ADMINISTRATIVE PROCEEDING
FILE NO. 3-1057

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

GENERAL ELECTRIC COMPANY

GENERAL ELECTRIC S & S PROGRAM
MUTUAL FUND

(813-26)

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INITIAL DECISION

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Sidney L. Feiler
Hearing Examiner

CONTENTS

Page

APPEARANCES 1

I. THE PROCEEDINGS 2

II. FINDINGS OF FACT AND LAW 3

A. The Applicant and the General Electric Savings and Security Program 3

B. The Fund 6

C. Statutory Provisions Involved 10

D. Contentions of the Parties and Union Participants 13

E. Prior Commission Decisions 17

F. Consideration of Specific Requests for Exemption. 21

1. Section 16 - Election of Fund Trustees 21

2. Section 18(i) - Voting Rights 25

3. Section 8 - Registration of Investment Companies
Section 24 - Registration of Securities under the Securities Act. 25

4. Section 10 - Affiliation of Directors. 26

5. Section 13(a)(4) - Changes in Investment Policy. 28

6. Section 15 - Investment Advisory and Underwriting Contracts. 29

7. Section 22(e) - Suspension of Right of Redemption. 29

8. Section 22(f) - Restrictions on Transferability 30

9. Section 30 - Periodic and Other Reports. . . . 30

CONTENTS

	Page
10. Section 32(a) Accountants and Auditors.	32
III. CONCLUDING FINDINGS, ORDER	33

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In the Matter of GENERAL ELECTRIC COMPANY — GENERAL ELECTRIC S & S PROGRAM MUTUAL FUND (813-26)	INITIAL DECISION

APPEARANCES: Messrs. Fritz F. Heiman and Thomas F. Hilbert, 570 Lexington Avenue, New York, New York 10022, for General Electric Company and General Electric S & S Program Mutual Fund.

Melvin Warshaw, Esq., 1126 16th Street, N. W., Washington, D. C. 20005, and Mr. John H. Callahan, 15 East 41st Street, New York, New York, for The International Union of Electrical, Radio and Machine Workers, AFL-CIO.

Jordan Rossen, Esq., 8000 E. Jefferson Ave., Detroit, Michigan 48214, for International Union, United Automobile, Aerospace and Agriculture Implement Workers of America.

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

Laurence J. Cohen, Esq., Sherman and Dunn, 1200 Fifteenth St., N.W., Suite 500, Washington, D. C. 20005, for International Brotherhood of Electrical Workers, AFL-CIO.

Richard N. Colasurd, Esq., Mulholland Hickey and Lyman, 741 National Bank Building, Toledo, Ohio 43604, for American Flint Glass Workers Union of America, AFL-CIO.

BEFORE: Sidney L. Feiler, Hearing Examiner

I. THE PROCEEDINGS

These are proceedings instituted by order of the Commission pursuant to Section 40(a) of the Investment Company Act of 1940 ("Act") to determine whether an application filed by General Electric Company (hereinafter referred to as the "Applicant" or the "Company") on behalf of General Electric S & S Program Mutual Fund ("Fund") pursuant to Section 6(b) of the Act for an order exempting the Fund from certain sections of the Act and rules and regulations promulgated thereunder should be granted.[1/]

After the Commission issued a notice of the filing of said application giving interested persons an opportunity to request a hearing, a request for such a hearing was filed by International Union of Electrical, Radio and Machine Workers, AFL-CIO ("IUE"). This request was granted and the present hearing was ordered. During the proceedings, in addition to appearances by Applicant, the Division, and IUE, additional appearances were filed by International Union, United Automobile, Aerospace and Agriculture Implement Workers of America ("UAW"), American Flint Glass Workers Union of America, AFL-CIO and International Brotherhood of Electrical Workers,

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1/ Applicant sought exemptions from the following sections of the Act:

Section 8 (except Section 8(a)); Section 10; Section 13(a)(4); all other provisions of Section 13 but only to the extent they would require voting on changes in the Rules of the Fund made pursuant to requirements of any governmental authorities; Section 14; Section 15; Section 16; Section 18(i); Section 20(a); Section 22(e) and (f); Section 24; Section 30(a), (b) and (c) except Section 30(b)(2); and Section 30(d) to the extent that a report to participants more than once a year may be required; and Section 32(a).

AFL-CIO ("IBEW"). All the labor organizations were granted leave to be heard pursuant to Rule 9(c) of the Commission's Rules of Practice.

A formal prehearing conference and a hearing were held. The factual record in this proceeding consists primarily of material contained in the application as supplemented by exhibits submitted by the Applicant during the hearing. At the conclusion of the hearing, there being a request for an initial decision, opportunity was afforded the parties and participants for filing proposed findings of fact and conclusions of law, together with briefs in support thereof. Proposed findings, together with supporting briefs, were submitted on behalf of the Applicant, the IUE, the UAW, and the Division. The IBEW joined in the brief submitted by the IUE. The original filing was made by the Applicant and answering briefs were filed by the Division and the participants as aforementioned. In its reply brief, the Applicant taking note of contentions made in the answering briefs modified its application in certain important respects and conceded that certain of the requested exemptions were not essential. The undersigned has taken note of this change of position in the findings herein.

