

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-1057

SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C.  
September 29, 1969

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In the Matter of	:	
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GENERAL ELECTRIC COMPANY	:	FINDINGS
570 Lexington Avenue	:	AND
New York, New York	:	OPINION
	:	OF THE
(813-26)	:	COMMISSION
	:	
Investment Company Act of 1940 -	:	
Sections 16(a), 32(a) and 6(b)	:	
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EXEMPTION FOR EMPLOYEES' SECURITIES COMPANY

Application on behalf of employees' securities fund pursuant to Section 6(b) of the Investment Company Act of 1940 for exemption, inter alia, from section 16(a) requiring that its directors be elected by its stockholders and from Section 32(a) requiring that the selection of its independent public accountant be ratified by its stockholders, granted, the Commission finding that such exemptions are consistent with the protection of investors in view of the safeguards provided under fund's terms and applicable statutory provisions, and the special character of an employees' securities company in the context of the statutory scheme.

APPEARANCES:

Fritz F. Heimann and Thomas F. Hilbert, for General Electric Company.

Irving Abramson, Ruth Weyand and Melvin Warshaw, for International Union of Electrical, Radio and Machine Workers, AFL - CIO.

Stephen I. Schlossberg, John A. Fillion, Jordan Rossen, Bernard F. Ashe and Stanley Lubin, for International Union, United Automobile, Aerospace & Agricultural Implement Workers of America - UAW.

Elihu Leifer, for International Brotherhood of Electrical Workers, AFL - CIO.

Gerald Osheroff and Oliver L. App, for the Division of Corporate Regulation of the Commission.

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General Electric Company ("GE") filed an application pursuant to Section 6(b) of the Investment Company Act of 1940 ("Act") for an order exempting the General Electric S & S Program Mutual Fund ("Fund")

as an employees' securities company 1/ from certain provisions of the Act. 2/ Following public notice and hearings, 3/ the hearing examiner in his initial decision granted and denied various exemptions. GE filed a petition for review, which we granted, with respect to the examiner's denial of exemptions from (1) the requirement of Section 16(a) that the directors of an investment company be elected by its stockholders; and (2) the requirement of Section 32(a) that the selection of an independent public accountant be ratified by vote of the stockholders.

Briefs in support of the requested exemptions from Sections 16(a) and 32(a) were filed by GE and our Division of Corporate Regulation ("Division"); 4/ briefs in opposition were filed by the International Union of Electrical, Radio and Machine Workers, AFL-CIO ("IUE") and the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America ("UAW"); and we heard oral argument. 5/ Our findings are based upon an independent review of the record.

The Fund is one part of the General Electric Savings and Security Program ("Program") which permits GE employees other than officers and directors to participate in a payroll deduction plan to which the employee may allocate up to 6% of his pay (7% after three years participation), with GE contributing for the account of the employee an amount equal to 50% of the employee's payments. A participating employee may select one or more of the following media for the investment of his own payments and GE's contributions: United States Government Savings Bonds, GE common stock, life insurance, and the Fund. The General Electric Savings and Security Trust ("Trust") receives all payments and makes required investments. It holds all securities credited to an employee

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- 1/ In pertinent part Section 2(a)(13) of the Act defines an "employees' securities company" as any investment company all of whose outstanding securities are beneficially owned by employees or former employees of a single employer or affiliated employers or by members of the immediate families of such employees or former employees, or by such employer or employers together with any of the foregoing classes of persons.
- 2/ Section 6(b) provides that upon application the Commission shall exempt any employees' securities company from provisions of the Act if and to the extent that such exemption is consistent with the protection of investors. Under Rule 6b-1, the Fund is exempt from the Act pending final determination of the application for exemption filed under Section 6(b).
- 3/ See General Electric Company, Investment Company Act Releases Nos. 4973 and 5217 (May 31 and December 28, 1967).
- 4/ The Division took the position before the hearing examiner that certain of the exemptions requested in the application would be inappropriate, and as noted above, the hearing examiner in his initial decision rejected exemptions from certain provisions. GE has not taken exceptions to such denials except in the two instances now before us.
- 5/ Two other unions had been granted leave to participate in the proceedings, and one of these, the International Brotherhood of Electrical Workers, AFL-CIO, appeared at the oral argument in opposition to the exemption application.

in trust for a three-year period, 6/ at the end of which time distribution is made to the employee unless he elects to have the securities purchased with the company's contribution held in trust until his retirement or other termination of employment. An employee may withdraw his own payments at any time, but if he does so during the three year holding period he forfeits the securities purchased with the company's contributions except in the event of specified contingencies including layoffs, illness, injury, plant closing, retirement and death. For certain employees who elect to participate in the Program, primarily certain salaried and hourly rated employees to whom general pay raises apply, there are deductions from pay of up to 1.75%.

