45.5 percent of the total assets of the Plan.

On April 1, 1992, the Fidelity Management Trust Company, a Massachusetts trust company, located in Boston, Massachusetts (the Trustee) became trustee of all the other assets in the Plan and Bankers Trust Company ceased to be a trustee of any Plan assets.

3. The Board of Directors of the Employer establishes the general investment policy for the Plan and has sole authority to appoint and remove any Trustee and any member of the Thrift Plan Committee (the Committee).

The Committee is the named fiduciary of the Plan and consists of officers and directors of the Employer and its subsidiaries. The duties of the Committee include, *inter alia*, the selection of the various investment options offered to the participants by the Plan; and the appointment and removal of investment managers, agents, assistants, legal counsel, and clericals. The Committee also has the duty to interpret the terms and conditions provided in the Plan and to adopt rules and restrictions to implement and administer the Plan and its general investment policy.

The Trustee is the custodian of the assets of the Plan and is responsible for the establishment and maintenance of the investment and disbursement accounts of the Plan. In addition, the Trustee invests Plan assets as directed by the participants into 14 various investment options offered by the Plan. These investment options include 13 diversified mutual funds offered by the Trustee. Initially, all the matching contributions to the Plan by the Employer are invested in the Stock Fund for the respective participants until the participants attain the age of 55 years; and then, the participants may direct the matching contributions by the Employer into any of the 14 investment options offered by the Plan.

4. The Plan acquired the GIC on January 2, 1990, for the consideration of \$6,500,000. The GIC provides for annual guaranteed interest payments of 8.8 percent with a maturity date of January 1, 1995. Since the GIC was acquired by the Plan, there have been withdrawals totalling \$2,272,377, which represents annual interest payments received through January 2, 1994. Interest payments are due January 2 each year. All interest payments through January 2, 1994 have been made. As of August 11, 1994, the GIC had a balance of \$6,838,983.56, including \$338,983.56 in accrued interest.

When the Plan requested payment of the value of the GIC on its maturity date, Confederation was unable to grant the

request because, on August 12, 1994, the Ingham County Circuit Court in Lansing, Michigan had placed Confederation in Conservatorship and Rehabilitation, causing Confederation to suspend payments on all of its contracts including the GIC.¹² At this time, August 12, 1994, a segregated subaccount (the Segregated Account) was established within the Money Market/Investment Contract Fund (MMIC) offered by the Trustee to hold the assets of the Plan represented by the GIC. The Segregated Account represents approximately 17 percent of the funds in the MMIC.

The applicant represents that the Segregated Account, which holds the GIC that is subject to suspension of payments, has prevented participants of the Plan from exercising their rights under the Plan to receive distributions of benefits, withdrawals, and investment transfers with respect to the funds invested in the GIC. The applicant further represents that it is not known whether, when, or under what circumstances Confederation will resume payments on its contracts, including the interest and principal amount of the GIC. Approximately 26 percent of the Plan participants (2,423 individuals) are affected by these restrictions.

5. The Employer proposes to make the Loan to the Plan in order to permit the participants to exercise their rights under the Plan and avoid the administrative problems arising from the restrictions on investment transfers and distributions for terminated, retired, and disabled participants as imposed by the rehabilitation of Confederation. The Loan will be made pursuant to two written agreements by the Employer and the Subsidiary, respectively, with the Plan. The notes issued pursuant to the agreements will be interest-free and unsecured. The amount of the Loan will be no less than the accumulated book value of the GIC (the principal amount, plus interest at the contract rate, and minus withdrawals) as of August 12, 1994.13 Any future interest received in accordance with the rehabilitation plan of the Circuit Court will be allocated and disbursed by the Trustee to the

accounts of the participants of the Plan that are affected by the GIC. The purpose of the Loan, as represented by the applicant, is to facilitate distributions and investment transfers from the Plan by the participants and their beneficiaries. The applicant represents that repayments of the Loan by the Plan will be limited to proceeds received from Confederation, or from State Guaranty Funds, or other thirdparty sources. The repayment of the Loan will be waived to the extent the Loan exceeds the proceeds from the GIC and in no event will the repayment exceed the Loan.

The Trustee in its independent capacity under the Trust Agreement with the Employer of April 1, 1992, represents that it has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries. Furthermore, the Trustee represents that it will determine that the Loan when consummated will be as described herein.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the proposed transaction will permit investment transfers as well as distributions for terminated, retired, and disabled participants in the Plan; (b) the Plan will not incur interest charges or other expenses with respect to the proposed transaction; (c) the Loan will be no less than the accumulated book value of the GIC as of August 12, 1994; (d) the source of the repayment of the Loan is restricted to the proceeds under the GIC from Confederation, or a State Guaranty Fund, or other third-party sources; (e) the repayment will not exceed the total amount of the Loan; and (f) the repayment of the Loan will be waived to the extent the Loan exceeds the proceeds from the GIC.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his

¹² The Department notes that the decisions to acquire and hold the GIC 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 GIC by the Plan.

¹³ The Department notes that this exemption, if granted, will not affect the rights of any participant or beneficiary with respect to claims under section 404 of the Act in connection with any aspect of the GIC transactions.