees, parking, and taxes. This "original capital outlay" was approximately \$421,920.

In addition, Mr. Rhoades states that the "NPV" is the difference between the present value of all expected investment benefits, or positive cash flows, and the present value of capital outlays, or negative cash flows, over the entire period of the investment. The present value calculation involved in determining NPV requires the use of a specific discount rate, which operates as the annual rate of return objective. In this regard, Mr. Rhoades used the standard real estate industry rate of 9 percent for the NPV calculation, which provided a basis for comparing the rate of return on the Lease to different leasing arrangements in the Property.

Mr. Rhoades states that his approach to evaluating leases and leasing costs is customary in the real estate industry. Mr. Rhoades states further that he was consistent in using this approach to evaluate the comparable leases in the Building and other comparable properties for purposes of determining the fair market rental value of the space under the Lease as well as the IRR and NPV of the Lease to the Trust. However, Mr. Rhoades notes that his approach did not consider the original cost or value of the Building in evaluating the specific leases. In this regard, Mr. Rhoades has confirmed that it is not customary to consider the cost or value of a building for this purpose because the focus in valuing a lease is on the incremental costs and income of the lease and the ongoing costs relating to the space.

Based on an extensive analysis and comparison of the terms of the Lease to all other leases in the Property at the time of the transaction, Mr. Rhoades concluded that the Lease had a greater NPV and would yield a higher IRR than any other lease of a comparable term in the Property. Mr. Rhoades represents that the Lease will yield an IRR to the Trust of approximately 10.83 percent on an annual basis and has a NPV of \$4.87 per square foot based on a discount rate of 9 percent, when taking into account the residual value of the tenant improvements. Therefore, Mr. Rhoades states that it is unlikely that the Trust would have obtained a lease for the space on more favorable terms from

<sup>15</sup> Mr. Rhoades cites *The Dictionary of Real Estate Appraisal* (3rd edition) as his source for the definition of these terms.

other tenants in the market at the time of the transaction.<sup>16</sup>

10. Mr. Rhoades, as independent fiduciary for the Trust, will monitor the Lease on an ongoing basis. Mr. Rhoades will determine GE Aviation's compliance with the terms of the Lease and has the authority to take any action necessary to enforce the rights of the Trust under the Lease, including the termination of the Lease. Any renewals of the Lease will be subject to the oversight, review and approval of Mr. Rhoades. Such a renewal will not be executed in the absence of Mr. Rhoades' opinion that the proposed renewal would be in the best interests of the Trust.

11. In summary, the applicant states that the transaction meets the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the terms of the Lease are at least as favorable to the Trust as the terms which would exist in an arm's-length transaction with an unrelated party; (b) the Trust will receive rental amounts under the Lease equal to the fair market rental value for the space, as determined by a qualified, independent appraiser; (c) an independent fiduciary (i.e. Mr. Rhoades) acting for the Trust reviewed the terms and conditions of the Lease and determined that the transaction would be in the best interests of the Trust; (d) Mr. Rhoades, as the independent fiduciary, will monitor the Lease on behalf of the Trust and take whatever actions are necessary to protect the interests of the Trust; and (e) the Lease only involves a small percentage of the Trust's total assets.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

**The Amended and Restated Profit Sharing Retirement Plan for Employees of 84 Lumber Company (the Profit Sharing Plan) and The Amended and Restated Savings Fund Plan for Employees of 84 Lumber Company (the Savings Plan; together, the Plans) Located in Eighty Four, Pennsylvania; Proposed Exemption**

[Application Nos. D-09945 and D-09946]

<sup>16</sup>Mr. Rhoades states in his letter dated August 12, 1994, that the NPV of leaving the space vacant for the five year term of the Lease would have been a negative \$19.45 per square foot due to the operational and tax expenses related to the space. Mr. Rhoades notes that while it is unlikely that the space would have remained vacant for the entire five year period, it would have taken about six months for the Trust to have obtained a lease on terms at least as favorable to the Trust, with the same IRR and NPV values, as the terms of the Lease

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) The proposed extension of credit by 84 Lumber Company (Lumber) to the Plans in the form of loans (the Loans) with respect to Guaranteed Investment Contract, Number CG0124601A issued by Executive Life Insurance Company (ELIC) to the Profit Sharing Plan and Guaranteed Investment Contract No. CG0124701A (both Contracts together, the GICs) issued by ELIC to the Savings Plan; and (2) the Plans' potential repayment of the Loans (the Repayments), provided: (a) all terms of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with an unrelated party; (b) no interest and/or expenses are paid by the Plans; (c) the Loans are made with respect to amounts invested by the Plans in the GICs; (d) the Repayments are restricted to the amounts, if any, paid to the Plans after the date of the Loans by ELIC or other responsible third parties with respect to the GICs (the GIC Proceeds); (e) the Repayments under each Loan will not exceed the total amount of the Loan; and (f) the Repayments are waived with respect to the amount by which any Loan exceeds the GIC Proceeds.

**Summary of Facts and Representations**

1. Lumber is a Pennsylvania general partnership engaged in the retail lumber and building products business. As of January 1, 1995, Lumber operated 374 individual store locations in 31 states. The headquarters of Lumber are in Eighty Four, Pennsylvania. The managing general partner of Lumber is Pierce-Hardy Real Estate, Inc., a Pennsylvania business trust. Lumber is the sponsor of both Plans, each of which covers the employees of Lumber. The Profit Sharing Plan also covers employees of the Trusty Building Components Company, an affiliate of Lumber.

2. Each of the Plans is a defined contribution plan that is qualified under section 401(a) of the Code. The Savings Plan is intended to constitute a qualified cash or deferred arrangement in accordance with section 401(k) of the

Code. The Savings Plan is a participant-directed individual account plan under which the participants may direct the investment of their accounts in one or more investment funds. As of December 31, 1994, (i) the Profit Sharing Plan had 3,018 active and terminated vested participants and total assets of approximately \$24,718,415; and (ii) the Savings Plan had 2,080 active and terminated vested participants and total assets of approximately \$17,187,503.

3. On September 25, 1987, ELIC issued the GICs to the Plans. The Profit Sharing Plan's GIC was in the principal amount of \$2 million, and the Savings Plan's GIC was in the principal amount of \$1 million. Each GIC guaranteed an annual interest rate of 9.92% from the issue date to the September 25, 1992 maturity date. Interest accrued under the GICs was payable yearly, and each Plan received interest payments for 1988, 1989 and 1990. The final interest payments made by ELIC were received by the Plans on September 25, 1990. No interest accrued under the GICs was paid in 1991.

4. On April 11, 1991 (the Conservation Date), ELIC was placed in conservatorship by the Commissioner of Insurance for the State of California. As of that date, payments under the GICs were suspended, and no payments were made to the Plans.<sup>17</sup> As of the Conservation Date, the accumulated book values of the GICs (Accumulated Book Value), defined as the amount of deposits, plus interest at the contract rate, less interest paid, were \$2,051,440 for the Profit Sharing Plan and \$1,049,923 for the Savings Plan. Effective June 30, 1991, the Plans' Administrative Committees (the Committees) froze the GICs and a proportionate share of the accounts of participants with account balances invested in the GICs. The Plans have not permitted distributions or withdrawals from the respective plans with respect to the frozen portion of a participant's account. Moreover, the Savings Plan has not allowed participants to receive a loan from or reallocate the frozen portion of their accounts to any other investment option under the Savings Plan.

5. On August 13, 1993, the Los Angeles Superior Court approved the terms of the Rehabilitation/Liquidation Plan for ELIC effective September 3,

<sup>17</sup>The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GICs by the Plans.