

have either a minimum account size of \$500,000 or a net worth over \$1 million.

3. Although the Performance Fee is assessed against the Trust (rather than directly against investors in the Funds), paragraph (b)(2) of the rule requires in effect that each investor in each of the Funds must meet the objective financial test of \$500,000 under management or \$1,000,000 in net worth set forth in paragraph (b)(1). Applicant represents that, except for the objective financial qualifications established by rule 205-3, all the other requirements of rule 205-3 are satisfied.<sup>2</sup>

4. Individuals who do not have \$1,000,000 in net worth and who are employees either of applicant or of BCF seek to invest in Fund III in amounts less than \$500,000. These individuals do not satisfy the objective financial test set out in rule 205-3(b)(1). Consequently, rule 205-3 does not permit, and section 205(a)(1) would prohibit, applicant from charging the Performance Fee to the Trust if such individuals invest in Fund III. Applicant requests that the SEC allow it to charge the Performance Fee to all investors, including the non-qualifying employees of applicant and BCF.

5. Applicant represents that each of the individuals in question has a college degree or graduate school training and years of experience in the mortgage securities investment business and is closely involved in the daily business of applicant or BCF. In addition, such non-qualifying personnel all hold positions of vice-president and above (including principal and managing director). Accordingly, each of these individuals has a professional understanding of the risk associated with the Trust's investment program as well as the degree of risk being undertaken by applicant in achieving the program.

6. Applicant argues that the financial sophistication of the non-qualifying employees is exactly what the SEC sought to assure by imposing the exemptive conditions of rule 205-3. In the adopting release, the SEC stated that the objective financial criteria set forth in rule 205-3 are intended to assure that the rule will be limited to advisory contracts with clients who are financially sophisticated and capable of bearing the increased risks associated

with incentive fee arrangements.<sup>3</sup> In addition, applicant states that it will make a good faith judgment as to the sophisticated nature of each investor relative to the affairs of the Trust.

7. Applicant further states that each of the individual employees who does not qualify under rule 205-3(b)(1) is an "accredited investor," as such term is defined in rule 501 of Regulation D under the Securities Act of 1933.<sup>4</sup> Each such employee who chooses to invest in Fund III also would execute a binding subscription agreement committing to invest between \$25,000 and \$100,000.

8. Substantially all of applicant's most senior personnel who do qualify under rule 205-3(b)(1) have committed up to \$28 million for Fund III and also share in applicant's profits through incentive compensation plans. Applicant believes that the fact that they have substantial amounts at stake moderates any incentive to take the kinds of investment risks that concerned Congress when it adopted section 205(a)(1) and tends to ensure a community of interest with all other investors, including the proposed non-qualifying investors.

9. Applicant believes that there is also a strong commonality of interest between the qualifying personnel and non-qualifying employees who may wish to invest in Fund III, because the two groups work closely together in conducting the business of the Trust or BCF. The non-qualifying employees are, for example, actively involved in meeting with prospective sellers and buyers of real estate debt, structuring potential transactions, and preparing financial statements and reports to investors. These functions all require a high degree of financial sophistication. As members of the term who expect to make the Trust successful, they would like to be able to participate in that success along with the more senior personnel through an equity investment.

10. Applicant believes that the terms of the Performance Fee eliminate the ability—and any incentive—for applicant to engage in speculative trading practices or artificially enhance its fee by loading profits into one year and losses into another year. The Performance Fee takes into account both realized and unrealized losses, but only realized gains. In addition, it is measured only against cumulative

performance over the life of the Trust and is payable only after a cumulative minimum return to investors has been achieved. Further, its accrual and payment are further delayed to minimize the possibility that Performance Fees paid for good performance in the early years could not be recovered by the Trust in later years if performance fell. Applicant also notes that investors in the Funds will receive annual and semi-annual reports with attached financial statements regarding the Funds, the Trust and the Trust's "downstream affiliates" as well as tax information regarding those entities, including BCF.

#### Applicant's Conditions

Applicant agrees that any order granting the requested exemptive relief may be made subject to the following conditions.

1. Applicant's investment advisory arrangement with the Trust will satisfy all the conditions of rule 205-3 of the Act, except for the objective financial standards set forth in paragraph (b)(1) thereof as they apply to the "non-qualifying" employees of applicant or BCF.

