

Respectfully Submitted,  
 Arthur M. Kaplan, Esquire (AK 6357)  
 Melinda L. deLisle, Esquire  
 Glenn J. Moramarco, Esquire  
 Fine, Kaplan and Black  
 1845 Walnut Street, 23rd Floor, Philadelphia,  
 PA 19103

Christopher Lovell, Esquire (CL 2595),  
 Lovell & Skirnick, L.L.P.  
 63 Wall Street, New York, NY 10005-2818  
 and

Leonard B. Simon, Esquire (LS 2068),  
 Dennis Stewart, Esquire,  
 Sharon T. Maier, Esquire,  
 Milberg, Weiss, Bershad, Hynes & Lerach  
 600 West Broadway, 1800 One America Plaza,  
 San Diego, CA 92101-5050

and

Patricia M. Hynes, Esquire,  
 Milberg, Weiss, Bershad, Hynes & Lerach  
 One Pennsylvania Plaza, New York, NY  
 10019-0165

Robert A. Skirnick, Esquire (RS 2636),  
 Lovell & Skirnick, L.L.P.,  
 63 Wall Street, New York, NY 10005-2818.

Co-Lead Counsel for Plaintiffs in the *In re:*  
*Nasdaq Market-Makers Antitrust Litigation*,  
*MDL 1023 (RWS)*.

\* \* \* \* \*

[FR Doc. 96-29965 Filed 11-22-96; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10318, et al.]

### Proposed Exemptions; GE Capital Investment Advisors, Inc.

**AGENCY:** Pension and Welfare Benefits  
 Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains  
 notices of pendency before the  
 Department of Labor (the Department) of  
 proposed exemptions from certain of the  
 prohibited transaction restriction of the  
 Employee Retirement Income Security  
 Act of 1974 (the Act) and/or the Internal  
 Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to  
 submit written comments or request for  
 a hearing on the pending exemptions,  
 unless otherwise stated in the Notice of  
 Proposed Exemption, within 45 days  
 from the date of publication of this  
 Federal Register Notice. Comments and  
 request for a hearing should state: (1)  
 The name, address, and telephone

number of the person making the  
 comment or request, and (2) the nature  
 of the person's interest in the exemption  
 and the manner in which the person  
 would be adversely affected by the  
 exemption. A request for a hearing must  
 also state the issues to be addressed and  
 include a general description of the  
 evidence to be presented at the hearing.  
 A request for a hearing must also state  
 the issues to be addressed and include  
 a general description of the evidence to  
 be presented at the hearing.

**ADDRESSES:** All written comments and  
 request for a hearing (at least three  
 copies) should be sent to the Pension  
 and Welfare Benefits Administration,  
 Office of Exemption Determinations,  
 Room N-5649, U.S. Department of  
 Labor, 200 Constitution Avenue, N.W.,  
 Washington, D.C. 20210. Attention:  
 Application No. stated in each Notice of  
 Proposed Exemption. The applications  
 for exemption and the comments  
 received will be available for public  
 inspection in the Public Documents  
 Room of Pension and Welfare Benefits  
 Administration, U.S. Department of  
 Labor, Room N-5507, 200 Constitution  
 Avenue, N.W., Washington, D.C. 20210.

### Notice to Interested Persons

Notice of the proposed exemptions  
 will be provided to all interested  
 persons in the manner agreed upon by  
 the applicant and the Department  
 within 15 days of the date of publication  
 in the Federal Register. Such notice  
 shall include a copy of the notice of  
 proposed exemption as published in the  
 Federal Register and shall inform  
 interested persons of their right to  
 comment and to request a hearing  
 (where appropriate).

**SUPPLEMENTARY INFORMATION:** The  
 proposed exemptions were requested in  
 applications filed pursuant to section  
 408(a) of the Act and/or section  
 4975(c)(2) of the Code, and in  
 accordance with procedures set forth in  
 29 CFR Part 2570, Subpart B (55 FR  
 32836, 32847, August 10, 1990).  
 Effective December 31, 1978, section  
 102 of Reorganization Plan No. 4 of  
 1978 (43 FR 47713, October 17, 1978)  
 transferred the authority of the Secretary  
 of the Treasury to issue exemptions of  
 the type requested to the Secretary of  
 Labor. Therefore, these notices of  
 proposed exemption are issued solely  
 by the Department.

The applications contain  
 representations with regard to the  
 proposed exemptions which are  
 summarized below. Interested persons  
 are referred to the applications on file  
 with the Department for a complete

statement of the facts and  
 representations.