In 1967 about 149,000 of GE's approximately 300,000 employees 7/ in this country participated in the Program through payroll deductions with the payments made by them amounting to about \$81,909,000. Company contributions were \$37,300,000. Participations in the Program, including the Fund, are registered under the Securities Act of 1933, and are offered to GE employees by means of a statutory prospectus. The Program itself is stated to be exempt from the Investment Company Act under Section 3(c)(13), which excludes from the definition of an investment company any employees' stock bonus, pension or profit sharing trust which qualifies under Section 401 of the Internal Revenue Code for favorable tax treatment. As pointed out later, the Program is so qualified.

The Fund is an employees' securities company within the meaning of Section 2(a)(13) of the Act. Interests in the Fund ("units") are offered only to employees participating in the Program and are transferable only to members of their immediate families. 8/ The Fund has registered under the Act as an open-end management investment company and it is administered by five trustees who are senior executives of and appointed by GE, and who serve without cost to the Fund. The principal functions of the Fund trustees are to engage an investment manager and supervise his activities in conformance with the Investment Policies promulgated in the Rules of the Fund ("Investment Policies"). The trustees have contracted with a major bank and trust company for investment management services and custody of Fund assets, and GE states that the annual management fee, on the basis of the \$60,000,000 portfolio which the Fund had in January 1969, is \$35,000.

Under the Fund's Investment Policies, which cannot be changed by GE or by the trustees, monies received by the Fund are invested principally in common stock and in securities convertible into common stock. The Fund may not invest in securities of GE or its affiliates or the

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6/ The holding period ends on January 1 three years after the year in which the securities are credited.

7/ About 144,500 employees were represented by unions, around 98,000 of them by the four unions granted leave to participate in these proceedings. It appears that union-represented employees account for about 5% of the interests in the Fund.

8/ Units distributed to participants at the end of the holding period are redeemable; units held subject to a termination of employment option are not redeemable until the occurrence of such event except in certain limited circumstances.

investment manager. The Investment Policies also prohibit, among other things, portfolio transactions with those companies or their officers or directors, the acquisition of over 10% of the outstanding voting stock of any issuer, and the investment of more than 5% of the Fund's assets in securities of any one issuer or more than 25% in any particular industry.

The Act clearly discloses a Congressional intention to provide an employees' securities company with more favorable exemptive treatment than an ordinary investment company. Section 6(b) not only provides a separate exemptive provision specially for employees' securities companies but it directs that we "shall . . . exempt" any such company "if and to the extent that such exemption is consistent with the protection of investors." In contrast, Section 6(c) provides that we "may . . . exempt" investment companies generally "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Act. From an early date it has been recognized that an employees' securities company is "a peculiar type of company which the Congress evidently desired to have treated as a special case," and that exemptions granted such companies are not necessarily precedents with respect to investment companies generally. <sup>9/</sup> Moreover, the complete and automatic exemption provided under Section 3(c) (13) for any plan established by an employer for the benefit of his employees which qualifies under section 401 of the Internal Revenue Code, further reflects a Congressional determination that participants in employees' funds created in the context of the labor - management relationship may not require the protections provided by the Act to the same degree as shareholders in investment companies generally.

Having in mind the peculiar relationships involved in an employees' securities company, we turn to the question whether the requested exemptions are consistent with the protection of investors, taking into consideration relevant factors under Section 6(b). <sup>10/</sup>

We have noted that the Fund is an integral part of the Program, which is a complex employee benefit package. There are no management fees paid to GE in connection with the operation of the Fund. On the other hand, GE contributes a significant portion of the money invested in the Fund, and while such contributions may be regarded as a form of employee compensation, it is reasonable to assume that GE's interests

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<sup>9/</sup> G.E. Employees Securities Corporation, 10 S.E.C. 652, 674 (1941); see also Executives Investment Trusts - Elfun Trusts, 14 S.E.C. 826, 829 (1943).

<sup>10/</sup> Section 6(b) provides that in granting exemptions thereunder we shall give due weight, among other things, to the form of organization and the capital structure of the fund, the persons owning the fund's securities, the sales load on the sales of the fund's securities, the use of the proceeds of such sales, the character of the securities in which such proceeds are invested, and any relationships between the fund and the issuer of any such security.

and incentive are to assure that its contributions provide a maximum amount of benefit to its participating employees. 11/

The investment management fee has been negotiated with an independent trust company by the Fund's trustees, who are experienced officials of GE, and appears not to be, and no claim is made that it is, in any way inappropriate. The salaries of the trustees are not charged to the Fund, and no sales or redemption charges are imposed on participating employees.

Other investor safeguards are provided in the Investment Policies described above which cannot be changed by GE 12/ or by the trustees and which look toward a policy of reasonable diversification and prohibit any investments in securities of GE or its affiliates or portfolio transactions with those companies. 13/ Moreover, the Fund will in any event remain subject also to the conflict of interests restrictions of Section 17 of the Act and to reporting requirements of the Act.

