

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 96-34; Exemption Application No. D-09880, et al.]

Grant of Individual Exemptions; General Electric

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

General Electric Pension Trust (the Trust), Located in Fairfield, Connecticut

[Prohibited Transaction Exemption 96-34; Application No. D-09880]

Exemption

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 (the Independent Fiduciary), 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) The Independent Fiduciary 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: The exemption is effective for the period from August 3, 1994, until the scheduled termination date of the Lease, as it may be renewed or extended by the parties subject to the review and approval of the Independent

Fiduciary, or, if earlier, the date the Lease is actually terminated by the parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 15, 1995, at 60 FR 31512.

NOTICE TO INTERESTED PERSONS: The applicant represents that it was unable to notify interested persons within the time period specified in the Federal Register notice published on June 15, 1995. However, pursuant to an agreement between the applicant and the Department, the Trust notified all interested persons (including active employees, former employees and retirees of General Electric Company (GE) and its affiliates) no later than March 11, 1996.¹ Interested persons were advised that they had until April 10, 1996 to comment and/or request a hearing on the proposed exemption.

WRITTEN COMMENTS AND MODIFICATIONS: By letter dated November 27, 1995, the applicant submitted the following comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

The Effective Date paragraph in the Proposal states that the exemption, if granted, will be effective 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.

The applicant states that Paragraph 10 of the Summary of Facts and Representations in the Proposal (the Summary) contemplates that Mr. Rhoades, as the independent fiduciary acting for the Trust (i.e. the Independent Fiduciary), will oversee, review and approve any renewals or extensions of the Lease, if such renewals or extensions are in the best interests of the Trust. The applicant states further that Condition (c) of the Proposal indicates that the Independent Fiduciary will be responsible for reviewing any subsequent modifications to the Lease and determining that such

¹ The applicant represents that notice of the proposed exemption was provided to the active employees of GE and its affiliates who are participants and beneficiaries of the plans participating in the Trust by posting a notice (along with a copy of the proposed exemption as published in the Federal Register) at GE locations, in areas that are customarily used for notices to employees with regard to employee benefits or labor relations matters, on or before March 11, 1996. Former employees and retirees, along with other employees, were notified by means of publication of a notice in the 1994 Summary Annual Reports which were distributed to such persons during September and October 1995 via first class mail.

modifications would be in the best interests of the Trust.

The applicant represents that it is likely that the parties will negotiate whether to renew or extend the Lease at its termination, and such a renewal or extension may be in the best interests of the Trust depending on the then-current real estate market. Therefore, the Trust requests that the exemption be effective until the termination of the Lease, as it may be renewed or extended by the parties subject to the review and approval of the Independent Fiduciary.

The applicant represents further that if Mr. Rhoades, the current Independent Fiduciary, is no longer able to serve in that capacity, the Trust would retain a replacement Independent Fiduciary with the same qualifications as Mr. Rhoades and his firm. The replacement Independent Fiduciary would be required to make the same representations made by Mr. Rhoades regarding experience, independence from the GE and its affiliates, and understanding the duties, liabilities and responsibilities such person would have as a fiduciary under the Act. In addition, the replacement Independent Fiduciary would be required to enter into the same form of Independent Fiduciary Agreement used by Mr. Rhoades.

In response to the applicant's comments, the Department has modified the Effective Date paragraph in the Proposal by inserting, after the reference to the scheduled termination date of the Lease, the phrase "... as it may be renewed or extended by the parties subject to the review and approval of the Independent Fiduciary". The Department has also modified Conditions (c) and (d) of the Proposal by inserting "Independent Fiduciary" as a capitalized term in reference to Mr. Rhoades, which is meant to incorporate the applicant's concerns regarding the possibility of a replacement for Mr. Rhoades in the future.