GE Capital Investment Advisors, Inc.,  
 Located in New York, New York

[Application No. D-10318]

### Proposed Exemption

The Department is considering  
 granting an exemption under the  
 authority of section 408(a) of the Act  
 and section 4975(c)(2) of the Code and  
 in accordance with the procedures set  
 forth in 29 C.F.R. Part 2570, Subpart B  
 (55 F.R. 32836, 32847, August 10, 1990).  
 If the exemption is granted, GE Capital  
 Investment Advisors, Inc. (GECIA) and  
 GECIA Holdings, Inc. (Holdings) shall  
 not be precluded from functioning as a  
 "qualified professional asset manager"  
 pursuant to Prohibited Transaction  
 Class Exemption 84-14 (PTE 84-14, 49  
 FR 9494, March 13, 1984) solely because  
 of a failure to satisfy section I(g) of PTE  
 84-14, as a result of General Electric  
 Company's ownership interest in them,  
 including any of their subsidiaries or  
 successors which provides investment  
 advisory, management or related  
 services and is registered under the  
 Securities and Exchange Act of 1934, as  
 amended, or the Investment Advisors  
 Act of 1940, as amended; provided the  
 following conditions are satisfied:

(A) This exemption is not applicable to any  
 affiliation by GECIA or Holdings with any  
 person or entity convicted of any of the  
 felonies described in part I(g) of PTE 84-14,  
 other than General Electric Company; and

(B) This exemption is not applicable with  
 respect to any convictions of General Electric  
 Company for felonies described in part I(g) of  
 PTE 84-14 other than those involved in the  
 G.E. Felonies, described below.

**Effective Date:** This exemption, if  
 granted, will be effective as of January  
 29, 1996.

### Summary of Facts and Representations

**Introduction:** General Electric  
 Company (G.E.), an indirect 100 percent  
 owner of GECIA Holdings, Inc.  
 (Holdings), has been convicted during  
 the past ten years of certain felonies  
 relating to G.E.'s government contracts  
 operations. In 1995-1996, Holdings  
 created a subsidiary, GE Capital  
 Investment Advisors, Inc. (GECIA),  
 solely to purchase an unrelated  
 investment advisory and management  
 business. G.E.'s felony convictions  
 could bar GECIA from acting as a  
 "qualified professional asset manager"  
 (QPAM) under Prohibited Transaction  
 Class Exemption 84-14 (PTE 84-14, 49  
 FR 9494, March 13, 1984). Part I(g) of  
 PTE 84-14 requires that no person  
 owning, directly or indirectly, 5 percent  
 or more of the QPAM has been

convicted of certain felonies within ten years preceding the transaction for which the QPAM intends to utilize PTE 84-14. GECIA and Holdings are requesting an exemption to enable GECIA to qualify as a QPAM without regard to any failure to satisfy part I(g) of PTE 84-14 by reason of G.E.'s ownership of GECIA, under the terms and conditions described herein.

1. GECIA is a real estate investment advisory and management business located in San Francisco, California. GECIA is a wholly-owned subsidiary of Holdings, a wholly-owned subsidiary of GE Capital Services, Inc. (GECS), which is entirely owned by G.E. GECIA and Holdings (the Applicants) were organized and established by GECS solely to acquire and continue the real estate investment advisory and management business of MacFarlane Partners (MacFarlane), which was unrelated to G.E. and its affiliates. MacFarlane obtained consent from each of its existing clients to the transfer of MacFarlane client accounts to GECIA, and GECIA commenced operations on January 29, 1996 immediately following completion of the acquisition of MacFarlane. As part of the acquisition, GECIA has hired all of the investment professionals and other employees of MacFarlane, including Victor MacFarlane as the chief executive officer of GECIA.

The Applicants represent that the clientele served by GECIA's operations include large employee benefit plans subject to the Act. They maintain that, given the size and number of the plans which GECIA represents, the large number of financial service providers engaged by such plans, the breadth of the definition of "party in interest" under the Act, and the array of services offered by GECIA, it would not be uncommon for GECIA to propose a transaction involving a party in interest with respect to a plan for which GECIA is acting in a fiduciary capacity. The Applicants represent that the proposing of such transactions is occasionally necessary to offer plan clients adequate investment diversification opportunities, and that such opportunities will be missed if GECIA is not permitted to function as a QPAM pursuant to PTE 84-14.