II. FINDINGS OF FACT AND LAW

A. The Applicant and the General Electric Savings and Security Program

Applicant is a large industrial company engaged primarily in the manufacture of electrical machinery, appliances and related

products. During 1967 it employed an average of over 375,000 persons of whom approximately 295,000 were employed in the United States.

The Fund is an integral part of the General Electric Savings and Security Program ("the Program"). The Program first became effective on January 1, 1959. Its stated purpose is to provide employees of the Applicant and its participating affiliates an opportunity for convenient, regular and substantial personal savings through a payroll deduction plan matched by proportionate company payments equal to 50% of payroll deduction savings. At the time it was established, investment choices under the Program were limited to United States Savings Bonds and General Electric common stock. The Program was amended, effective July 1, 1967, and the Fund and Life Insurance were added as additional investment options. The Program is registered under the Securities Act of 1933 and participation in it, including participation in the Fund, is offered to Applicant's employees by means of a prospectus (File No. 2-26544-1).

The Program is administered by the Applicant. All employees of General Electric, except officers and directors, are eligible to participate in the Program. Participating employees may save up to 6% of their earnings; this increases to 7% after three years of participation in the Program. Each employee selects the investment media in which his own savings and the Applicant's contribution shall be invested. Employees may split their

investment among two or more investment media, and generally do so. A minimum investment in U. S. Savings Bonds is required; normally 2% of employee earnings.

A trust, the General Electric Savings and Security Trust, receives employee deductions and Company contributions and makes the required investments. The securities purchased under the Program are held by the Trust for a holding period which ends on January 1, three years after the year in which payroll deductions are made. At the end of the holding period the securities are distributed to the employee except that an employee may elect to have the Applicant's contribution held in trust until his retirement or other termination of his employment.

During the holding period an employee may withdraw the securities purchased with his own savings. However, since his right to the Applicant's contribution does not vest until the end of the holding period, withdrawal of an employee's savings before the expiration of the holding period results in forfeiture of the related Company contribution, except in specified contingencies. Since, for certain employees (primarily non-exempt salary, and hourly rated employees to whom general pay raises apply) there are deductions in pay rates ranging from 0 to 1.75% if the employee elects to participate in the Program, forfeiture also results in an employee in effect losing the difference in pay he otherwise would have received with a consequent accrual to the Company of that difference.

B. The Fund

The Application for Exemption, which has given rise to these proceedings, was filed on April 25, 1967 and the Fund commenced operation on July 1, 1967 under the exemption from the Act provided by Rule 6b-1 promulgated by the Commission thereunder.[2/]

The Fund is a trust created by a Fund Agreement to broaden investment opportunities available to employees under the Program. It was established to receive and invest moneys allocated for that purpose by participants under the Program.

The Fund Agreement entered into by the Company and Fund Trustees governs the administration of the Fund. The Fund Trustees, five in number, are appointed by the Chief Executive Officer of the Company. He also has the right to remove any of them with or without cause and to appoint successors. At present the Fund Trustees are: the Vice President - Finance, the Comptroller, the Vice President - Personnel and Industrial Relations, a Vice President and Group Executive (one of the senior operating officers of the Company reporting to the Chief Executive Officer) and the Manager - Trust Investment Operations.

2/ "Any employees' securities company which files an application for an order of exemption under Section 6(b) of the Act shall be exempt, pending final determination of such application by the Commission, from all provisions of the Act applicable to investment companies as such."

The first four of these Fund Trustees are officers of the Company and are ineligible to participate in the Program or to hold Fund Units. The fifth Trustee is the senior operating manager responsible for the investment portfolio of the General Electric Pension Trust.

The Fund Trustees receive from the Savings and Security Trust, established pursuant to the Program, the payroll deduction savings and other payments which are allocable to the Fund. Proportionate interests in the Fund are expressed in units ("Fund Units"). Fund Units are distributable from the Savings and Security Trust to individual employees in accordance with the terms of the Program. The Fund Trustees have entered into a contract for investment management services with Morgan Guaranty Trust Company. The Bank manages investment of moneys received by the Fund in conformity with investment policies set forth in the Rules of the Fund under the general guidance of and subject to review by the Fund Trustees.

Some of the Key provisions of the Rules of the Fund dealing with its investment policies are:

> The moneys received by the Fund will be invested principally in common stock and in securities convertible into common stock. Purchases will be made primarily on the basis of opportunities for long-term growth of capital and income.
>
> The Fund will not invest in securities of the

Company or its affiliates, or in securities of the investment manager.

The Fund is required to diversify its investments and cannot acquire more than 10 per cent of the outstanding voting securities of any issuer, nor may it invest more than 25 per cent of its assets in any particular industry.

The Fund will not purchase from or sell any of its portfolio securities to the Company or its affiliates or to its investment manager or any officer or director of either.

The Company and the Fund Trustees have the right to amend the Fund Agreement or the Rules of the Fund but not provisions dealing with investment policies of the Fund or restrictions on its investments. However, the Board of Directors of the Company may suspend or terminate the Fund Agreement or the Fund.

All costs of administration of the Program except those relating to the operation of the Fund are met by the Company. The costs of the administration of the Fund are charged to the Fund. No compensation has been or will be received from the assets of the Program by its administrator or any of the Trustees. There are no sales or redemption charges to employees.