The Department received two comment letters and various telephone calls from employees of GE who did not fully understand the Proposal's effect on benefits provided to participants and beneficiaries of the GE Pension Plan and other plans in the GE Trust (the GE Plans). In this regard, the applicant states that a special telephone line was established by GE to respond to such inquiries by participants and beneficiaries of the GE Plans. The applicant represents that GE received over 150 telephone calls in response to the Proposal and that additional information was provided to interested persons when requested.

The Department also received two comment letters from interested persons who oppose the granting of an exemption. One of the commenters objects to the transaction because the commenter believes that the Lease involves "...the risking of GE Pension funds to be used in lieu of operating capital from the various GE businesses" and exposes the GE Trust to "high risks". The other commenter does not approve of the Proposal but did not express any reasons for objecting to the transaction and could not be reached for further comments.

The applicant has responded to these comments by letter dated April 24, 1996. The applicant represents that the subject transaction does not involve the use of assets of the GE Pension Plan in lieu of operating capital of GE. Rather, the applicant states that the transaction involves the lease of space in an office building currently owned by the Trust to a GE subsidiary (i.e. GE Aviation) at terms equivalent to an arm's-length transaction, as reviewed and approved by a qualified independent fiduciary. The applicant notes that if the GE subsidiary had not entered into the Lease, the office space likely would have remained vacant for a longer period, resulting in loss of income to the Trust (including the GE Pension Plan). Therefore, the applicant maintains that the transaction is in the best interests of the Trust and does not in any way expose the Trust to higher risks than it would have been exposed to absent this transaction. The applicant concludes that there are sufficient safeguards in place to protect the interests of the Trust and its participants and beneficiaries.

No other comments, and no requests for a hearing, were received by the Department from interested persons.

Therefore, the Department has determined to grant the proposed exemption as modified herein.

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

NBD Bancorp, Located in Detroit, Michigan

[Prohibited Transaction Exemption 96-35 Exemption Application No. D-09986]

Exemption

The restrictions of sections 406(b)(2) of the Act shall not apply to the merger of the INB Principal Stability Fund (the PS Fund) into the NBD Stable Asset

Income Fund (the SAI Fund);² provided the following requirements are satisfied:

- (1) On the date the merger is executed, the assets in the PS Fund and the assets in the SAI Fund will be valued in the same manner, under identical guidelines, by the same individuals;
- (2) Upon completion of the merger of the PS Fund into the SAI Fund, the aggregate fair market value of the interests of the employee benefit plans (the Plans) participating in the SAI Fund immediately following the merger, together with any cash received in lieu of fractional units, equals the aggregate fair market value of each participating Plans' interest in such Funds immediately before the merger;
- (3) The assets of each of the participating Plans are invested in the same type of investments both before and after the proposed merger;
- (4) Neither NBD Bancorp nor any of its affiliates receives fees or commissions in connection with the merger;
- (5) The Plans will pay no sales commissions or fees, as a result of the transaction; and
- (6) A fiduciary who is acting on behalf of each affected Plan and who is independent of and unrelated to NBD Bancorp and any of its affiliates receives advance written notice of the merger of the PS Fund into the SAI Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on March 5, 1996, at 61 FR 8670.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

Spreckels Industries, Inc. Employee Stock Ownership Plan (the ESOP); Spreckels Industries, Inc. Incentive Savings Plan for Union Hourly Employees (the Hourly Plan); and

Spreckels Industries, Inc. Employees' Incentive Savings Plan (the Incentive Plan; Collectively, the Plans), Located in Pleasanton, California

[Prohibited Transaction Exemption 96-36, Exemption Application Nos. D-09999 through D-10001]

Exemption

The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 407(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the

²For purposes of this exemption, the PS Fund and the SAI Fund described herein are collectively referred to as the Funds.

application of section 4975 of the Code, by reason of section 4975(c)(1) (A) and (E) of the Code, shall not apply to the acquisition, holding or exercise by the Plans of certain warrants (the Warrants) for the purchase of Class A new common stock (the New Common Stock) of Spreckels Industries, Inc. (the Employer), a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) An independent fiduciary (the I/F) will manage the Warrants and monitor the value of the Warrants at all times and will be empowered to assign, transfer, sell, and exercise the Warrants in order to serve the best interest of the Plans and their participants and beneficiaries;