2. The Applicants represent that prior to January 29, 1996, G.E. did not have any ownership interests in any of the operations of MacFarlane, which are now the operations of GECIA. They represent that Holdings and GECIA were established solely to acquire, operate and expand the business of MacFarlane, and that GECIA and Holdings do not engage in any of the business to which

the G.E. Felonies, described below, pertain. The Applicants further represents that GECIA and Holdings are intended and structured to be operated and maintained separately and independently from the G.E. business operations to which the G.E. Felonies pertain, which did not involve any investment advisory, management or related services.

3. On three occasions from 1986 through 1992, G.E. pled guilty or was convicted of felonies relating to the government contract activities of G.E. and its subsidiaries (the G.E. Felonies). The Applicants represent that the G.E. Felonies did not in any way relate to any employee benefit plan or any person's authority with respect to an employee benefit plan. The Applicants describe the G.E. Felonies more specifically as follows:

(a) On May 13, 1986, G.E. pled guilty to four counts of filing false claims with the United States Air Force and 104 counts of filing false statements with the United States Air Force in connection with work performed in 1980 by G.E.'s Re-Entry Systems Operation. The Applicants represent that these counts primarily related to individual time cards that were improperly charged to certain government contracts.

(b) On February 2, 1990, G.E. was convicted of mail fraud and violations of the False Claims Act relating to the conduct in 1983 of two contract employees of a G.E. subsidiary, Management and Technical Services Co., involving failure to notify the United States Army that subcontractors had agreed to prices lower than those contained in projections for the project. The Applicants represent that neither G.E. nor any officer or employee of G.E. was accused of having knowledge of the discrepancy and withholding it from the United States Army.

(c) On July 22, 1992 G.E. pled guilty to violations of 18 U.S.C. 287 (submitting false claims against the United States), 18 U.S.C. 1957 (engaging in monetary transactions in criminally derived property), 15 U.S.C. 78m(b)(2)(A) and 78ff(a) (inaccurate books and records), and 18 U.S.C. 371 (conspiracy to defraud and commit offenses against the United States). The Applicants represent that these violations related to a series of events between 1984 and 1990, involving false statements made by employees of G.E. Aircraft Engines Division to a foreign government that led such foreign government to submit false claims to the United States relating to the purchase of weapons.

4. The Applicants represent that the G.E. Felonies did not relate in any way

to the conduct or business of MacFarlane, or any investment advisor or fiduciary of an employee benefit plan. The Applicants maintain, however, that although none of the unlawful conduct involve MacFarlane's or GECIA's investment management activities or any plans covered by the Act, the criminal activities described above could preclude GECIA, as an affiliate of G.E., from serving as a "qualified professional asset manager" (QPAM), due to the provisions of sections I(g) and V(d) of PTE 84-14. Section I(g) of PTE 84-14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity, including any crime described in section 411 of the Act. Because the G.E. Felonies involved crimes described in section 411 of the Act and monies transferred to or claimed by G.E., the Applicants represent that GECIA may be barred from qualifying as a QPAM.

5. Accordingly, the Applicants request an exemption to enable GECIA to function as a QPAM despite the failure to satisfy section I(g) of PTE 84-14 solely because of the G.E. Felonies and GECIA's affiliation with G.E. The Applicants request that the exemption apply not only to GECIA but to Holdings as well, in order to enable flexibility in the growth and development of GECIA's operations and to enable potential corporate reorganizations. The Applicants state that they intend that GECIA's relationships with employee benefit plans will be developed by increasing the types and amounts of services provided, or by extending the relationships into new areas. GECIA may prefer, for example, to establish a related registered investment advisor to service a particular niche of the market. However, the Applicants represent that GECIA is structured such that subsidiaries will not be established under GECIA, and any new corporate entities needed to accommodate expanded operations of GECIA will be subsidiaries of Holdings. The Applicants further maintain that inclusion of Holdings in the requested exemption is also necessary to allow GECIA or Holdings to participate in any reorganization which might eliminate one of them or change their relative position with respect to GECS, or they may be repositioned for reasons unrelated to their activities, such as a public offering of their stock. For these reasons, the Applicants are requesting that the exemption be

applicable to GECIA and Holdings and any subsidiary or successor which provides investment advisory, management or related services and is registered under the Investment Advisors Act of 1940, as amended.