Prior to July 1, 1967 union-represented employees did not participate in the Program. During the fall of 1966 the Company and

IUE agreed that participation in the Program would be offered to union-represented employees effective July 1, 1967. Certain changes and improvements, including the addition of the Mutual Fund, as well as liberalized emergency withdrawal provisions, were agreed upon. These changes were incorporated in the Program and made available to all employees.

In its application, the Applicant stated that it was difficult to estimate the projected size of the Fund. It was estimated that the amounts flowing into the Fund annually would be in the $20 - $40 million range without taking into account withdrawals and redemptions of Fund Units. In 1967, 148,993 employees participated in the Program, saving $81,909,066. The contribution by the Company was $37,300,011. Payments into the Fund for the month of January 1968 indicated that the annual rate of investment was $38,264,000 of which employee savings were $22,803,000 and the Company contributions were at the rate of $15,461,000. As previously noted, employees may direct that Company contributions be made in a different investment media than that in which their own **savings** are invested. This accounts for the high percentage of Company contributions in the Fund. Union represented employees in the Fund were 4% of the total.[3/]

3/ The total company employees (domestic) as of September 30, 1967 was 295,275, of which 144,500 were union-represented.

C. Statutory Provisions Involved

Section 3(c)(13) of the Act exempts from the definition of an investment company within the meaning of the Act, "Any employees' stock bonus, pension, or profit-sharing trust which meets the conditions of Section 165 of the Internal Revenue Code, as amended." Applicant asserts that the only reason that the Fund does not qualify for a complete exemption is because Fund Units are distributed to employees at the end of a three-year holding period or, at an employee's election, upon his retirement and that if the Program required redemption of the Units and payment of the proceeds in cash whenever distributions occur, the Fund would qualify as a tax-exempt trust under Section 401 of the Internal Revenue Code [the successor to Section 165] and would be completely exempt from the Act. Applicant asserts that the right of an employee to receive Fund Units in kind and to retain them was made part of the Program for the benefit of participants. It is undisputed that the Fund falls within the definition of an employees' securities company as defined in the Act.[4/] Units of the Fund are offered only to employees

4/ "'Employees' securities company' means any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons." (Section 2(a)(13).

participating in the Program and are transferable only to members of their immediate family.

It is provided in Section 6(b) of the Act that,

> "Upon application by any employees' security company, the Commission shall by order exempt such company from the provisions of this title and of the rules and regulations hereunder, if and to the extent that such exemption is consistent with the protection of investors." (Note: emphasis added.)

This standard differs from the general exemption provisions of the Act where it is provided,

> "(c) The Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, 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 this title.
> (Note: emphasis added.)

While the legislative history of Section 6(b) is not extensive it is apparent from the existence of special provisions for employees' securities companies that the Congress adopted the position advanced by the Commission during hearings which resulted in the passage of the Act that the Commission should be given great flexibility in determining exemption applications for these companies.[5/]

5/ David Shenker, counsel for the Investment Trust Study conducted by the Commission stated in his testimony before a subcommittee of (Continued on following page.)

The Commission has applied the standard set forth in Section 6(b) in applications filed by employees' securities companies seeking exemptions. Thus, in G. E. Employees Securities Corporation, 10 S.E.C. 652 (1961) it said of such a company,

> ". . .To the extent that the applicant is exempted from the provisions of the Investment Company Act of 1940, we have granted such exemption because the applicant is an employees' securities company, a peculiar type of company which the Congress evidently desired to have treated as a special case. Nothing in this opinion is to be taken either as representing the views of the Commission with respect to the provisions discussed as they apply generally to investment companies or as authoritative precedent for any case except that of an employees' securities company." (p. 674) 6/

[Continuation]
the Committee on Banking and Currency of the United States Senate,

> "Now, subsection (d) on page 13 makes provision to grant the Commission power to exempt employees' securities companies. Now, these employees' securities companies exist in great variation. You have got the type of employees' securities company which is virtually an eleemosynary institution, which the investment company sets up as a sort of savings plan for his employees; and, on the other hand, you may have a situation like the Hobson Employees Co., which was not so eleemosynary - at least, from the point of view of the employees.
>
> "Now, the only way you can deal with that problem is by making an application with the Commission and the Commission studying the situation. If it feels that it is of the character of Category A, then the Commission is empowered to exempt it either fully or under conditions, or to impose upon it such conditions as the Commission feels necessary in the public interest or for the protection of the investor." (Hearings on S. 3580 Before a Subcommittee on Banking and Currency United States Senate, 76th Cong., 3d Sess. at 196-7 (1940)).

6/ See to the same effect HBNS Corporation, Investment Co. Act Rel. No. 1368 (November 21, 1949).

It is further provided in Section 6(b) that in making its determination,

> ". . .the Commission shall give due weight, among other things, to the form of organization and the capital structure of such company, the persons by whom its voting securities, evidences of indebtedness, and other securities are owned and controlled, the prices at which securities issued by such company are sold and the sales load thereon, the disposition of the proceeds of such sales, the character of the securities in which such proceeds are invested, and any relationship between such company and the issuer of any such security."