Upon consideration of all these factors, we agree with the Division that GE has acted responsibly to safeguard the interests of employee participants in the Fund and that no apparent conflicts of interest between management and such participants exist which would warrant denial of the exemptions. Under the circumstances, and in view of the Congressional intent evidenced in the Act to favor employees' securities companies, we conclude that it is consistent with the protection of investors to grant the exemptions from Sections 16(a) and 32(a) as requested. 14/ In reaching this conclusion we have also taken into account that the Program, including the Fund, is registered under the Securities Act, and that GE will furnish each participant with an annual prospectus under that Act covering the Program and the Fund as well as a statement of the Fund's fixed Investment Policies. 15/ The independent public accountant selected for the Fund is a well-known

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- 11/ Payments into the Fund for January 1968 indicated an annual rate of investment of \$38,254,000, of which \$22,803,000 would represent employee savings and \$15,461,000 GE contributions. Employee participants in the Program may direct that their savings be invested in a manner different from that in which the company's contribution is to be invested, which would appear to explain the fact that the company's contributions in the Fund are more than half of those of the employees.
- 12/ Under the Fund's Rules GE may suspend or terminate the Fund but any such action cannot adversely affect the right of any participant to Fund units credited to his account as of the date of such action.
- 13/ The Investment Policies also provide that portfolio purchases will be made primarily on the basis of opportunities for long term growth of capital and income and that no purchases will be made for trading purposes; that monies in the Fund will not be used in underwriting securities, for the purchase of real estate or commodities, or for the purpose of exercising control or management; and that there will be no margin transactions, joint trading accounts, or transactions in puts or calls.
- 14/ With respect to Section 16(a), the hearing examiner had concluded that three of the five trustees should be elected and that GE could appoint the other two.
- 15/ The statutory prospectus under the Securities Act states that the Fund units have the right to vote on amendments to the Investment Policies of the Fund.

national accounting firm which has served as the independent auditor for the entire Program as well as the Fund, and the Fund's financial statements certified by that independent public accountant will be included in filings made with us as well as in prospectuses and reports distributed to Fund participants.

We also give consideration to the features which the examiner seemed to stress in reaching his conclusion, the provisions concerning the loss of GE's contributions under certain circumstances upon an employee's withdrawal during the holding period and the deductions from pay for certain participating employees. We do not find those features of significance in relation to the question of the selection of trustees and the auditor. These are general provisions of the Program which apply regardless of the investment medium chosen by the respective Program participant. Thus such provisions are applicable even if a Program participant makes no investment in the Fund, and the Fund's trustees have no powers or functions with respect to such matters.

The Program itself is a qualified employee trust under Section 401 of the Internal Revenue Code and is automatically exempt from the Act by virtue of the provisions of Section 3(c)(13) thereof. It appears that the Fund too would be such a qualified employee trust and thus completely exempt from the Act but for the fact that participants in the Fund may, at their option, retain the Fund units distributed to them at the end of the holding period or upon termination of employment, instead of being required to redeem such units and receive immediate payment in cash whenever a distribution occurs. This option gives the employee - participant greater flexibility with respect to his investment in the Fund, and the safeguards embodied in the Fund's Investment Policies go beyond the protective features required for qualified employee plans under the Internal Revenue Code.

We have considered the various arguments presented by the unions in opposition to the requested exemptions, including the assertions that it is the policy of the Act that ultimate control of the policy and management of an investment company be in the hands of those whose funds are at risk, and that employees who are investors are no less entitled to the protections of the Act than other mutual fund investors. The two specific provisions in question are important protective features of the Act, but in view of the employee safeguards already provided by the terms of the Fund and GE's interest in its success, and by the reporting and other applicable requirements of the Act and of the Securities Act, they would not appear to provide such additional protections as to be necessary for the protection of the participants in this employees' securities company. Our conclusions in this regard are limited to the situation of an employees' securities company in the circumstances presented here, and would not afford a precedent for similar exemptions in other situations.

In view of the foregoing, we shall issue an order declaring the hearing examiner's decision effective as to the matters on which no exceptions were filed, and granting the requested exemptions from sections 16(a) and 32(a). However, we shall reserve jurisdiction to reconsider the exemptions thereby granted and to alter or withdraw any such exemption after notice and opportunity for hearing, should it appear in the light of subsequent facts that such exemption is not consistent with the protection of investors. 17/

By the Commission (Chairman BUDGE, Commissioners OWENS, WHEAT and SMITH), Commissioner NEEDHAM not participating.

Orval L. DuBois  
Secretary

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17/ After the close of the public hearing, the UAW filed a motion that notice of the proceedings be served at least by mail on all GE employees eligible to participate in the Fund and on all of the approximately 100 GE unions, which the examiner denied. Although the UAW and IUE reiterated in their briefs to us the position taken by UAW before the examiner, they did not seek interlocutory review of the examiner's ruling nor have they filed any petition for review taking exception to the examiner's initial decision. In any event, we find no merit in their contentions. As pointed out by the examiner, the notice given in this case complied with Section 40(a) of the Act, which expressly provides that notice to interested persons other than parties to the proceedings may be given by publication in the Federal Register. Moreover, the Securities Act prospectuses distributed to participants and prospective participants in the Program referred to these proceedings, and as previously noted, these proceedings were announced and described in public releases, and four unions, which represented almost 70% of all union-represented employees, appeared and requested and were given leave to participate.