(b) The fair market value of the Warrants will at no time exceed twenty-five percent (25%) of the value of the total assets of the Hourly Plan or the Incentive Plan;

(c) The Warrants that the Plans will acquire resulted from a bankruptcy proceeding, in which all holders of the Class A old common stock in Spreckels Industries, Inc. were treated in a like manner, including the Plans;

(d) The Plans will not incur any expenses or fees in connection with the proposed transactions;

(e) Any assignment, sale, or other transfer of the Warrants will not involve a party in interest with respect to the Plans, as defined in section 3(14) of the Act, unless such transfer is to the Employer, pursuant to an exercise of the Warrants; and

(f) The I/F will determine the fair market value of the Warrants upon acquisition by the Plans, and an independent qualified appraiser will determine the fair market value of the Warrants on a periodic basis (but not less frequently than annually).

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the Federal Register on January 31, 1996. All comments and requests for hearing were due by March 18, 1996.

During the comment period, the Department received no requests for hearing. However, the Department did receive a comment letter from the applicant, dated April 8, 1996, which informed the Department of changes in the facts as represented in the proposed exemption. In this regard, the Employer has engaged Consulting Fiduciaries, Inc.

(CFI) to replace L. Scott Maclise (Mr. Maclise), a registered investment advisor with Linsco/Private Ledger Financial Services, who was appointed to serve as the I/F on behalf of the Plans for the purposes of the exemption. In the comment letter, the Employer requested concurrence from the Department that the exemption would be granted notwithstanding the replacement of Mr. Maclise as the I/F for the Plans.

Attached to the comment letter, the applicant included: (1) A copy of a letter, dated April 2, 1996, which details the agreement between the Employer and CFI concerning the engagement of CFI to provide certain services as independent fiduciary on behalf of the Plans; and (2) a letter, dated April 2, 1996, from CFI to the Department in which CFI made certain representations. In this regard, CFI has accepted appointment as I/F on behalf of the Plans for the purposes of the transactions which are the subject of this exemption and, except in the event of discharge or resignation as described in the agreement with the Employer, will serve throughout the duration of the transactions.

CFI represents that it is qualified to serve as I/F, in that it is a registered investment adviser under the Investment Advisers Act of 1940 and provides professional, independent fiduciary decision making, consultation, and alternative dispute resolution services to plans, plan sponsors, trustees, and investment advisers. Further, CFI is experienced in representing clients as a fiduciary in stock transactions.

CFI represents that it has the power to negotiate and act independently of the Employer and its officers, directors, shareholders, agents and representatives with respect to the transactions which are the subject of this exemption. In this regard, CFI is not affiliated with the Employer and the income CFI receives from the Employer is expected to represent less than one percent (1%) on an annualized basis of its income over the life of its engagement as I/F.

CFI represents that it understands its duties as I/F under the Act and the Code and will assume all duties, responsibilities, and obligations imposed on it as I/F of the Plans in connection with the transactions which are the subject of this exemption. In this regard, CFI represents that it will take whatever acts are necessary to review, analyze, negotiate, monitor, and approve or disapprove the transactions and will be responsible for the Plans' acquisition and holding of the Warrants. Bearing in mind its fiduciary duties

under the Act, CFI represents that it will determine whether the transactions: (a) Are prudent and for the exclusive purpose of providing benefits to participants; (b) are fair to the Plans from a financial point of view; and (c) are in accordance with the terms and conditions as set forth in the Notice.

CFI will decide on behalf of the Plans (a) whether or not the Plans should acquire and hold the Warrants; and (b) when, if at all, the Warrants should be exercised to acquire New Common Stock or sold and the proceeds used to acquire such stock. With respect to the acquisition of the Warrants, CFI represents that it will conduct due diligence to evaluate whether the Plans should enter into the transactions which are the subject of this exemption. CFI represents that it bears full power to manage and monitor the value of the Warrants at all times. In this regard, CFI represents that it will determine the fair market value of the Warrants upon acquisition by the Plans.