The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTE 84-14. If granted, the exemption will enable GECIA to qualify as a QPAM by satisfying all conditions of PTE 84-14, except that G.E.'s convictions and guilty pleas in connection with the G.E. Felonies shall not prevent satisfaction of the condition stated in section I(g) of PTE 84-14 because of affiliation with G.E. The exemption, if granted, will relate only to the Applicants' affiliation with G.E. and not to any affiliation with any other persons or entities.<sup>1</sup>

6. The Applicants represent that the G.E. Felonies do not create any concern that they will endanger employee benefit plans for which GECIA proposes to serve as a QPAM. The Applicants note that all of the G.E. Felonies occurred before the creation of GECIA and its acquisition of the MacFarlane business, and that all of the G.E. Felonies involved areas of business unrelated to employee benefit plans and the activities of GECIA. The Applicants represent that prior to its incorporation, substantial efforts were devoted to identifying possible relationships between its proposed provision of real estate management services to plans and the existing business activities of G.E. and its affiliates, and understanding the potential legal issues related thereto. As a result, the Applicants represent that care has been taken to situate GECIA and Holdings separate from other unrelated business activities of G.E. and its affiliates, particularly those involved with the G.E. Felonies, and that GECIA and Holdings are isolated organizationally from the G.E. operations and entities formerly involved in the G.E. Felonies.

Furthermore, the Applicants represent that they are committed to a strong legal compliance program, developing their own policies and procedures to promote compliance with applicable laws including the Act. In this regard, the Applicants note that GECIA has

established its own general counsel, independent of G.E., with responsibility for supervising legal compliance. Under the general counsel's direction, GECIA has adopted written compliance policies designed to ensure compliance with the Act, and written materials relating to such policies have been provided to applicable employees. The Applicants represent that GECIA conducts employee training programs, including on-site seminars by outside counsel, on the requirements of the Act. The Applicants conclude that the efforts in these compliance measures constitute substantial amounts of time, effort and resources to avoid any failure by GECIA to comply with the Act and other applicable laws.

7. In summary, the Applicants represent that the criteria of section 408(a) of the Act are satisfied for the following reasons: (a) The G.E. Felonies occurred prior to any affiliation between G.E. and GECIA, and did not involve any conduct on the part of GECIA; (b) GECIA constitutes a continuation of the operations of MacFarlane, which was not involved in any of the G.E. Felonies and which was unrelated to G.E. prior to acquisition by GECIA; (c) GECIA has committed to a legal compliance program featuring written policies and procedures to prevent illegal activity; and (d) The exemption will permit the Applicants to engage in a broader variety of investments and services on behalf of client employee benefit plans which demand diverse investment opportunities.

*For Further Information Contact:*  
Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Summit Sheet Metal, Inc. Defined Benefit Pension Plan (the Plan) Located in Anaheim, California

[Application No. D-10330]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plan of certain real property (the Property) to Messrs. Milton J. Chasin, Donald E. Hanson, and Gale N. Searing,

parties in interest with respect to the Plan; provided that the following conditions are satisfied: (a) the Sale is a one-time transaction for a lump sum cash payment; (b) the purchase price is the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser; and (c) the Plan will incur no commissions or any other expenses from the proposed Sale.

#### *Summary of Facts and Representations*

1. The sponsoring employer of the Plan is the Summit Sheet Metal, Inc. (the Employer), a California corporation, which has manufactured sheet metal for over 20 years for the construction industry located primarily in southern California. The Employer has formerly resolved to terminate its business operations and is in the process of dissolution. Messrs. Milton J. Chasin, Donald E. Hanson, and Gale N. Searing, who each own a one-third interest in the Employer, are its only remaining employees.

2. The Plan is a defined benefit plan with approximately \$3.18 million in total assets, as of October 16, 1996, and three participants who are equal owners of the Employer. The trustee and administrator of the Plan are the three owners of the Employer. CalTrust, located in Costa Mesa, California, is the third-party recordkeeper for the Plan.

The Employer has formally resolved to terminate the Plan, and has received a determination from the Pension Benefit Guaranty Corporation that the Plan is no longer insured. In addition, the Plan is currently in termination process with the Internal Revenue Service.

The remaining three participants in the Plan have attained normal retirement age and intend to retire within the next few months and transfer their respective interests in the Plan to their respective Individual Retirement Accounts (IRA).