2. Applicant will use its best efforts to ensure that no shares of any of the Funds or any interests therein are transferred to any person that does not satisfy the applicable objective financial standards of rule 205-3(b)(1).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-29715 Filed 11-20-96; 8:45 am]

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[Rel. No. IC-22335; 813-158]

#### Elfun Trust, et al.; Notice of Application

November 14, 1996.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Amendment of Prior Order under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Elfun Trusts, Elfun Tax-Exempt Income Fund, Elfun Income Fund, Elfun Global Fund, Elfun Diversified Fund, Elfun Money Market Fund, General Electric S&S Program Mutual Fund, and General Electric S&S Long Term Interest Fund (collectively, "Fund").

**RELEVANT ACT SECTIONS:** Order requested pursuant to section 6(b) of the Act for an exemption from section 2(a)(13) of

<sup>2</sup> Rule 205-3 requires, first, that the adviser's compensation must be based upon a formula that includes realized capital losses, and under certain conditions, unrealized capital depreciation. Second, the compensation must be based upon performance over a period of not less than one year. Third, the adviser must disclose certain information to the client. Finally, the adviser must reasonably believe that the advisory contract represents an arm's-length arrangement and that the client understands the performance fee and its risks.

<sup>3</sup> See Investment Advisers Act Release No. 996 (Nov. 14, 1985) (adopting rule 205-3).

<sup>4</sup> Rule 501 of Regulation D defines an accredited investor to include, as here relevant, any natural person having an income of greater than \$200,000 for each of the previous two years and an expectation of the same income level for the current year.

the Act and to amend a previous order granting relief from certain sections of the Act.

**SUMMARY OF APPLICATION:** The order would permit the beneficial owners of applicants, each applicant an employees' securities company, to donate units ("Units") of applicants to charities of their choosing, which Units must, on the first business day following the later of the 90th day after their receipt as described in the application or the cessation of circumstances described in paragraphs (1)–(3) of section 22(e) of the Act, be redeemed by the holder or involuntarily by the appropriate applicant, or be transferred to an investor eligible for investing in an Elfun Fund or an S&S Fund.

**FILING DATE:** The application was filed on November 13, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 9, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 3003 Summer Street, Stamford, Connecticut 06905.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Staff Attorney (202) 942–0574, or Mercer E. Bullard, Branch Chief (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

#### Applicants' Representations

1. Applicants are diversified, open-end, management investment companies, and each is organized and operated to meet the definition of an "employees' securities company" within the meaning of section 2(a)(13) of the Act. Elfun Trusts is a trust created pursuant to an agreement among the Fund's trustees dated May 27, 1935 and most recently amended July 18, 1978. Elfun Tax-Exempt Income Fund is a

trust created pursuant to an agreement among the Fund's trustees dated March 14, 1977 and most recently amended July 12, 1978. Elfun Income Fund is a trust created pursuant to an agreement among the Fund's trustees dated December 22, 1982. Elfun Global Fund is a trust created pursuant to an agreement among the Fund's trustees dated May 15, 1987. Elfun Diversified Fund is a trust created pursuant to an agreement among the Fund's trustees dated June 1, 1987. Elfun Money Market is a trust created pursuant to an agreement among its trustees dated July 15, 1989. General Electric S&S Program Mutual Fund is a trust created pursuant to an agreement among the Fund's trustees dated May 1, 1967, as amended and restated January 1, 1976. General Electric S&S Long Term Interest Fund is a trust created pursuant to an agreement among the Fund's trustees dated as of September 15, 1979.

2. Pursuant to prior orders issued by the SEC, each of the applicants has received exemptions from certain provisions of the Act permitting the formation of various employees' securities companies. Under three prior orders, the SEC has granted Elfun Trusts an exemption from sections 8(b), 10a, 15a, 15c, 16(b), 20(a), 22(f), 30(b)(1) and 32(a) of the Act.<sup>1</sup> The SEC also has issued orders exempting each of Elfun Tax-Exempt Income Fund,<sup>2</sup> Elfun Income Fund,<sup>3</sup> Elfun Global Fund,<sup>4</sup> Elfun Diversified Fund<sup>5</sup> and Elfun Money Market Fund<sup>6</sup> from sections 10(a), 13(a)(4), 15(a), 15(c), 16(a), 30(d) and 32(a) of the Act. In addition, the order for the Elfun Tax-Exempt Income Fund also provided for an exemption from sections 8(b) and 22(f). Finally, the SEC has issued orders exempting the General Electric S&S Long Term Interest Fund<sup>7</sup> and the General Electric S&S Program Mutual Fund<sup>8</sup> from sections 8(b), 10(a), 13(a)(4), 15, 16(a), 18(i),

