

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

<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.

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