D. Contentions of the Parties and Union Participants

It is contended by the Applicant that the Fund is organized and managed in a manner deserving favorable consideration of the exemptions requested and meets the criteria set forth in Section 6(b). Reliance is placed on the following factors:

While the Fund is administered by Trustees appointed by the Applicant Company, neither the Trustees nor the Applicant Company make any profit from the operation of the Fund. Day-to-day investment management is performed by Morgan Guaranty Trust Company at a fee which is very much lower than investment management fees customarily charged in the mutual fund industry.[7/] The Company has a major stake in the success of the Fund by reason of the extent of its contribution to it, which assures that the investments will be managed with care and diligence in the interest of employee-investors. The Fund does not issue any securities other than a

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7/ Cf. Testimony of Chairman Cohen, October 11, 1967, Hearings on Investment Company Act Amendments of 1967, p. 153.

single class of Fund Units which are sold only to employees participating in the Program and are transferable only to members of the immediate families of such employees.

It is further contended that the Fund is organized in a conservative manner designed to protect the interest of employee-participants and to avoid any conflict between the interests of participants and the interests of the Company. Thus, it is pointed out that the Fund does not charge any sales load and does not make any redemption charge. No underwriters or brokers are involved in the sale of Fund Units, which are sold at a price computed by dividing the number of Fund Units into the net asset value of the Fund. Investment policies of the Fund require investment on the basis of opportunities for long-term growth of capital and income with provisions against undue concentration of investments in any one company or industry. Furthermore, the Fund is prohibited from purchasing or selling any of its portfolio securities to General Electric or its affiliates or to the Investment Manager or any officer or director of either and will not, during the existence of any underwriting syndicate, purchase any securities for which the Investment Manager is acting as principal underwriter.

It is further urged that the exemption request finds support in past decisions of the Commission and it is also pointed out that full exemption from regulation would have been achieved if the Company had set up the Fund on a basis less favorable to employees.

The IUE contends that the Applicant, in effect, is seeking a total exemption from sections of the Act which, together, express and effectuate its underlying objectives and policies - that those who commit their funds to the hands of others on an equity basis shall have ultimate voice in the management and policies of an investment fund. It is urged that employee-investors should not be afforded less protection than any other stockholder of a registered investment company and are in the same position of having contributed to a pool of equity capital which is at risk with respect to investments purchased out of that capital.

It is further argued that the Company derives financial profit from the Program in that hourly rated employees participating in the Program are paid a reduced wage rate of as much as 1.75% an hour or an estimated average wage reduction per such employee of $109.20 a year and that if such employees are unable to participate in the Program for the full period of three years the Company realizes a profit, measured by the payment of reduced wages, without any offset of any company contribution.[8/] It is maintained that the company derives as much as somewhat over $4,000,000 per year by reduced payments to hourly paid employees, that while

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8/ Hourly rated employees who elect to participate in the Program have a deduction taken from their salary ranging from zero (for those earning not in excess of $2.149 per hour) to 1.75% (for those earning from $2.995 per hour and up). (App. Ex. No.1, p.3)

proportionate payments for hourly employees amount to over $6,000,000, the ultimate amount of this item will depend on whether employees continue their payroll deductions to the Fund for the three-year holding period. There also will be some savings to the company from non-exempt salaried employees who do not keep up their participation in the Program and the Fund for a full three-year period. These facts, it is contended, have resulted in a substantially reduced cost of labor for the Company indicative of a non-eleemosynary nature of the Fund which in turn relates to the testimony on the Investment Company Act by a Commission representative, previously cited (page 13).[9] It is further pointed out that the non-elected Fund Trustees are officers or employees of the Company and serve at the pleasure of its Board of Directors and that effective control and responsibility for the affairs of the Fund lies in the Board of Directors who may amend, suspend or terminate the Program at any time, or from time to time. It is argued that Program arrangements are not consistent with the purposes of the Act to endow fund holders with exclusive rights to select their representatives through whom their rights and interests can be pursued.

9/ The above-mentioned figures are estimates and no breakdown by wage-bracket of employee-participants has been presented. Since the Company in all cases makes up to a 3 or 3-1/2% contribution to the employee's savings, the Company contribution is substantial and any Company offset would not place it in the category mentioned in the Shenker testimony. The annual rate of Company contribution to the Program is in excess of $47,000,000 and, to the Fund, in excess of $15,000,000. (App. Ex. 8).

In its brief the UAW has stressed that the Company has complete control over the Fund by Trustees who owe loyalty to it, that employee-investors have no voice or vote in the selection of the Trustees, have no right to inspect the accounts of the Fund nor to select the accountants who audit the Fund, have no right to participate in amending the Fund Trust Agreement or the rules of the Fund, and that the Board of Directors of the Company may terminate the Fund at any time.

As previously pointed out, the Division has taken a position that certain exemptions from the Act should be granted and that others would be inappropriate. It has also been pointed out that the Applicant, in its reply brief, has not pressed certain of the requested exemptions.

E. Prior Commission Decisions

There have been only a few cases where the Commission was requested to grant exemptions under Section 6(b) of the Act. None of these involved a contested formal hearing. All except one date back to 1947 or earlier and several involved the Applicant here, General Electric Company.