3. The Property, acquired solely as an investment in 1988 by the Plan from an unrelated person, is an unencumbered, fully developed parcel of commercial real estate, which is located at 12707 and 12717 Los Neitos Road, Santa Fe Springs, California on approximately 1.17 acres. The applicants represent that the Property is serviced by all the necessary public utilities and consists of a single story metal building and a single story concrete block building with a mezzanine for office space, and has been leased and used only by unrelated third-parties with respect to the Plan. The Property was determined in 1993 by the Environmental Protection

<sup>1</sup> For example, any affiliation of the Applicants with any company or individual convicted of any of the felonies described in section 411 of the Act, other than G.E. with respect to the G.E. Felonies described herein, is not within the scope of the exemption proposed herein. Furthermore, any future convictions of or guilty pleas by G.E. for felonies described in part I(g) of PTE 84-14 are not within the scope of the exemption proposed herein.

Agency (EPA) to be located within a potential toxic waste clean-up site.

The applicants represent that several attempts to sell the Property by the Plan to unrelated persons have been unsuccessful, primarily, because of the uncertainty of the costs in cleaning up the toxic waste found by the EPA.

Mr. Claude J. Demers, Real Estate Broker with California Real Estate Properties, Inc. of Huntington Beach, California, in a letter dated September 3, 1996, represented that his listing agreement on the Property had expired August 31, 1996, after every major industrial broker in Orange County was contacted with little response and no serious inquiries received. Mr. Demers further represented that the lack of market demand for the Property and the potential liability because of the hazardous materials on the Property effects the value of the Property. In addition, Mr. Demers represented that several financing institutions commented that even if a serious buyer were found, financing the Property would still be a major obstacle to overcome.

The Property was appraised as of June 20, 1996, and determined to have a fair market value of \$410,000. The appraisal was done by the Grubb & Ellis Company Appraisal and Consulting Services, Orange, California and signed by Paul M. Meade, Vice President, State Certification #AG001947, and Donald L. Hoelzel, Independent Review Appraiser, State Certification #AG00732. The appraiser represented that it had no interest in the Property and was independent of the Employer and the participants of the Plan. The appraiser also represented that the only impact on the Property of the EPA determination is the stigma associated with its proximity to the contained toxic waste and the subsequent value reduction.

4. The applicants represent that the Plan has been unable to interest anyone in purchasing the Property because of the EPA determination, and the trustees of the Plan are unable to locate an IRA custodian willing to accept the Property as an asset of an IRA. Therefore, the three remaining participants of the Plan desire to purchase the Property so that the Plan may be terminated and its assets rolled-over into their respective IRAs.

The applicants represent that the Sale would be in the best interests of the Plan and its participants and beneficiaries because the Sale would avoid the risk of future costs of clean-up and the anticipated depreciation in value of the Property. Also the parties involved expect to terminate as soon as possible the Plan and the Employer.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Property involves a one-time transaction for cash; (b) the Plan will not incur any payment of commissions or any other expenses from the Sale; (c) the Plan will be able to terminate and roll-over its remaining assets into three separate IRAs for the benefit of the three remaining participants; (d) the Property has been appraised by a qualified, independent appraiser; and (e) the Plan will receive as consideration for the Sale no less than the fair market value of the Property as of the date of the Sale.

*Notice to Interested Persons:* Because Messrs. Chasin, Hanson, and Searing, the applicants, are the sole participants of the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the Federal Register.

*For Further Information Contact:* Mr. C.E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Skana Enterprises, Inc. Defined Benefit Pension Plan (the Plan) Located in Kodiak, Alaska

[Application No. D-10342]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the proposed loan (the Loan) of \$157,500 by the Plan to Skana Enterprises, Inc. (Skana), the Plan's sponsor and a disqualified person with respect to the Plan, and (2) the personal guarantee of the Loan by Mr. Ralph Bolton (Mr. Bolton), a disqualified person with respect to the Plan, provided the following conditions are satisfied: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan does not exceed 25% of the assets of the Plan; (c) the Loan is secured by a first deed of trust on real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of the

Loan; (d) the fair market value of the Property remains at least equal to 150% of the outstanding balance of the Loan throughout the duration of the Loan; (e) the Plan's independent fiduciary has determined that the Loan is appropriate for, in the best interest of, and protective of the Plan; and (f) the Plan's independent fiduciary will monitor compliance with the terms of the Loan and conditions of the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Property in the event of default.<sup>2</sup>

#### *Summary of Facts and Representations*

1. Skana is a corporation located in Kodiak, Alaska, which is engaged in the business of commercial fishing for seafood. The Plan is a defined benefit plan with one participant, Mr. Bolton. The approximate aggregate fair market value of the Plan's assets is \$670,000.