With respect to the holding of the Warrants by the Plans, CFI represents that such holding will not impair the diversification, prudence, or liquidity of the Plans. In this regard, CFI represents that it will be responsible, as appropriate, for insuring that the Warrants will be appraised on a periodic basis (but not less frequently than annually).

CFI represents that it is empowered to assign, transfer, sell, and exercise the Warrants in order to serve the best interests of participants and beneficiaries of the Plan. In this regard, CFI represents that it will not in any way transfer, assign, or sell the Warrants to a "party in interest" within the meaning of section 3(14) of the Act or section 4975(e)(2) of the Code, unless such a transfer is to the Employer pursuant to an exercise of such Warrants.

After giving full consideration to the entire record, including the written comment from the applicant, the Department has decided to grant the exemption, as described and concurred in above. In this regard, the comment letter submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the

Department's decision to grant this exemption refer to the Notice published on January 31, 1996 at 61 FR 3470.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

Budge Clinic Profit Sharing Plan and Trust (the Plan), Located in Logan, Utah

[Prohibited Transaction Exemption 96-37; Exemption Application No. D-10142]

Exemption

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 the sale of certain improved real property located in Logan, Utah (the Property) by the Plan to IHC Health Services, Inc., a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price for the Property which is no less than the fair market value of the Property as of the sale date; and

(C) The Plan does not incur any expenses or suffer any loss with respect to the transaction.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on March 12, 1996 at 61 FR 10015.

FOR FURTHER INFORMATION CONTACT: Ronald Willett 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 or disqualified person from certain other provisions to which the exemptions 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 duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 6th day of May, 1996.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

[FR Doc. 96-11744 Filed 5-9-96; 8:45 am]

BILLING CODE 4510-29-P

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under Section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Thursday June 6, 1996 at the Disabled American Veterans National Service and Legislative Headquarters 807 Maine Avenue, S.W., Washington, D.C. 20024 at 9:00 a.m. to 4:00 p.m. and Friday June 7, 1996 in the Department of Labor Secretary's Conference Room, S-2508, 200 Constitution Avenue, N.W., Washington, D.C. at 8:30 a.m. to noon.

Written comments are welcome and may be submitted by addressing them to: Mr. Thomas S. Keefe, Special Assistant, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S1315, Washington, D.C. 20210.

The primary items on the agenda are:

■ Adoption of minutes of the previous meeting.

- Budget briefing—FY 1996 & 1997.
- Pending legislation (S 1711).
- National Skills Board briefing.
- Veterans Preference Issues.
- Office of the DOL Inspector General briefing on OFCCP.

■ WREI video.

■ Planning session of a fall Veterans Employment Forum.

The meeting is open to the public. Persons with disabilities, needing special accommodations, should contact Thomas S. Keefe at telephone number 202-219-9116 no later than Friday, May 31.

Signed at Washington, D.C. this 3rd day of May, 1996.

Preston M. Taylor Jr.,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 96-11766 Filed 5-9-96; 8:45 am]

BILLING CODE 4510-79-M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Provision for the Delivery of Legal Services Committee of the Legal Services Corporation's Board of Directors will meet on May 19, 1996. The meeting will begin at 2:00 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336-8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Consider and act on recommendation for Board action on a suggested list of priorities that grantee boards may use in setting local priorities.

3. Report by the OIG on its plans for implementation of Section 509 of Pub. L. 104-134 (H.R. 3019).

4. Report by the Directors of OPEAR and OPS on the Corporation's implementation of competitive grantmaking in '96 and plans for '97, and other initiatives.

5. Provide direction to staff with respect to publication of a draft revised Accounting Guide for Recipients and Auditors in the Federal Register for public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336-8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an