In the first case presented to the Commission under Section 6(b), G. E. Employees Securities Corporation, 10 S.E.C. 652 (1941), the Commission considered an application by an applicant corporation for an order exempting it completely from the provisions of the Act. The applicant was organized as a medium

of investment for employees of General Electric Company and, later, employees of affiliated companies and pensioners of General Electric. The applicant had assets which included cash, General Electric securities, securities of affiliates of General Electric, and investments in other diversified securities. It had outstanding debenture bonds, pension trust notes, interest-bearing accounts payable, and common stock and contributions to its capital surplus. It had sold debenture bonds to employees and pensioners of General Electric Company and certain of its affiliates. It had also sold pension trust notes to trustees of the additional pension trust of General Electric Company. The beneficial interest in common stock and contributions to capital surplus were held solely by General Electric Company.

After finding that applicant was an employees' securities company entitled to apply for exemption under Section 6(b), the Commission declined to give a blanket exemption to the applicant from all provisions of the Act, but did grant certain specific exemptions. In considering the applicability of Section 16(a) (the provision for election of directors by holders of voting securities) the Commission concluded that an existing arrangement whereby the bondholders elected seven of the directors and General Electric Company, eight, with nominations on a plant basis, was suitable to the existing employer-employee relationship and granted the necessary exemption to permit the continuance of the system of electing directors so as to divide control between bondholders and

the General Electric Company.[10/]

In Electrical Securities Corporation, 10 S.E.C. 648 (1941), an exemption was granted to an applicant from all provisions of the Act, with the exception of those relating to the filing of annual reports, where the applicant served as a medium for the investment of funds of General Electric Pension Trust, all of whose funds were advanced by General Electric Company.

In Executives Investment Trusts; Elfun Trusts, 14 S.E.C. 826 (1943), Executives and its successor, Elfun, were created to provide an investment vehicle for certain employees of General Electric Company, both operating under control of a committee of persons affiliated with General Electric Company and its affiliated companies. The committee was self-perpetuating. However, General Electric Company was not a party to the basic trust agreement and had no responsibility for the administration of the trust funds. Applications on behalf of the Trusts for orders exempting them from all of the provisions of the Act were granted only with respect to certain specific exemptions and the grant did not include a Section 16(a) exemption.

In Tennessee Gas and Transmission Company, 24 S.E.C. 241 (1946), the Commission considered a plan somewhat similar to the one

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10/ The company was later found by the Commission to have ceased to be an investment company and its registration was declared not to be in effect (G. E. Employees' Securities Corporation, Investment Company Act Rel. No. 1255, January 3, 1949).

under consideration here. Tennessee had established a contributory thrift plan for its employees whereby it matched the savings of its employees. The employees, under terms of the trust established by the company known as the Thrift Plan, had the right to elect where their savings and company contributions could be invested among five alternatives. One of these alternatives was a Special Fund in which funds were to be invested in securities.

Broad exemptions were requested for the Special Fund. The Commission, in granting wide exemption, placed emphasis on the fact that the Thrift Plan was organized as a trust in which a national bank was trustee, that Tennessee guaranteed that each employee-participant would receive upon liquidation and settlement of his account an amount at least equal to his contributions, that all expenses of the Special Fund were to be paid by Tennessee, and that the funds available for investment in the Special Fund were limited to investments legal under the provisions of the Texas Trust Act.

In the case of HBNS Corporation, Investment Company Act Rel. No. 1368 (November 21, 1949), the Commission granted substantial exemptions from the Act to an applicant corporation formed to provide officers and employees of a company an investment vehicle which would permit them to acquire stock in their employer company to prevent possible liquidation. The employer company, so far as appears, had no connection with the applicant corporation whose securities were beneficially owned by officers or employees of the employer company or members of their immediate families.

Applicant places special reliance on the case of Socony Mobil Oil Company, Inc., Investment Company Act Rel. No. 3880 (December 31, 1963). In that case, an applicant sought and obtained an order from the Commission exempting the Equity Fund and the Balanced Fund to be established under its Employees Savings Plan from various sections of the Act. The Commission further ordered that the two Funds would be subject to all the sections of the Act and the respective rules thereunder as though they were registered investment companies, except those sections and rules in respect of which exemption had been specifically granted. Applicant maintains that its request is similar to that made in the Socony Mobil case and that the specific exemptions it requests here were granted in that decision.

F. Consideration of Specific Requests for Exemption

1. Section 16 - Election of Fund Trustees

The Applicant contends that an exemption should be granted from provisions of the Act requiring annual election by investors of those in control of the Fund. It is urged that five experienced trustees have been appointed who serve without cost to the Fund; that company contributions are substantial and the Company's interest in the welfare of its employees provides assurance that the Company would see to it that management of the Fund will be exercised with diligence and in the best interest of employees. Annual elections, it is contended, would not be a meaningful measure of investor protection in view of the fact that no individual would be

likely to own any more than a very small fraction of the outstanding Fund Units while at the same time election procedure would be a substantial expense perhaps approximating the annual cost of investment management itself.[11/]

As has been pointed out, the exemption provisions in Section 6(b) of the Act differ substantially from the general exemption provisions in Section 6(c). However, both require that any exemption granted must be consistent with the protection of investors. Justice Brennan stated in Securities and Exchange Commission v. Variable Annuity Life Insurance Co. of America[12/] that the protective provisions of the Act ". . .are of particular relevance to situations where the investor is committing his funds to the hands of others on an equity basis, with the view that the funds will be invested in securities and his fortunes will depend on the success of the investment." (supra, p.78). The Commission

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11/ Applicant also has contended that the union participants had attempted to misuse these current proceedings by objecting to the requested exemptions when they have previously agreed to participation by their members in the Program which contains a specific provision that the Program would be administered by the Company. It is asserted that any change in the organization of the Program which these Unions desired should be the subject of negotiations at the time new collective bargaining agreements are negotiated.

