

1993 (the Rehab Plan). On or about December 1, 1993, each ELIC contract holder was provided with an election form and a summary of the Rehab Plan. Under the Rehab Plan, ELIC guaranteed investment contracts were reduced in value to approximately 79% of the Accumulated Book Value as of the Conservation Date and each holder of such contracts was paid an amount for accumulated interest and fees for the period between the Conservation Date and September 3, 1993 (the Interim Payments). Each contract holder, including the Plans, was informed that it could elect by February 12, 1994 to

“opt in” or “opt out” of the Rehab Plan. By opting in, a contract holder would have been issued a new 5-year guaranteed investment contract issued by Aurora National Life Assurance Company (Aurora), the successor to ELIC, in an amount equal to the restructured percentage of the Accumulated Book Value as of the Conservation Date, plus the right to receive possible distributions from certain trusts and settlements that may occur in the liquidation of ELIC. Opting out of the Rehab Plan would have resulted in a cash settlement, payment of which would be made by immediate

payments and future payments from an Allocation Holdback Trust, plus the right to receive possible distributions from certain trusts and settlements that may occur in the liquidation of ELIC.

6. After reviewing the Rehab Plan materials supplied by ELIC, Lumber elected to “opt in” with respect to the GICs. As a result, the Plans’ GICs were replaced, effective February 27, 1994, with the Aurora GICs in accordance with the approved Rehab Plan. A comparison of the terms of the ELIC GICs and the Aurora GICs is set forth below:

	ELIC GIC	Aurora GIC
1. Profit sharing plan:		
Contract number	CG0214601A	CG01246A1A
Maturity date	9/25/92	9/3/98
Account value	\$2,000,000	\$1,280,487
Guaranteed interest rate	9.92%	5.61%
2. Savings Plan:		
Contract number	CG0214701A	CG01247A1A
Maturity date	9/25/92	9/3/98
Account value	\$1,000,000	\$640,243
Guaranteed interest rate	19.92%	5.61%

7. As the chart indicates, the present account value of the Aurora GICs is substantially less than the pre-conservatorship book values of the ELIC GICs. In addition, the interest rate on the Aurora GICs is substantially less than the stated interest under the ELIC GICs. Interest received by the Plans during ELIC’s conservatorship and prior to the consummation of the Rehab Plan was also substantially less than the ELIC contract rate. The foregoing factors have resulted in a significant reduction in value and yield of the contracts held by the Plans.

8. The extended maturity date of the Aurora GICs has also had a significant impact on participants in the Plans and their beneficiaries. Under the terms of the Aurora GICs, the only payments that may be made prior to maturity are semi-annual interest payments. The only other benefit withdrawals permitted are the annuitization of benefits under the contract, which is not permitted under the Plans (which provide only a lump sum form of benefit).¹⁸ As a result, participants who terminate their employment with Lumber are not able to have their lump sum distributions paid out of the respective Aurora GICs at this time.

9. In order to permit the Plans to resume full funding of all Plan events, including distributions, withdrawals, loans, interfund transfers and fund investments, Lumber proposes to make the Loans to each of the Plans and has requested an exemption to permit the Loans under the terms and conditions described herein. The Loans will be made (i) pursuant to written agreements and (ii) as a single lump sum cash payment to each Plan (the Loan Amount).¹⁹ It is contemplated that the Loan Amount to the Profit Sharing Plan will be \$1,378,000, representing the original \$2,000,000 principal amount of that Plan’s ELIC GIC, less an Interim Payment received by the Profit Sharing Plan of \$405,852, and less payments of \$93,416 under the Aurora Replacement GIC characterized as return of principal, and certain Rehab Plan adjustments attributable to distributions from various trusts (see rep. 5, above) in the amount of \$123,033. It is contemplated that the Loan Amount to the Savings Plan will be \$689,000, representing the original principal amount of that Plan’s ELIC GIC, less an Interim Payment received by the Savings Plan of \$202,925, and less payments of \$46,708 under the Aurora Replacement GIC

characterized as return of principal, and certain Rehab Plan adjustments attributable to distributions from various trusts (see rep. 5, above) in the amount of \$61,516.²⁰ The Loans will be made as soon as practicable after the granting of the exemption proposed herein, and a closing agreement with respect thereto has been entered into between Lumber and the Internal Revenue Service. The Repayments will be limited to the cash proceeds of any payments received by the respective Plans as GIC Proceeds after the date of the Loans. Repayments are due only when GIC Proceeds are received by the Plans. No interest will be paid on the Loans. Under no circumstances will Repayments exceed the Loan Amounts, even if GIC Proceeds should exceed such amounts. At such time that Lumber learns that no further GIC Proceeds will be received, Repayments of any outstanding Loan Amounts will be waived by Lumber.

10. If the exemption proposed herein is granted, the Committees intend to value the Aurora GICs at the original principal amount of the ELIC GICs. Each frozen account would then be adjusted to reflect this new value, and the freeze placed on each participant’s account would be removed. The Plans would then resume distributions and withdrawals under the Plans with

¹⁸The applicant represents that pursuant to section 401(a)(11) of the Code, the Plans are not required to provide joint and survivor annuities. The Department expresses no opinion with respect to the applicant’s representation.

¹⁹The Department notes that this exemption, if granted, will not affect the rights of any participant or beneficiary with respect to any civil action against Plan fiduciaries for breaches of section 404 of the Act in connection with any aspect of the GIC transactions.

²⁰The Loan Amounts have been rounded to \$1,378,000 and \$689,000 for the Profit Sharing Plan and the Savings Plan, respectively.