

examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (c)(1)(ii)-(t)(1)(iv) of this paragraph (c)(1) are authorized to examine the trade secrets of SEB or its affiliates or commercial or financial information which is privileged or confidential.

Section V. Definitions

(a) An "affiliate" of a person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director or employee, or in which such person is a partner.

(b) The term "borrower" includes SEB and any other affiliate of SEB that now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or U.S. bank.

Effective Date: This exemption is effective as of October 23, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on May 5, 2003 at 68 FR 23768.

Written Comments

The Department received one written comment with respect to the Notice. The comment letter, which was submitted on behalf of SEB by its outside legal counsel, is intended to modify the Summary of Facts and Representations (the Summary) of the Notice, as discussed below.

1. *Footnote 6.* On page 23770 of the Notice, SEB states that Footnote 6 of the

Summary contains a reference to a non-existent "Footnote 2." SEB explains that the correct reference should have been to another footnote, *i.e.*, "Footnote 4," which describes the tax implications of foreign securities lending on an investing Plan.

2. *Representation 18.* On page 23374 of the Notice, the first sentence of Representation 18 of the Summary states, in part, that "in the event a loan is terminated and the Borrower fails to return the borrowed securities, or the equivalent thereof, within the time described in Representation 18 above, the Plan may purchase securities identical to the borrowed securities * * *." SEB notes that the reference should be to "Representation 17" rather than to "Representation 18."

3. *Representation 32.* On page 23777 of the Notice, in Representation 32 of the Summary, the last sentence of the fourth paragraph states, that "the Applicant concludes that a Plan can bring an enforcement action, under an expedited procedure, on a foreign money judgment in New York to attach the assets of SEB's New York branch located in New York." For purposes of clarification, SEB suggests that the word "often" be inserted before the phrase "under an expedited procedure." As a result, the sentence would now read as follows:

* * * Thus, the Applicant concludes that the Plan can bring an enforcement action, often under an expedited procedure, on a foreign money judgment in New York to attach the assets of SEB's New York branch located in New York.

The Department concurs with SEB's comments and suggested changes, and it takes note of the foregoing revisions to the Notice. In addition, the Department has revised Footnote 4 of the operative language to reflect the correct footnote reference.

Accordingly, after giving full consideration to the entire record, including SEB's written comment, the Department has decided to grant the exemption, as modified herein.

For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11133) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For Further Information Contact: Ms. Blessed ChukSORJI of the Department, telephone (202) 693-8567. (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 or disqualified person from certain other 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) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 19th day of June, 2003.

Ivan Strasfeld,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
Department of Labor.*

[FR Doc. 03-15929 Filed 6-23-03; 8:45 am]

BILLING CODE 4510-29-P