

assets in the M Fund is the GIC, a single-deposit, non-benefit-responsive guaranteed investment contract issued to the Plan on February 2, 1990 by Confederation Life, a Canadian life insurance company doing business in the United States through subsidiaries in Michigan and Georgia. The GIC was purchased by the Plan for an initial principal deposit of \$250,000 (the GIC Principal), which earns interest at the rate of 9.18 percent per annum (the Contract Rate). The GIC terms provide for annual interest payments (the Annual Payments) on February 1 each year, commencing 1991 through 1995. All Annual Payments through 1994 have been made by Confederation Life and received by the Plan. The GIC provides for no pre-maturity withdrawals of principal, and has a maturity date of February 1, 1995 (the Maturity Date). Upon the Maturity Date, the Plan is due a final Annual Payment plus the total GIC Principal, for a total of \$272,950 (the Maturity Payment).

3. On August 12, 1994, Confederation life was placed in receivership (the Receivership) pursuant to rehabilitation proceedings by the State of Michigan.⁶ Consequently, Confederation Life's assets and operations were frozen, and payments on all its guaranteed investment contracts were suspended effective as of the Receivership commencement. The Employer represents that under the prevailing circumstances, it is unlikely that the Maturity Payment will be made to the Plan when due on February 1, 1995. The Employer is also concerned that the Plan may never recover the full Maturity Payment in its entirety. The Employer desires to protect Plan participants and beneficiaries from any loss resulting from the Receivership, by purchasing the GIC from the Plan, if allowable, or by lending the Plan the amount of the Maturity Payment, if the purchase is not allowable. The Employer is requesting an exemption for such transactions under the terms and conditions described herein.

4. The Employer prefers to purchase the GIC from the Plan on February 1, 1995 for the amount of the Maturity Payment due the Plan on that date. However, the terms of the GIC include a prohibition against assignment of the GIC. The Employer and the Trustee represent that they have initiated the process of obtaining a release from this

contractual prohibition. If a release is obtained to enable the GIC's transfer to the Employer, the Employer will purchase the GIC on February 1, 1995 for cash in the amount of the Maturity Payment due on that date. The Plan will incur no expenses with respect to this proposed sale transaction.

In the event the parties are unable to obtain a release from the prohibition on assignability of the GIC, on February 1, 1995 the Employer will make a cash loan to the Plan (the Loan) in the amount of the Maturity Payment due on that date. The Loan will be interest-free, and the Plan will incur no expenses related to the Loan. Repayment of the Loan will be restricted to the amounts which the Plan receives from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the GIC (the GIC Proceeds). To the extent the Loan exceeds the GIC Proceeds, repayment of the Loan will be waived.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The transactions will protect the Plan from any loss on the GIC's full Maturity Payment which might result from the Receivership; (2) The Employer's proposed purchase of the GIC will be a one-time transaction for cash in which the Plan receives no less than the greater of the fair market value of the GIC or the Maturity Payment; (3) If a release is not obtained to enable the purchase of the GIC, the Plan will still receive the Maturity Payment when due, in the form of the Loan; (4) If the Loan is made, its repayment will be restricted to GIC Proceeds; (5) To the extent the Loan exceeds GIC Proceeds, the repayment of the Loan will be waived; and (6) The Plan will pay no interest or incur any expenses with respect to the proposed transactions.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Profit Sharing Plan for Employees of Annis, Mitchell, Cockey, Edwards & Roehn, P.A. (the Plan) Located in Tampa, Florida

[Application No. D-09906]

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), 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 sale by the Plan to Annis, Mitchell, Cockey, Edwards & Roehn, P.A. (the Employer), of the Plan's interest (the Interest) in a limited partnership, for \$40,000 in cash, provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) no commissions or other expenses are paid by the Plan in connection with the sale; and (c) the Plan receives not less than the fair market value of the Interest as of the date of the sale as determined by a qualified, independent expert.

Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan which currently has approximately 105 participants. As of September 30, 1994, the aggregate fair market value of the Plan's assets was \$3,378,407. The Employer is a professional association engaged in the practice of law in Tampa, Florida.

2. On June 30, 1988 the Plan acquired the Interest, which is a one-half unit of limited partnership interest in Hunter's Ridge Associates, Ltd. (the Partnership). The business of the Partnership is to acquire, own, operate, improve and otherwise deal with an apartment complex located in Winter Park, Florida. The Partnership units were not registered with the Securities and Exchange Commission or the Florida Division of Securities, but rather were privately placed. The total number of units offered and sold was 35. No shareholder or employee of the Employer individually purchased an interest in the Partnership.

3. The Plan has now been modified to permit individual investment selections by the Plan participants. The Plan's investment in the Interest is illiquid, difficult to accurately value and hard to allocate among participants. In order to improve the Plan's liquidity and to reduce accounting costs for the Plan attributable to this investment, the Plan would like to sell the Interest to the Employer.

4. If the exemption proposed herein is granted, the Plan will assign the Interest to the Employer as a substitute investor in the Partnership, in exchange for a lump sum cash payment equivalent to the current fair market value of the Interest from the Employer. Participants' accounts will receive an allocation in cash exactly equal to the most recent valuation of the Interest. No broker fees

⁶The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.