The issue before the Commission is not to determine the effect of certain collective bargaining agreements or whether there have been waivers by the union participants of certain rights, but, rather, whether the exemption request should be granted, with due regard to the purposes and policies of the Act and with specific consideration of the provisions of Section 6(b).

12/ 359 U. S. 65 (1959).

has pointed out that the Act requires that those having funds at risk in the equity securities of an investment fund should elect its directors in order to place the power of control in the holders not only to secure honesty and objective "wisdom" in management but to make the fund responsive to the wishes and judgment of those who depend upon its results.[13/]

The proposed exemption, if granted, would have the effect of by-passing requirements which would give a voice to holders of Fund Units in the operation of the Fund. Fund participants have a financial stake in the Fund over and above their payroll deductions. As has been pointed out, hourly rated employees who elect to participate in the Fund, in effect, pay a premium for doing so. In addition, all employee participants run the financial risk of losing company contributions made on their behalf if they withdraw from the Fund and the Program before Fund Units bought with company contributions vest after the three-year holding period. Thus, employee participants have a financial investment in the Fund over and above their payroll savings which they can withdraw at any time.[14/] The few cases in which applications for exemption under Section 6(b) have been made to the Commission did not contain this element of a premium paid by a substantial number of employees.

13/ The Prudential Insurance Co. of America, 41 S.E.C. 335, 351 (1963); aff'd 326 F 2d 383 (C.A.3, 1964), cert. denied 377 U.S. 953 (1964).

14/ As of January 1968, 6,842 hourly rated employees were investing in the Fund out of a total of 61,368, or 11.1% of the total participants. (App. Ex. 2A).

The undersigned is unable to conclude that the granting of the requested exemption would be consistent with the protection of investors under Section 6(b). The Commission is required under that section to give due weight to ". . .the persons by whom its voting securities. . .are owned and controlled." Here, the exemption sought would take away the vote from those who have the sole beneficial interest in the Fund, some of whom have incurred a financial loss to participate, and all of whom run the risk of some future loss because of vesting provisions. Any good faith effort by the Applicant to assure careful and successful operation of the Fund is no substitute for the power of employee-investors to have an effective voice in determining those matters themselves.

This is not to say, as contended, that the Applicant has no interest in the Fund because it has no beneficial interest therein. Its contributions to the Fund, now running at the annual rate of $15,461,000 (Div. Ex. 8) are sufficient evidence of the importance the Fund plays in the total Program, and the size of the Program and the substantial employee participation therein in turn demonstrates its importance as a fringe benefit to employees.

The undersigned concludes that while a total exemption from Section 16(a) is not warranted here, a partial exemption recognizing the joint interests of the Applicant and the employees, an approach approved in the G. E. Employees Securities Corporation case, *supra*, would be appropriate and in the interest of investors. The employee-investors should have the right to elect the majority of

the trustees. The Applicant, which has a long-range, continuing interest in the Fund, should be allowed to select a minority of the trustees. Accordingly, it is concluded that the request for exemption should be granted to the extent that two of the five trustees may be selected by the Applicant without resort to the requirements of Section 16(a).[15/]

2. Section 18(i) - Voting Rights

This section provides that shares of stock hereafter issued by a registered management company shall be voting stock and have equal voting rights with every other outstanding voting stock. Exemption from this section, to the extent it is relevant to the exemption from Section 6(a) granted above, is also granted.

3. Section 8 - Registration of Investment Companies
Section 24 - Registration of Securities under the Securities Act

The Fund has already complied with Section 8(a) by filing a notification of registration. Exemption is sought from Section 8(b).[16/]

15/ The partial exemption granted here would also affect the other exemption requests, since the protection afforded by employee-investor representation on the managing board justifies a more liberal approach.

16/ Exemption was originally sought from all provisions of Section 8 except 8(a). Applicant now agrees that Sections 8(c) through (f) have no particular relevance to the Fund and therefore exemptions are unnecessary. (Reply Br., p. 4).

Section 8(b) provides that every registered investment company shall file a registration statement on a prescribed form.

The entire Program, of which the Fund is a part, is registered under the Securities Act. The Rules of the Fund have been filed as an exhibit. A prospectus will be given annually to company employees which will set forth the Fund's investment policies. Under these circumstances, the requested exemption is warranted, although future developments may require a change as to information to be furnished concerning officers and Trustees.

For the same reasons set forth above, exemption from provisions for registration of the securities to be issued by the Fund, as required in Section 24, is granted.

