

Street or any division or U.S. affiliate of State Street **serves as discretionary trustee or manager and** \* \* \*.

The Department concurs and in the final exemption has amended the language of section II(a), as requested in the May 21, 2003, letter from the Applicants. In addition, in order to maintain consistent language throughout the exemption, the Department has determined to make a conforming changes to the definition of the term, "Index Fund(s)," as set forth in the notice in section III(d) on page 6205, column 2, line 11; and in the definition of the term, "Model-Driven Fund(s)," as set forth in the notice in section III(e) on page 6205, column 2, line 43. Accordingly, in the final exemption, the Department has adopted the following language for section III(d) and section III(e). 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.

II(d) The term, "Index Fund(s)," refers to any investment fund, account or portfolio [sponsored, maintained, trustee, or managed by] **as to which** State Street or a U.S. affiliate **serves as discretionary trustee or manager and** in which one or more investors invest, and

(1) which is designed to track the rate of return, risk profile, and other characteristics of an Index, as defined, below, in section III(f) of this exemption, by either:

(A) replicating the same combination of securities which compose such Index, or

(B) sampling the securities which compose such Index based on objective criteria and data;

(2) for which State Street or its affiliate does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) that contains "plan assets" subject to the Act, pursuant to the Plan Asset Regulation; and

(4) that involves no agreement, arrangement, or understanding regarding the design or operation of the fund which is intended to benefit State Street or its affiliate or any party in which State Street or its affiliate may have an interest;

II(e) The term, "Model-Driven Fund(s)," refers to any investment fund, account, or portfolio [sponsored, maintained, trustee, or managed by] **as to which** State Street or a U.S. affiliate **serves as discretionary trustee or manager and** in which one or more investors invest, and

(1) which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of State Street or an affiliate, to transform an Index;

(2) which contains "plan assets" subject to the Act, pursuant to the Plan Asset Regulation; and

(3) that involves no agreement, arrangement, or understanding regarding the design or operation of the fund or the utilization of any specific objective criteria which is intended to benefit State Street, any affiliate of State Street, or any party in which State Street or any affiliate may have an interest;

6. The Department notes that the subject exemption provides relief for the lending of securities by a Client Plan or Client Plans (and/or by a CIF or CIFs, as applicable); provided State Street, through GSL, acts as securities lending agent. In order to describe the subject transaction with more clarity, the Department has decided to change the language of section I, as set forth in the notice at the following locations: (a) In section I(a)(2) on page 6201, column 2, line 58; (b) in section I(a)(2) on page 6201, column 3, line 2; and (c) in section I(c) on page 6201, column 3, lines 31–32. Accordingly, in the final exemption, the Department has adopted the following language for section I(a)(2) and section I(c). 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.

I(a)(2) to any U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealer(s)); by an employee benefit plan (the Client Plan(s)), [including any] **and/or by a** commingled investment fund holding plan assets [for which] **(the CIF(s)); provided** 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);

I(c) the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1) of the Code shall not apply to an arrangement whereby a U.S. registered broker-dealer affiliated with State Street (the Introducing Broker) receives compensation from **a clearing broker** (the Clearing Broker), **as defined in section III(g)**, in connection with, or as a direct or indirect result of, the lending of securities to the Clearing Broker by [an employee benefit plan] **a Client Plan (and/or a CIF, as applicable)**, for which GSL acts as securities lending agent; provided that the conditions, set forth in section II, below, are satisfied.

Further, throughout the notice, many references are made to the term, "Client Plan(s)." For some such references, the Department intended the term to include both a Client Plan and a CIF. For other such references, the Department intended the term only to refer to a Client Plan and not to a CIF. To eliminate ambiguity, the Department has determined to change the language, as set forth in the notice. Accordingly,

throughout the final exemption, the Department has used the phrase, "a Client Plan (and/or a CIF, as applicable)."

For further information regarding the matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11122) that the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received from the Applicants by the Department are made available for public inspection in the Public Disclosure Room of the Employee Benefit Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption to replace PTE 97-63, as amended.

#### 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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an