

examination, such records as are necessary to enable the persons described, below, in section II(t)(1), to determine whether the conditions of this exemption have been met, except that—

(1) This record-keeping condition shall not be violated if, due to circumstances beyond the control of State Street and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than State Street and its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by section II(t)(1) of this exemption; and

(t)(1) Except as provided in section II(t)(2), below, of this exemption and notwithstanding any provisions of sections (a)(2) and (b) of section 504 of the Act, the records referred to in section II(s) of this exemption are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Client Plan, (and/or a CIF, as applicable), or a State Street Plan, or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan, State Street Plan, or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, State Street Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in section II(t)(1)(B)–(t)(1)(D) are authorized to examine the trade secrets of State Street or its affiliates or commercial or financial information which is privileged or confidential.

### III. Definitions

For purposes of this exemption, the following definitions shall apply:

(a) The term, “affiliate” or “affiliates,” means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee;

(b) The term, “control,” means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term, “State Street Plan(s),” refer to employee benefit plans covered by the Act sponsored and maintained by State Street and/or an affiliate for its own employees;

(d) The term, “Index Fund(s),” refers to any investment fund, account or portfolio 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;

(e) The term, “Model-Driven Fund(s),” refers to any investment fund, account, or portfolio 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;

(f) The term, “Index,” refers to a securities index that represents the

investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers;

(2) the index is created and maintained by an organization independent of State Street; and

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of State Street; and

(g) The term, “Clearing Broker,” means a U.S. broker-dealer registered under the Securities Exchange Act of 1934 that is unrelated to State Street or its affiliates, that has net capital equal to at least \$10 million and that regularly serves as a clearing broker for introducing brokers in the ordinary course of its business, but only in the context, and to the extent, of its service as a clearing broker for an Affiliated Broker Dealer that is acting as introducing broker.

For a complete statement of the facts and representations supporting the Department’s decision to grant PTE 97–63, refer to the proposed exemption (62 FR 51684, October 2, 1997) and the final exemption (62 FR 66689, December 19, 1997). For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption replacing PTE 97–63, refer to the notice (68 FR 6197, February 6, 2003).

Signed at Washington, DC, this 19th day of June, 2003.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
Department of Labor.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application No. D–11079, et al.]

### Proposed Exemptions; Kinder Morgan, Inc.

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed exemptions.