2. Skana wishes to borrow \$157,500 from the Plan to purchase a parcel of real property in Kodiak, Alaska. The Loan will be amortized over a 15 year period, with equal semi-annual payments of principal and interest over the 15 year term. The interest rate for the Loan will be 9.25% per annum. The proposed terms of the Loan were submitted to Mr. Duane E. Dudley, Vice President of the Bank of America Alaska, N.A. in Anchorage, Alaska. Mr. Dudley approved the Loan, but recommended that certain of the proposed terms should be amended, such as raising the interest rate to 9.25% per annum. Mr. Dudley has represented that the terms of the Loan, as amended, are commercially reasonable.

3. The Loan will be secured by the Property, which consists of land and the timber located thereon, situated on East Devils Road in Lincoln City, Oregon. Char Brown of The Prudential Taylor & Taylor Realty Company in Lincoln City, Oregon, has appraised the land as having a fair market value, excluding the timber value, of \$200,000 as of September 17, 1996. Ms. Brown represents that she is a qualified, independent realtor who has worked in the small town of Lincoln City for five years and is well acquainted with the values of all the properties in the area. The timber on the Property has been valued by D.J. Davis Cutting, Inc. of Otis, Oregon as having a fair market value of \$193,277.75 as of September

<sup>2</sup> Since Mr. Bolton is the sole owner of Skana and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

15, 1996. Thus, independent experts have determined that the fair market value of the Property is \$393,277.75, which is approximately 2.5 times the principal amount of the Loan. The applicant represents that the Plan will have first priority interest in the collateral, and the Plan's interest will be perfected under applicable state law. Mr. Bolton will also personally guarantee the Loan to the Plan.

4. The Plan has appointed Drugge & Associates (Drugge), a CPA firm in Seattle, Washington, as its independent fiduciary for purposes of this transaction. Drugge represents that it performs accounting and tax services for Skana, but fees generated from Skana represent less than one percent of its annual service revenues. Mr. Jon Krueger of Drugge has represented that all terms and conditions of the Loan are at least as favorable to the Plan as the Plan could obtain in an arm's-length transaction with an unrelated party, and represent fair market value terms. Drugge has determined that the Loan is appropriate for the Plan, in the Plan's best interests as an investment for its portfolio, and protective of the Plan and its participant. Drugge represents that it will monitor compliance by Skana with the terms and conditions of the Loan and of the exemption proposed herein throughout the term of the Loan, taking whatever action is necessary to safeguard the Plan's interest, including foreclosure on the collateral in the event of default.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 4975(c)(2) of the Code for the following reasons: (a) The Loan represents less than 25% of the assets of the Plan; (b) the terms of the Loan will be at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) the Loan will be secured by a first deed of trust on the Property, which has been appraised by qualified, independent experts to have a fair market value approximately 2.5 times the Loan amount; (d) Mr. Bolton will personally guarantee the Loan; (e) Drugge, the Plan's independent fiduciary, has determined that the transaction is appropriate for the Plan and in its best interests; (f) Drugge will monitor the transaction and take whatever action is necessary to enforce the Plan's rights under the Loan; and (g) Mr. Bolton is the only participant in the Plan to be affected by the transaction, and he desires that the transaction be consummated.

*Notice to Interested Persons:* Since Mr. Bolton is the only Plan participant to be affected by the proposed

transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### *General Information*

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of November 1996.

Ivan Strasfeld,

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration.*  
[FR Doc. 96-29900 Filed 11-22-96; 8:45 am]

BILLING CODE 4510-29-P

---

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

---

### **Notice [96-136]**

#### **NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Subcommittee on Propulsion Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee, Subcommittee on Propulsion meeting.

**DATES:** December 11, 1996, 8:30 a.m. to 5 p.m.; and December 12, 1996, 8:30 a.m. to 4 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carol J. Russo, National Aeronautics and Space Administration, Lewis Research Center, Building 86, Room 100, 21000 Brookpark Road, Cleveland, OH 44135, 216/433-2965.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- NASA Aeronautics Program Overviews
- NASA Lewis Aeropropulsion Overview
- Restructured Base Overview
- Materials & Structures ARTS Overview

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: November 18, 1996.

Leslie M. Nolan,

*Advisory Committee Management Officer.*

[FR Doc. 96-29995 Filed 11-22-96; 8:45 am]

BILLING CODE 7501-01-M