

administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) This exemption is subject to the express condition that the Summary of Facts and Representations, as set forth in the notice, and the Summary of Facts and Representations, as set forth in the notice of Proposed Exemption relating to PTE 97-63, accurately describe the material terms of the transactions to be consummated pursuant to this exemption.

Exemption

Based on the facts and representations set forth in the application, under the authority of 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), the Department of Labor (the Department) hereby replaces Prohibited Transaction Exemption 97-63 (PTE 97-63), as set forth below.

I. Transactions

(a) 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 4975(c)(1)(A) through (E) of the Code,¹ shall not apply to the lending of securities:

(1) to State Street Bank and Trust Company (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 United States (U.S.) domiciled affiliate, as defined in this exemption in section III(a)(1), below, of State Street that is a successor to the activities of FMG; or

(2) to any U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealer(s));² by an employee benefit plan (the Client Plan(s)), and/or by a commingled investment fund holding plan assets (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);³

(b) 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 4975(c)(1)(A) through (E) of the Code, shall not apply to the receipt of compensation by GSL in connection with any securities lending transaction, as described, above, in section I(a) of this exemption; and

(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 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.

II. Conditions

Section I of this exemption applies only if the conditions of Section II of this exemption are satisfied.

(a) Neither State Street, the SSB Group, GSL, the Clearing Broker, nor any other division or U.S. affiliate of State Street or of the Clearing Broker has or exercises discretionary authority or control with respect to the investment of the assets of a Client Plan (and/or a CIF, as applicable), involved in the transactions which are the subject of this exemption (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), nor renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to such assets, including decisions concerning the acquisition or disposition of securities available for loan by a Client Plan (and/or a CIF, as applicable).

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 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, as to which State Street or any division or U.S. affiliate of State Street serves as discretionary trustee or manager and in which Client Plans (and/or CIFs, as applicable) invest. An Index Fund or a Model-Driven Fund with multiple Client Plan (and/or CIF, as applicable) investors is referred to herein as a commingled Index Fund or a commingled Model-Driven Fund (the Commingled Index Fund(s) or the Commingled Model-Driven Fund(s));

(b) Except as otherwise provided, below, in section II(q) of this exemption with respect to Commingled Index Funds or Commingled Model-Driven Funds, before a Client Plan (and/or a CIF, as applicable) participates in a securities lending program, and before any loan of securities to the SSB Group or the Clearing Broker is effected, pursuant to this exemption, the fiduciary of the Client Plan (and/or the fiduciary of the CIF, as applicable) who is independent of State Street, GSL, the SSB Group, the Clearing Broker, and any other division or affiliate of State Street or the Clearing Broker must have:

(1) Authorized and approved the securities lending authorization agreement with GSL (the Agency Agreement), where GSL is acting as the direct securities lending agent; or

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where GSL is lending securities under a sub-agency arrangement with the primary lending agent;⁴ and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan (and/or CIF, as applicable) and the SSB Group or the Clearing Broker, as applicable, the specific terms of which are negotiated and entered into by GSL;

(c)(1) Each Client Plan (and/or CIF, as applicable) may terminate the Agency Agreement or the Primary Lending Agreement at any time, without penalty to such Client Plan (and/or CIF, as applicable), on five (5) business days notice, whereupon the borrower shall deliver certificates for securities

¹ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

² FMG, any division or U.S. affiliate of State Street that becomes a successor to the activities of FMG, and the Affiliated Broker Dealers are collectively referred to, herein, as "the SSB Group."

³ For the sake of simplicity, future references to GSL's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent, and references to Client Plans (and/or CIFs, as applicable) should be deemed to refer to Client Plans (and/or CIFs, as applicable) for which GSL is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of reference.

⁴ The Department, herein, is not providing relief for securities lending transactions engaged in by primary lending agents, other than GSL, beyond that provided, pursuant to Prohibited Transaction Exemption 81-6 (PTE 81-6) (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and Prohibited Transaction Exemption 82-63 (PTE 82-63) (47 FR 14804, April 6, 1982).