<sup>1</sup> Investment Company Act Release Nos. 584 (Dec. 2, 1943), 10375 (Aug. 23, 1978) (notice) and 10414 (Sept. 20, 1978) (order), and 17038 (Jun. 30, 1989) (notice) and 17083 (July 25, 1989) (order).

<sup>2</sup> Investment Company Act Release Nos. 9839 (July 5, 1977) (notice) and 9879 (Aug. 2, 1977) (order).

<sup>3</sup> Investment Company Act Release Nos. 13485 (Sept. 7, 1983) (notice) and 13612 (Nov. 2, 1983) (order).

<sup>4</sup> Investment Company Act Release Nos. 16042 (Oct. 8, 1987) (notice) and 16114 (Nov. 5, 1987) (order).

<sup>5</sup> Investment Company Act Release Nos. 16146 (Nov. 24, 1987) (notice) and 16186 (Dec. 22, 1987) (order).

<sup>6</sup> Investment Company Act Release Nos. 17284 (Mar. 16, 1990) (notice) and 17433 (Apr. 13, 1990) (order).

<sup>7</sup> Investment Company Act Release Nos. 10929 (Nov. 6, 1979) (notice) and 10971 (Dec. 4, 1979) (order).

<sup>8</sup> General Electric Co., 44 S.E.C. 87 (1969).

22(e), 22(f), 24, 30(d) and 32(a)(1); and 8(b), 10(a), 13(a)(4), 15, 16(a), 22(e), 22(f), 24, 30(d) and 32(a) of the Act, respectively.

3. Applicants propose to offer holders of Units ("Unitholders")<sup>9</sup> the opportunity to realize the tax advantages associated with gifts of appreciated property by permitting Unitholders to donate appreciated Units to charities of their choosing, provided, however, that the charities qualify as tax-exempt entities under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and are not private foundations.<sup>10</sup>

4. Applicants have been advised by special tax counsel that a donee-charity's right to hold the appreciated property for a reasonable period of time during which market fluctuations and other events can affect the value of a Unit will help assure that the donor's gift will receive the desired tax treatment. Applicants propose that a charity may hold the Units for up to 90 days during which time it may voluntarily dispose of the Units to eligible participants or submit the Units for redemption. If, after 90 days, a charity remains a Unitholder, the Fund's trustees will use their power under the trust agreement to redeem involuntarily the Units and the charities will be paid the next determined net asset value for the Units they hold.<sup>11</sup>

#### Applicant's Legal Analysis

1. Section 2(a)(13) of the Act defines "employees' securities company" generally as an investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned by employees and former employees of a company.

2. Section 6(b) of the Act provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. The applicants believe that the Proposal satisfies the requirements of section 6(b).

3. Applicants state that many of the Unitholders have held Units for significant periods of time. In many

<sup>9</sup> Unitholders includes only those persons eligible to invest in applicants under the Prior Orders.

<sup>10</sup> With regard to the S&S Funds, this Proposal is limited to those Units that are held outside of the GE Savings and Security Program, a qualified employee benefit program.

<sup>11</sup> Each Fund's net asset value per share is calculated on each day the New York Stock Exchange is open for business. Under each Fund's trust agreement, the trustees have the power to cause the involuntary redemption of Units if the Unitholder would cause the Fund to lose its status as an employees' securities company.

cases, these Units have net asset values that are substantially higher than the basis at which they are carried, causing the Unitholder to realize a gain upon redemption of the Units. Applicants state that their proposal would provide the Unitholder with the tax advantages associated with gifts of appreciated property while the charity receives a security that it can then present to the Fund for redemption in return for cash.

