

a hearing on the proposed exemption, the Department required, and the Applicants agreed, that 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 again be notified of the pendency of the Notice in the **Federal Register**. It was agreed that: (1) Such notification would be sent by a first class mailing to the fiduciary of each Client Plan that participates in an Index Fund or a Model-Driven Fund managed by State Street or any division or U.S. affiliate of State Street; (2) such mailing would contain a copy of a cover letter the contents of which was approved by the Department in advance; and (3) such mailing would contain a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2). The Department determined that, as 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 had already received a copy of the Notice in the mailing on March 6, or March 7, 2003, that it was not necessary for the Applicants to include an additional copy of the Notice in this second mailing; provided that the cover letter included: (1) An offer from the Applicants to provide another copy of the Notice upon request; and (2) a website address where a copy of the Notice could be found.

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 May 15, 2003, of the deadline when comments and/or requests for hearing would be due on the proposed exemption.

The Applicants confirmed by letter dated April 30, 2003, that a copy of the cover letter and a copy of the Supplemental Statement were delivered by first class mail on or before April 15, 2003, to each known sponsor of a Client Plan that on that date was invested in an Index Fund or Model-Driven Fund that was authorized to engage in securities lending activities and was managed by State Street or any division or U.S. affiliate of State Street. The sponsors of such Client Plans were informed of the right to comment and/or request a hearing by May 15, 2003.

During the comment period the Department received no requests for a hearing. However, the Department did receive several comment letters from the Applicants. In this regard, in a letter dated March 7, 2003, the Applicants requested certain changes to the operant language of the exemption, as published in the Notice. Subsequently, in letters

dated April 1, April 30, and May 21, 2003, the Applicants clarified the position taken in their March 7, 2003, comment letter.

A discussion of the points raised in the Applicants' comment letters, as clarified, and the Department's response, thereto are set forth in the numbered paragraphs below.

1. The Applicants requested an amendment to the language of section II(e) of the exemption. In this regard, the Applicants asked that the words, "on the following day," as set forth in the Notice, on page 6202, column 3, line 20, be revised to read "on the following business day." The Applicants maintain that this change would be consistent with both the corresponding references to "business day," in section II(e) of the Notice, on page 6202, column 3, on lines 8 and 13, and consistent with the practical realities of operating a securities lending program.

The Department concurs and in the final exemption has amended the language of section II(e), accordingly.

2. The Applicants requested that the exemption be modified to permit the indemnification required by section II(g) of the exemption to be provided by State Street's parent corporation. In this regard, the Applicants asked that the phrase, "State Street will agree to indemnify," as set forth in section II(g) of the notice, on page 6202, column 3, line 41, be revised to read "State Street or its parent corporation will agree to indemnify." Subsequently, in a letter, dated April 1, 2003, State Street withdrew the request.

The Department concurs with the withdrawal of the Applicants' request.

3. The Applicants requested a change in the language of section II(j)(1) and section II(j)(2), as set forth in the notice, in the following locations:

(a) In section II(j)(1) on page 6203, column 1, lines 39–40;

(b) in section II(j)(2) on page 6203, column 1, lines 64–66; and

(c) in section II(j)(2) on page 6203, column 2, lines 4–6. In this regard, the Applicants, asked that in each of these locations the phrase, "the fiduciary responsible for making the investment decision," be revised in the final exemption to read, "the fiduciary responsible for making the decision to authorize the Client Plan to engage in securities lending." In the opinion of the Applicants, this change would more accurately describe the appropriate fiduciary contemplated in these sections and would also cause the fiduciary referred to in these provisions to be the same as the fiduciary referred to in other sections of the exemption (e.g., the

fiduciary described in section II(b) of the exemption).

In a letter dated, April 30, 2003, the Applicants submitted a revision of their requested wording of section II(j)(1) and (j)(2). In this regard, the Applicants believe that in the context of securities lending the revised wording would be consistent with the actual operation of entities (the Entities), as described in section II(j), including a master trust, a group trust, or other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 of the Department's regulations. In particular, the Applicants believe that the language of section II(j) of the notice, as drafted, incorrectly focuses on the fiduciary who is responsible for making investment decisions on behalf of such Entities. In the opinion of the Applicants, the focus should be on the fiduciary who is making the decision to authorize such Entities to engage in securities lending, to retain GSL as the lending agent, and to authorize the loans made pursuant to the subject exemption, whether or not such fiduciary makes "investment decisions" with respect to the assets involved in the securities lending program. Accordingly, the Applicants propose that the language of section II(j), as set forth in the notice on page 6203, column 1, lines 40, 44, 47, 65–66; and on page 6203, column 2, lines 4–6, 8–11, and 14–15, be revised as set forth below. Words that have been stricken from the text of the notice appear in closed brackets, and additions to the text of the notice appear in bold italics.

(j) Only Client Plans with total assets having an aggregate market value of at least \$50 million will be permitted to lend securities to the SSB Group or to the Clearing Broker, as applicable; provided, however that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in a securities lending arrangement with GSL, the foregoing \$50 million requirement shall be deemed satisfied, if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that if the fiduciary responsible for [making the investment decision] **authorizing the securities lending arrangement with GSL** on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its overall management and control, exclusive of the \$50 million threshold amount attributable to plan investment in [the] **such** commingled entity, which are in excess of \$100 million.

(2) In the case of two or more Client Plans which are not maintained by the same