

persons are also invited to submit comments and/or hearing requests to EBBSA by email to: moffitt.betty@dol.gov or by fax at (202) 219-0204 by the end of the scheduled comment period. All comments received will be available for public inspection in the Public Disclosure Room, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Allison Padams Lavigne, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8540 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed class exemption that would amend and incorporate PTEs 81-6 and 82-63 into a new class exemption and would expand the existing relief from the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code to additional parties under modified conditions.¹ Notice is also hereby given of the pendency before the Department of a proposed revocation of PTEs 81-6 and 82-63.

The proposed exemption was requested in two applications. One was submitted by the American Bankers Association (ABA) (D-08295)² and the second application was submitted by the Robert Morris Associates, now known as the Risk Management Association (RMA) (D-10365). The applications were filed pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990.)

Background

PTE 81-6 provides relief from section 406(a)(1)(A) through (D) of ERISA and Code section 4975(c)(1)(A) through (D) for the lending of securities by employee benefit plans to banks and

broker-dealers registered under the Securities Exchange Act of 1934, who are parties in interest with respect to such plans. The exemption was amended in 1987 to include broker-dealers exempted from registration as dealers in exempted government securities, provided that all other conditions of the exemption are met.

Securities lending transactions generally operate in the following manner. An institutional investor, such as a plan, lends securities from its portfolio to a broker-dealer or bank in order to augment the return on those securities while continuing to enjoy the benefits of owning the securities (e.g., from the receipt of any interest, dividends, or other distributions made on the loaned securities and from any appreciation in the value of the securities). The lender generally requires that the securities loaned be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. If the borrower deposits cash collateral, the lender invests the collateral, and the borrowing agreement may provide that the lender pays the borrower a previously-agreed upon rebate and keeps the earnings on the collateral. If the borrower deposits government securities, the borrower is entitled to the earnings on its deposited securities and pays the lender a lending fee. If the borrower deposits bank letters of credit as collateral, the borrower pays the lender a fee as compensation for the loan of its securities.

PTE 82-63 exempts certain compensation arrangements for the provision of securities lending services by a plan fiduciary to an employee benefit plan, provided that: the loan of securities is not prohibited by section 406(a); the lending fiduciary is authorized to engage in lending transactions on behalf of the plan; the compensation is reasonable and is paid in accordance with terms of a written instrument; the compensation arrangement is approved by an independent fiduciary; and the authorization is provided only after the independent fiduciary has received all information necessary to approve the arrangement with the lending fiduciary.

Currently, relief under PTE 81-6 is limited to securities lending transactions in which a plan loans securities to a U.S. broker-dealer or U.S. bank which is a party in interest to the plan. Moreover, only collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or

instrumentalities, or irrevocable bank letters of credit may be accepted by the plan. As discussed more fully below, the applicant(s) have asked the Department to extend relief to foreign broker-dealers and banks and to allow plans to accept additional forms of collateral.

Discussion of the Application

The application contains facts and representations with regard to the requested exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Applicant

The RMA is the primary association of securities lending professionals. RMA's membership is composed of approximately 2800 member institutions consisting of banks and regulatory agencies. RMA states that its purpose as an association is to foster standards and performance in the practice and management of lending and credit activities in its members and other institutions which comprise the financial service industry.

According to RMA, securities lending activities in the international business context have increased greatly. Securities commonly loaned now include U.S. and foreign corporate and government securities. Lenders are continuing to expand their global securities lending networks by becoming familiar with and lending securities located in new markets and by lending to borrowers located in new jurisdictions. The applicant represents that plans are effectively prevented from participating in securities lending transactions in foreign markets because of the limitations contained in PTE 81-6.

2. Summary of RMA's Application

Eligible Borrowers

In its original submission, RMA requested an exemption to permit employee benefit plans to lend securities to U.S. banks and broker-dealers and "exempted foreign banks and broker-dealers." RMA proposed to define "exempted foreign banks and broker-dealers" as either those subject to the laws and regulations of a country which is a member of the Organization for Economic Cooperation and Development or those which are rated with respect to their long-term creditworthiness as at least "A" by Standard & Poors or "A3" by Moody's Investors Services, Inc. RMA also requested that the permissible collateral

¹ Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (1996)) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) to the Secretary of Labor.

² The ABA requested broad relief to permit employee benefit plans to lend securities to any foreign bank or broker-dealer. In this regard, the ABA did not continue to pursue their exemption request by responding to issues raised by the Department relating to the definition of eligible borrowers and providing information on how securities markets in other countries operate as compared to those in the United States. However, the ABA's request is being addressed, in part, by this Notice which is based on exemption application D-10365.