4. Section 10 - Affiliation of Directors

Applicant seeks an exemption for the Fund from Section 10(a) and (d).[17/]

Section 10(a) would have the effect of prohibiting a board of trustees of the Fund on which more than 60% are officers or employees of the Applicant.

In the G. E. Employees Securities Corporation case, previously cited, the Commission in granting a Section 10(a) exemption to a mixed board composed of elected representatives of the employees and designated representatives of the employer, stated:

17/ Applicant agrees that exemptions from Sections 10(b), (c), (e), (f), (g) and (h), originally requested, are of no particular relevance to the Fund. (Reply Br., p.5).

> "The reasons for this exemption are clear. In the case of an employees' securities company, cooperation of employer and the employees in the management of the company was apparently contemplated by the Congress. That is indicated by the definition of such companies contained in the Act. Because of the employer-employee relationship involved, such cooperation in management between an industrial employer and its employees does not seem to present any of the inherent dangers Section 10(a) attempts to avoid, at least, so long as the investment policy of the management is one of reasonable diversification, and does not involve intense concentration of investment in the securities of the employer company. The present investment policy of the applicant is one of reasonable diversification. Because of this policy, together with the limitations of the Act with respect to cross-ownership and circular ownership (from which the applicant shall not be exempt) any future intense concentration of investment in General Electric or its affiliated companies is circumscribed. Absent these dangers, the fact that the employer company or its affiliate may be considered an investment adviser seems to present no reason to limit the participation of the employees and officers of General Electric Company and its affiliates in the administration of funds which they have advanced. In other words, Section 10(a) loses much of its significance where ownership of the securities of the investment company is limited to the persons who may be investment advisers and to their officers, employees and pensioners. That is the case here."
> (10 S.E.C. 652, 660).

The undersigned finds that the requested exemption is warranted. Employee-investors should have full freedom in selecting trustees without restriction as to their affiliation with the Applicant.

The necessity for the requested exemption from Section 10(d) [18/] is not necessary in view of the exemption from Section 10(a) requested and granted. This exemption is denied.

18/ This section provides that notwithstanding the provisions of Section 10(a) a registered investment company may have a board of affiliated persons, except for one member.

5. Section 13(a)(4) - Changes in Investment Policy [19/]

It is provided in Section 13(a)(4) that, "No registered investment company shall, unless authorized by the vote of its outstanding voting securities - ..., .(4) change the nature of its business so as to cease to be an investment company."

Applicant asserts that the exemption is necessary to permit changes in the Program, of which the Fund is a part, and that the Applicant should be able to terminate the Fund as part of the over-all employee benefit program. The union participants oppose this request and the point has been made that the requested exemption might deprive employee-participants in the Fund, in the event of termination, of the benefit of company contributions which have not yet vested. The Applicant asserts that the Rules of the Fund protect employee-participants from any such loss (Reply Br., pp. 5-6).

While there is some question whether Section 13(a)(4) applies to a dissolution or termination [20/] the undersigned concludes that it would be appropriate to grant the requested exemption with the proviso that termination of the Fund shall not deprive participants of Company contributions credited to their accounts, but which have not yet vested.

19/ Request for additional exemption from Section 13 has been dropped. (Reply Br., pp. 5-6).

20/ See G. E. Employees Securities Corporation, *supra*, pp.658-59.

6. Section 15 - Investment Advisory and Underwriting Contracts [21]

This section requires shareholder approval of investment advisory contracts. The requested exemption is appropriate here if employee-participants have elected trustees, as required under Section 16(a), who will represent their interests in the negotiation of such contracts.

7. Section 22(e) [22] - Suspension of Right of Redemption

Section 22(e) provides that no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender. Applicant seeks an exemption from this provision for the Fund pointing out that provisions in the Program for a three-year holding period, deposit of securities in trust until retirement - all central to the operation of the Program and the Fund - would not be possible under this Section.

Opposition has been voiced to provisions which would allow Fund Trustees to make the right of redemption and transfer subject to provisions limiting redemption or transfer of less than all of a

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21/ Applicant states that a requested exemption from Section 14 has now become irrelevant.

22/ Applicant has agreed to drop its request for exemption from Section 20(a). (Reply Br., p.6).

holder's Fund Units if after such a redemption or transfer his units would be less than $200. Applicant urges that this is a reasonable administrative requirement and consistent with the provisions of Section 22(e). The IUE contends that this is an onerous burden on the right of redemption of small investors.

The undersigned concludes that the requested exemption from Section 22(e) is warranted. It is doubtful whether Section 22(e) would apply to the provision challenged. In any event, the undersigned concludes that it is a reasonable administrative regulation.

8. Section 22(f) - Restrictions on Transferability

Exemption is requested from this section which provides that no registered open-end company shall restrict the transferability or negotiability of any security of which it is the issuer except in conformity with the statements with respect thereto contained in its registration statement and applicable rules and regulations. Since a Section 8(b) exemption from full registration has been found warranted and full disclosure of transferability restrictions is made in the registration of the Program under the Securities Act, the undersigned concludes that the requested exemption is warranted.

