

employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are “plan assets” under the Plan Asset Regulation, which entity is engaged in a securities lending arrangement with GSL, the foregoing \$50 million requirement is satisfied, if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for [making the investment decision] **authorizing the securities lending arrangement with GSL** on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Client Plan or an employee organization whose members are covered by such Client Plan) [However], **provided** that the fiduciary responsible for [making] **authorizing** the [investment decision] **securities lending arrangement** on behalf of such group trust or other entity—

[(A) Has full investment responsibility with respect to plan assets invested therein; and

(B) Has] **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 **and the assets referred to in the foregoing parenthetical**, which are in excess of \$100 million.

The Department continues to believe that the appropriate focus in section II(j) is the investment manager of the Entities described therein, 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. Accordingly, the Department has not changed the language, section II(j), as set forth in the final exemption, with the exception that throughout section II(j), the terms, “Client Plan(s),” “employee benefit plan(s)” or “plan(s),” have been used where appropriate.

4. The Applicants have requested an amendment of the language of section II(p). Section II(p), as set forth in the notice, on page 6204, column 1, lines 8–28, reads as follows:

If an independent fiduciary of a Client Plan has given the initial affirmative authorization and approval for such plan to engage in securities lending transactions, pursuant to the terms of PTE 97–63, or pursuant to section II(b), above, of this exemption, then any subsequent authorization or approval contemplated under this exemption shall be deemed to have been given, if such independent fiduciary has not objected in writing to GSL within 30 days following disclosure to the independent fiduciary of all material information required in connection with said authorization or approval, a statement appraising the independent fiduciary that PTE 97–63 has been replaced by this exemption, and a copy of this Notice, and a copy of the final exemption, if granted.

In this regard, the Applicants wish to clarify what information must be provided to independent fiduciaries in connection with any subsequent authorization or approval, pursuant to section II(p) of the subject exemption. It is the Applicants’ view that only in the case of an independent fiduciary whose initial authorization was obtained pursuant to PTE 97–63 that the provision of the statement appraising the independent fiduciary that PTE 97–63 has been replaced by the subject exemption and the disclosure of the additional information (*i.e.*, a copy of the notice and a copy of the final exemption) would be relevant. In this regard, the Applicants maintain that any independent fiduciary whose initial authorization was given pursuant to the subject exemption would have already been provided a copy of the Notice and a copy of the final exemption, in accordance with section II(i). In addition, the statement indicating that PTE 97–63 has been replaced would be irrelevant to any independent fiduciary whose initial authorization was given pursuant to the subject exemption.

Accordingly, the Applicants requested that the language of section II(p), as set forth in the Notice, on page 6204, column 1, lines 23–28 be amended: (1) To insert a period between the word, “approval,” and the words, “a statement;” (2) to delete the phrase:

A statement appraising the independent fiduciary that PTE 97–63 has been replaced by this exemption, and a copy of this Notice, and a copy of the final exemption, if granted;

and (3) to substitute the following phrase:

In the case of an independent fiduciary whose initial authorization was pursuant to PTE 97–63, the independent fiduciary should, in connection with its initial authorization to lend securities pursuant to this exemption, be provided a statement indicating that PTE 97–63 has been replaced by this exemption, a copy of this notice, and a copy of the final exemption, if granted.

Subsequently, based upon a conversation with the Department, the Applicants in a letter dated April 1, 2003, substituted the following revised wording for the language quoted in item (3), above:

In addition, before an independent fiduciary, whose initial authorization was given pursuant to PTE 97–63, may give its first subsequent authorization or approval under this exemption in accordance with the procedures contained in this section II(p), such independent fiduciary must be provided with a statement indicating that PTE 97–63 has been replaced by this exemption, a copy of this Notice, and a copy of the final exemption, if granted.

In order to maintain consistent language throughout the exemption, the Department has determined in the final exemption to adopt the following wording for section II(p):

In addition, before an independent fiduciary of a Client Plan (and/or the independent fiduciary of a CIF, as applicable), whose initial authorization was given pursuant to PTE 97–63, may give its first subsequent authorization or approval under this exemption in accordance with the procedures contained in this section II(p), such independent fiduciary must be provided with a statement indicating that PTE 97–63 has been replaced by this exemption, and a copy of the Notice, and a copy of the final exemption.

5. The Applicants requested amendment of the language of section II(a), section III(d), and section III(e), as set forth in the Notice, in the following locations:

(a) In section II(a) on page 6202, column 1, line 9;

(b) In section III(d) on page 6205, column 2, line 11; and

(c) In section III(e) on page 6205, column 2, line 43.

Specifically, the Applicants requested that the phrase, “managed by,” in section II(a) be revised to read “trusteed, managed, or advised by.” Further, in section III(d) and in section III(e), the Applicants requested the phrase, “trusteed, or managed by” should be revised (in both instances) to read, “trusteed, managed, or advised by.” As support for the requested changes, the Applicants point out that State Street would have even less discretionary authority with respect to an Index Fund or a Model-Driven Fund that is “advised by” State Street, as compared to the minimal degree of discretionary authority that State Street has with respect to such a fund that is “managed by” State Street.

Subsequently, in a letter dated, May 21, 2003, the Applicants withdrew their previous request and proposed that the language of section II(a), as set forth in the Notice on page 6201, column 3, lines 57–59 and on page 6202, column 1, lines 1–11, 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.

Section II(a) of this exemption will be deemed satisfied notwithstanding the fact that State Street or any division or affiliate of State Street has or exercises discretionary authority or control [or renders investment advice] in connection with an index fund (the Index Fund(s)), as defined, below, in section III(d) of this exemption, or a model-driven fund (the Model-Driven Fund(s)), as defined, below, in section III(e) of this exemption, [managed by] **as to which** State