

other tenants in the market at the time of the transaction.¹⁶

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]

¹⁶ 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.¹⁷ 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,

¹⁷ 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.