9. Section 30 - Periodic and Other Reports

Applicant seeks exemptions for the Fund from Section 30(a); 30(b) except 30(b)(2); 30(c) and 30(d) to the extent

that a report to participants more than once a year may be required.

If the requested exemptions from Section 30(a) and (b) are granted, the Fund would not be required to file either an annual report on Form N-1R pursuant to Section 30(a) or quarterly reports on Form N-1Q pursuant to Section 30(b). The Division urges that these requested exemptions be denied, contending that the information contained in these reports outweighs other considerations. Applicant states that much of the information required by Form N-1R is provided in other filings which must be made and that it is prepared to file quarterly reports in the event it is concluded that such reports would be desirable. The undersigned concludes that the required reports should be filed and the requested exemptions are denied.[23/] There is no necessity for an exemption, as requested, from Section 30(c) which deals with alternative methods of supplying required information to the Commission.

Applicant seeks an exemption from Section 30(d), which requires semi-annual reports to stockholders, to the extent that reports to participants more than once a year may be required. Applicant states that the Fund will make an annual report under Section 30(d), will comply with the filing requirements of Section 30(b)(2), and will furnish participants in the Program with an annual prospectus. While there has been no objection raised to the specific request, concern has been voiced over the problem of

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23/ G. E. Employees Securities Corporation, supra, p. 674.

furnishing information to retired employees. Another objection raised has been to the inclusion of the report of the Fund in the prospectus of the Program rather than furnishing it to investors as a separate document. The undersigned concludes that the requested exemption should be granted. It will be the responsibility of the Fund to furnish all participants, including retired employees, with the annual report. The Applicant has also committed itself to review procedures for furnishing periodic information to former employees. This, and the question whether the annual report may be included in the prospectus, are basically compliance matters which can best be worked out with the Division, but it does not affect the basic validity of the requested exemption.

10. Section 32(a) Accountants and Auditors

This subsection provides that financial statements required to be filed with the Commission by a registered management company or face-amount certificate company shall be certified by an independent public accountant whose selection is made by the board of directors of such registered company and is submitted to the stockholders for ratification or rejection at the next succeeding annual meeting. Applicant seeks to retain control of the appointment of accountants, as provided in Section VI of Rules of the Fund, and requests an exemption. The union participants are opposed. In view of their equity in the Fund, the undersigned concludes that it would not be consistent with the interest of investors to deny

this statutory right to Fund investors and the requested exemption is denied except for subsection 32(a)(1). This subsection provides that the accountant shall be selected by a majority of the members of the board who are not officers or employees of the Applicant. Since, under the exemption granted from Section 10(a), all members of the board of trustees of the Fund may be officers or employees of the Applicant, exemption is also granted from this subsection.

III. CONCLUDING FINDINGS, ORDER

It has been found that pursuant to Section 6(b) of the Act certain of the requested exemptions should be granted; others should be granted in part or conditionally; while others should be denied. An appropriate order will be issued.

It should be noted that the Fund has been in operation a short time. Operating experience may indicate that certain changes in the relief granted herein are appropriate. The Commission has in a case similar to the instant one reserved jurisdiction to reconsider rulings on exemption requests.[24/] If this is done here, the parties and participants in this proceeding may later raise matters deemed appropriate for Commission action. Accordingly,

IT IS ORDERED that pursuant to Section 6(b) of the Act, exemption be, and it hereby is, granted to General Electric

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24/ See Tennessee Gas and Transmission Company, 24 S.E.C. 241, where the Commission stated:
"Moreover, we shall reserve jurisdiction to reconsider the exemption herein granted and to alter or withdraw such exemption or the conditions thereof after notice and opportunity for hearing, should subsequent facts, in our opinion, make such action necessary or appropriate." (p. 244)

S & S Program Mutual Fund from:

1. Sections 8(b), 15, 22(e), 22(f), 24, and subsection 32(a)(1).

2. Sections 16(a) and 18(i), so as to permit the appointment by General Electric Company of two members of the five-member board of trustees of the Fund.

3. Section 13(a)(4), with the proviso that termination of the Fund by the Company shall not deprive participants of Company contributions credited to their accounts, but which have not yet vested.

4. Section 30(d), to the extent that reports to participants more than once a year are required.

IT IS FURTHER ORDERED that exemptions from Sections 10(d), 30(a), 30(b), 30(c), and 32(a) except for subsection 32(a)(1) be, and they hereby are, denied.[25/]

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party or other person entitled to seek review of this initial decision may file a petition for Commission review of this initial decision within fifteen days after service thereof on him. This initial decision, pursuant to Rule 17(f) shall become the final decision of the Commission as to each such party or person

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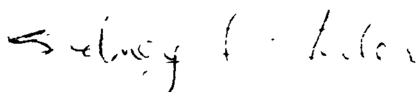
25/ All contentions and proposed findings have been carefully considered. This initial decision incorporates those which have been found necessary for incorporation therein.

unless he files a petition for review pursuant to Rule 17(b) or the Commission, pursuant to Rule 17(e), determines on its own initiative to review this initial decision as to him. If a party or person timely files a petition to review or the Commission takes action to review as to a party or person, this initial decision shall not become final as to that party or person.



Sidney L. Feiler
Hearing Examiner

Washington, D. C.
November 5, 1968