sale of the GICs to the Employer, the price will be determined by the Trustee. NOTICE TO INTERESTED PERSONS: Notice to interested persons will be provided within 30 days of the date of publication of this Notice in the **Federal Register**. Comments and requests for a hearing are due 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, (202) 219–8881. (This is not a toll-free number.)

Acushnet Company Employee Savings Plan (the Plan) Located in Fairhaven, Massachusetts; Proposed Exemption

[Application No. D-10026]

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) and 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 to the proposed cash sale by the Plan of guaranteed investment contract No. GA-5244 (the GIC) issued by Mutual Life Insurance Company of New Jersey (Mutual Benefit), to the Acushnet Company (the Employer), a Delaware corporation and a party in interest with respect to the Plan, provided the following conditions are met: (1) The sale is a one-time transaction for cash; (2) the Plan experiences no loss and incurs no expense from the sale; (3) the Plan receives as consideration for the sale the greater of either (a) the fair market value of the GIC on the date of the sale, or (b) the accumulated book value of the GIC as set forth in paragraph 3 of this Notice, with such determination to be made by the State Street Bank and Trust Company, the Plan fiduciary with respect to the GIC.

Summary of Facts and Representations

- 1. The Employer is a Delaware corporation with its principal offices in Fairhaven, Massachusetts. It is a whollyowned subsidiary of American Brands, Inc. a publicly held corporation whose stock is traded on the New York Stock Exchange. The Employer is engaged in the manufacture and distribution of golf balls, golf shoes, gloves and related products.
- 2. The Plan is a defined contribution plan with individual accounts for Plan participants which is intended to

qualify under sections 401(a) and 401(k) of the Code. Participants have the right to self direct the investment of the assets in their individual accounts. Plan assets totaled \$70.6 million as of February 28, 1995. Also as of February 28, 1995, there were 2,183 Plan participants and beneficiaries who will be affected by the proposed transaction.

Prior to July 1, 1991, the Plan permitted investments in two investment funds. One of the investment funds, the Fixed Fund, was invested in several guaranteed investment contracts including the GIC issued by Mutual Benefit. The GIC was purchased effective December 1, 1990, with a maturity date of September 30, 1992, and an interest rate of 8%. The GIC was to be paid in full by Mutual Benefit on its maturity date. The GIC represented approximately 10% of the Fixed Fund's assets. Effective July 1, 1991, the Plan was amended to transfer the GIC from the Fixed Fund to a new investment fund called the Frozen Mutual Benefit GIC Fund (the Frozen GIC Fund). The sole asset of the Frozen GIC Fund is the GIC which is the subject of this proposed exemption. The Plan was also amended to prohibit: (1) Investments into the Frozen GIC Fund; (2) investment transfers from the Frozen GIC Fund into other investment funds; and (3) withdrawals from the Frozen GIC Fund for loan requests. On April 1, 1992, the Fixed Fund was discontinued and six new funds were made available to Plan participants for the investment of their individual accounts.

3. On July 16, 1991, the New Jersey Department of Insurance took control of Mutual Benefit pursuant to an order of the Superior Court of New Jersey. The court imposed a moratorium on cash withdrawals from Mutual Benefit's GICs.⁵ On November 10, 1993, the New Jersey Superior Court approved a rehabilitation plan for Mutual Benefit (the Rehabilitation Plan). On April 29, 1994, the GIC was restructured and transferred to MBL Life Assurance Corporation (MBLLAC). Pursuant to the Rehabilitation Plan, principal payments with respect to the GIC will generally not be made until December 31, 1999, a lower rate of interest will be credited on the GIC for periods after December 31, 1991 than is guaranteed under the terms of the GIC and interest will be

credited each year after 1994 based on MBLLAC's investment performance.

In lieu of subjecting participants of the Plan to the investment risks associated with retaining the GIC, and to permit the participants to redirect the funds invested in the Mutual Benefit GIC to safer investments without loss to the individual accounts of the participants in the Plan, the Employer proposes to purchase the GIC from the Plan.⁶ In this regard, the Employer proposes to pay the Plan, in a one-time cash sale transaction, an amount that is not less than the accumulated book value of the GIC, which was \$3,722,435 as of May 31, 1995. The accumulated book value is the total amount paid by the Plan for the GIC plus interest, less prior withdrawals. Interest will be calculated at the contract rate of 8% until September 30, 1992 which was the maturity date of the GIC. For the period beginning on October 1, 1992 through December 31, 1992, interest will be credited at a rate equal to 4%. For the period beginning on January 1, 1993 through December 31, 1994, interest will be credited at an annual rate equal to 3.5%. For 1995, interest will be credited at 3.55%. The rates of interest for periods after the maturity date of the GIC are the rates applicable to the GIC for those periods according to the Rehabilitation Plan. No expenses will be incurred by the Plan for the proposed transaction. In no event will the purchase price be less than the fair market value of the GIC on the date of sale.

- 4. The State Street Bank and Trust Company of Boston, Massachusetts, (State Street) which was the Plan trustee at the time the GIC was purchased, is the current Plan fiduciary with respect to the GIC. At the time of the consummation of the transaction, State Street as Plan fiduciary will determine the purchase price for the GIC with such price to be the higher of (a) The fair market value of the GIC, or (b) the accumulated book value of the GIC as described in 3. above.
- 5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a)

⁵The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility provisions of Part 4, Subtitle B, 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

⁶The applicant previously applied for an administrative exemption to permit the Employer to make interest-free loans to the Plan which would enable the Plan to make benefit distributions to Plan participants (Exemption Application D–9146). The Department responded by letter dated August 5, 1992, that such loans may be encompassed by Prohibited Transaction Class Exemption (PTCE) 80–26 (45 FR 28545, April 29, 1980), and thus to the extent the transactions satisfy the conditions of PTCE 80–26, an administrative exemption is not necessary. The applicant represents that the Employer has not implemented the interest-free loan program described in application D–9146.