U.S. Department of Labor Pension and Welfare Benefits Administration
Washington, D.C. 20210

AUG 18 1989 89-18A

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RE: General Electric Investment Corporation
Identification Number: F-3537A

Dear Mr. Vine:

This is in response to your letter of November 17, 1986, in which you request an advisory opinion that a certain sale of securities from the General Electric Pension Trust (the Trust) to an underwriting syndicate of which Kidder, Peabody & Co. Incorporated (Kidder) was a member was not a prohibited transaction within the meaning of section 406 of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975 of the Internal Revenue Code of 1986 (the Code).

Under Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code has been transferred, with certain exceptions, to the Secretary of Labor. Therefore, the references in this letter to specific sections of ERISA refer also to the corresponding sections of the Code.

You represent that General Electric Corporation (GE) and its subsidiaries have adopted the Trust to hold, manage, and invest the assets of two defined benefit pension plans (the Plans) maintained by GE and its subsidiaries. The Plans cover approximately 397,000 participants and beneficiaries. The investment policies of the Plans are determined by GE's Benefit Plans Investment Committee ("BPIC") whose members are appointed by GE's Board of Directors. Each member is currently an officer and/or employee of GE. BPIC appoints the trustees of the Plans, all of whom are currently officers of General Electric Investment Corporation (GEIC), a wholly-owned subsidiary of GE. GEIC directs the investment of all but approximately $1 billion of the Trust's total assets of $14.4 billion, pursuant to an investment advisory agreement between GEIC and the trustees. GEIC is a registered investment adviser under the Investment Advisers Act of 1940.

You further represent that General Electric Financial Services, Inc. (GEFS), a wholly-owned subsidiary of GE, acquired an 80% interest in Kidder, a registered broker-dealer, on June 11, 1986. The acquisition was accomplished pursuant to stockholder agreements (the Agreements) in which Kidder stockholders agreed to tender their shares to GEFS. General Electric announced the proposed purchase of Kidder on April 25, 1986.

You further represent that on June 10, 1986, one day prior to the acquisition of Kidder by GEFS, but after holders of more than 50% of Kidder's then-outstanding stock had entered into the Agreements, the Trust sold part of its 5.9% equity interest in Pannill Knitting Company (Pannill Knitting) to members of an underwriting syndicate for the public offering of Pannill Knitting securities. The decision to sell the Pannill Knitting securities was made by GEIC. Kidder was one of approximately 120 members in the underwriting syndicate. You indicate that the underwriting was accomplished on a "firm commitment" basis in which the underwriting syndicate guaranteed to purchase the entire issue at a stated price. You represent that the price at which the Trust sold its Pannill Knitting securities, which represented 5.87% of the total number of shares sold pursuant to the offering, was the same price at which the other participants in the offering sold their Pannill Knitting securities.

You represent that the membership of the Pannill Knitting underwriting syndicate was not fixed until one day before the registration statement became effective. You further represent that, at the time of the sale, the fiduciaries of the Trust were unaware that Kidder would be a member of the underwriting syndicate and that they remained unaware until August, 1986 when the final prospectus was received and reviewed by counsel.

The provisions of ERISA section 406(a)(1)(A) and (D) prohibit a plan fiduciary from causing the plan to engage in a transaction if the fiduciary knows or should know that the transaction constitutes a direct or indirect sale or exchange or leasing of any property between the plan and a party in interest, or a transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. ERISA section 406(b)(1) further prohibits a plan fiduciary from dealing with the assets of the plan in the fiduciary's own interest or for the fiduciary's own account.

The term "party in interest" is defined in ERISA section 3(14)(C) as an employer any of whose employees are covered by the plan, and is further defined in ERISA section 3(14)(G) as a corporation of which 50 percent or more of the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation is owned directly or indirectly by an employer any of whose employees are covered by the plan.

It is the view of the Department that the existence of one or more stockholder agreements to tender a majority of shares of a corporation to an unrelated employer, or a wholly-owned affiliate of such employer, at a future date, does not, in itself, create a party in interest relationship within

the meaning of section 3(14) of ERISA between the corporation to be acquired and a plan sponsored by that employer. The Department is of the opinion, therefore, that Kidder was not a party in interest with respect to the Trust under section 3(14)(G) of ERISA at the time the Trust sold its Pannill Knitting securities. The question of whether or not Kidder was a party in interest with respect to the Trust under any other provision of section 3(14) is inherently factual in nature and thus not addressed in this opinion.

To the extent that Kidder was not otherwise a party in interest at the time of the sale by the Trust, it is the Department's view that the sale by the Trust of the Pannill Knitting securities to an underwriting syndicate of which Kidder was a member did not constitute a prohibited transaction under section 406(a)(1)(A) of ERISA.[1]

This conclusion concerning section 406(a)(1)(A) of ERISA does not preclude an examination of the facts and circumstances surrounding the transaction to determine whether it was part of an agreement, arrangement or understanding in which a fiduciary caused plan assets to be used in a manner designed to benefit a party in interest in violation of section 406(a)(1)(D) of ERISA as interpreted by 29 CFR 2509.75-2. The Department further notes that if the transaction was part of an arrangement, agreement, or understanding designed by a fiduciary to benefit itself (or any persons in which such fiduciary had an interest which affected the exercise of its best judgment as a fiduciary), such arrangement, agreement or understanding would contravene section 406(b)(1) of ERISA. Because of the inherently factual nature of this question, the Department is not in a position to issue an opinion with regard to it.

This letter is an advisory opinion under ERISA Procedure 76-1 (ERISA Proc. 76-1, 41 FR 36281, August 27, 1976). Section 10 of the procedure explains the effect of an advisory opinion.

Sincerely,

Robert J. Doyle
Director for Regulations and Interpretations

[1] We assume, for purposes of this ruling, that no other member of the syndicate was a party in interest with respect to the Trust, or that an administrative exemption was otherwise available for such other member. In this regard, see Prohibited Transaction Exemption 75-1 (44 FR 50845, October 31, 1975).