

DEPARTMENT OF LABOR**Employee Benefits Security Administration**

[Prohibited Transaction Exemption 2003–19
Application No. D–11122]

Grant of Individual Exemption To Replace Prohibited Transaction Exemption 97–63 (PTE 97–63) Involving State Street Bank and Trust Company (State Street) Located in Boston, MA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Grant of individual exemption to replace PTE 97–63.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) which replaces PTE 97–63 (62 FR 66689, December 19, 1997). This exemption permits securities lending transactions between State Street, its United States (U.S.) domiciled affiliates, and certain employee benefit plans (the Client Plan(s)) and/or commingled investment funds holding plan assets (CIF(s)); provided State Street, through any division or U.S. affiliate of State Street or of its parent acts as securities lending agent (or sub-agent). This exemption also permits receipt of compensation by a U.S. registered introducing broker affiliated with State Street (the Introducing Broker) in connection with an arrangement whereby securities are lent to an unrelated U.S. registered broker-dealer (the Clearing Broker) who in turn lends such securities to clients of the Introducing Broker; provided that certain conditions are satisfied.

In addition, this exemption incorporates various modifications to specific terms and conditions of PTE 97–63. The replacement of PTE 97–63 affects the participants and beneficiaries of the Client Plans participating in securities lending transactions and the fiduciaries with respect to such Client Plans.

EFFECTIVE DATE: This exemption is effective as of February 6, 2003, the date when the Notice of Proposed Exemption (the Notice) was published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone number (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 6, 2003, the Department published in the **Federal Register** the

notification that it was considering replacing PTE 97–63.

PTE 97–63 provides an exemption from certain prohibited transaction restrictions of section 406 of the Act and from the sanctions resulting from the application of section 4975 of the Code, as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 97–63 provides relief from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(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, for:

(1) The lending of securities to State Street, acting through its Financial Markets Group (FMG) (formerly the Money Market Division of the Capital Markets Area) or acting through any other division or U.S. affiliate of State Street that is a successor to the activities of FMG; and for the lending of securities to any U.S. registered broker-dealer affiliated with State Street (the Affiliated Broker Dealer(s)) by certain Client Plans (the Client Plans or the Client Plan), including commingled investment funds holding plan assets, for which State Street, through its Master Trust Services Division, acts as directed trustee or custodian, and for which State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent), and (2) the receipt of compensation by GSL in connection with such securities lending transactions; provided that certain conditions are satisfied.

The exemption was requested in an application filed on behalf of State Street and its U.S. affiliates (the Applicants), pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1, 1995) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is issued solely by the Department.

In the notice, the Department invited all interested persons to submit written comments and/or requests for hearing on the proposed replacement of PTE 97–63 within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on February 6, 2003. All comments and/or requests for a hearing were due by March 24, 2003.

By letter dated April 30, 2003, the Applicants confirmed that a copy of a

cover letter, a copy of the Notice, and a copy of the Supplemental Statement (the Supplemental Statement), as described at 29 CFR 2570.43(b)(2) of the Department's regulations, were delivered by first class mail on or before February 21, 2003, to each known sponsor of a Client Plan that on that date was a direct client of GSL, informing the sponsors of such Client Plans of the right to comment and/or request a hearing by March 24, 2003. Such Client Plans are interested persons with respect to the transactions which are the subject of this exemption.

In a telephone conversation on February 20, 2003, the Applicants identified other interested persons with respect to the transactions which are the subject of this exemption. In this regard, the Applicants informed the Department that a Client Plan which participates in an index fund (the Index Fund(s)) or a model-driven fund (the Model-Driven Fund(s)) managed by State Street or any division or U.S. affiliate of State Street would also be an interested person. The Applicants further indicated that notification to Client Plans that participate in Index Funds or Model-Driven Funds, including a copy of the cover letter, a copy of the Notice, and a copy of the Supplemental Statement, would not be mailed until March 6, 2003. In light of the fact that the notification to the Client Plans that participate in Index Funds or Model-Driven Funds managed by State Street or any division or U.S. affiliate of State Street would not be provided until March 6, 2003, and in order to give all interested persons the benefit of the full thirty (30) day comment period the Department required, and the Applicants agreed to, an extension until April 10, 2003, of the deadline when comments and/or requests for hearing would be due on the proposed exemption.

In a telephone conversation on April 3, 2003, the Applicants informed the Department that: (1) The notification to some Client Plans that participate in Index Funds or Model-Driven Funds managed by State Street or any division or U.S. affiliate of State Street was mailed on March 7, 2003, rather than on March 6, 2003; (2) the notification indicated that the comment period would close on April 7, 2003, rather than April 10, 2003, as agreed to by the Applicants; and (3) a cover letter attached to the notification included a few sentences that deviated from the form of the cover letter that had been previously approved by the Department.

In light of the above, and in order to give all interested persons an opportunity to comment and/or request