4. Applicants assert that their proposal is an attempt to promote the economic welfare of their employee-investors. The proposal, applicants contend, simply provides the Unitholders with the option of divesting themselves of appreciated property, gaining the associated tax advantages, and avoiding what could otherwise be a substantial tax burden, while donating to the charity of their choosing. Applicants contend that, without this option, many of the Unitholders may be subject to substantial taxes upon redemption of their Units owing to the long holding periods and the appreciation in the value of the Units that has occurred over time. Applicants believe that a Unitholder wishing to use his or her ownership interest in the applicants for philanthropic purposes thus would be forced to submit the shares for redemption, pay the taxes associated with the gain realized by the Unitholder, and then donate the cash proceeds to the charity of his or her choice. Applicants contend that the Unitholder consequently will be forced to redeem more Units than would otherwise be required in order to cover the associated taxes if the Unitholder has an established amount that he or she wishes to donate to a charity.

5. Applicants state that the gift of appreciated property to a charity is a commonly used strategy in philanthropy. Applicants contend that their proposal would permit the Unitholders to do nothing more than they would be entitled to do if the security at issue were any other form of security or asset. The applicants believe that their status as employees' securities companies should not cause detriment to the very people that status is intended to benefit.

6. Applicants also believe that, owing to the short holding period, the charities are less in need of the protections afforded by the Act. The charities will only be permitted to hold the Units for up to 90 days before mandatory redemption is instituted by the applicants at an amount equal to their net asset values.

7. Applicants note that the donee-charities, like all eligible investors, will have many of the protections afforded

by the Act. Applicants state that, except for the prospect of involuntary redemption, each donee-charity will be treated as any other Unitholder and therefore will not be disadvantaged by their temporary ownership of Units. Applicants also assert that, so long as the donee-charities qualify as tax-exempt entities under section 501(c)(3) of the Code, the donee-charities will not be subject to any tax liability by reason of their holding Units in applicants or by the redemption of such Units.

#### Applicants' Condition

Applicants agree that the order granting the requested relief shall be subject to the condition that on the first business day following the later of the 90th day after receipt of Units donated as described in the application or the cessation of circumstances described in paragraphs (1)–(3) of section 22(e) of the Act, the Units will be redeemed by the holder or involuntarily by the appropriate applicant or be transferred by the holder to an investor who is eligible to invest in an Elfun Fund or an S&S Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 35–26607]

#### Filings Under the Public Utility Holding Company Act of 1935, as Amended (“Act”)

November 15, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 9, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or,

in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

TUC Holding Company (70–8953)

TUC Holding Company (“TUC Holding”), located at Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201, a Texas corporation not currently subject to the Act, has filed an application for an order under sections 9(a)(2) and 10 of the Act authorizing its proposed acquisition of all of the issued and outstanding common stock of (1) Texas Utilities Company (“TUC”), a Texas electric public-utility holding company exempt under section 3(a)(1) from all provisions of the Act except section 9(a)(2), and, through such acquisition, TUC's Texas public-utility subsidiary companies, Texas Utilities Electric Company (“TU Electric”) and Southwestern Electric Service Company (“SESCO”); and (2) ENSERCH Corporation (“ENSERCH”), a Texas gas public-utility company. TUC Holding also requests an order under section 3(a)(1) exempting it from all provisions of the Act except section 9(a)(2), following consummation of the proposed transactions.

TU Electric and SESCO operate as public utilities exclusively in the State of Texas.<sup>1</sup> Both are subject to regulation with respect to retail electric rates and other matters by the Public Utility Commission of Texas (“Texas Commission”) and by certain municipalities with regard to their rates.<sup>2</sup>

TUC also has eight nonutility subsidiaries. Texas Utilities Australia Pty. Ltd, an Australia limited liability company, owns all of the common stock of an Australia foreign utility company, as defined in section 33 of the Act. Texas Utilities Fuel Company, a Texas corporation, owns a natural gas pipeline

<sup>1</sup> TU Electric is engaged in the generation, purchase, transmission, distribution and sale of electric energy in the north central, eastern and western parts of Texas, an area with a population estimated at 5,280,000. SESCO is engaged in the purchase, transmission, distribution and sale of electric energy in ten counties in the eastern and central parts of Texas, with a population estimated at 125,000.

<sup>2</sup> In addition, TU Electric is subject to regulation by the Nuclear Regulatory Commission in connection with its ownership of the Comanche Peak nuclear generating facility.