

monthly, reporting. The Applicants maintain that this request is consistent with the approach approved by the Department in PTE 2002-45, and would make the provision of such reports to all Client Plans more administratively feasible.

The Applicants also request the addition of the following conditions to the requirements of this proposed exemption:

(1) A new section II(p) which would permit certain authorizations and approvals required or contemplated by this proposed exemption to be obtained by a negative consent procedure, provided that an initial affirmative authorization and approval was obtained from an independent fiduciary of each Client Plan. In this regard, the Applicants maintain that a requirement that affirmative approval be obtained from the independent fiduciary of each Client Plan for each change in the securities lending program imposes unnecessary administrative burdens. In the opinion of the Applicants, it is appropriate for such subsequent authorizations and approvals to be obtained by means of a procedure whereby each independent fiduciary of a Client Plan receives full disclosure of all of the required information and has a reasonable opportunity to object. Failure by an independent fiduciary to object within a prescribed time period would be deemed to constitute authorization and approval; and

(2) A new section II(q) which would set forth special authorization and approval rules in the context of certain commingled Index Funds and commingled Model-Driven Funds in which Client Plans invest and for which State Street or a U.S. affiliate serves as a trustee, custodian, and/or manager (collectively, the Commingled Index Fund(s) and the Commingled Model-Driven Funds(s)). It is represented that these special rules are appropriate in order to avoid the type of administrative burden and disruption that could result from including a requirement that an independent fiduciary of each Client Plan that participates in a Commingled Index Fund or Commingled Model-Driven Fund must give affirmative authorization or approval before a securities lending program (or a change in such program) can be implemented with respect to such fund.

Further, the Applicants have requested a special rule applicable to any employee benefit plans maintained by State Street (or a U.S. affiliate) for its own employees (the State Street Plan(s)) that participate in a Commingled Index Fund or a Commingled Model-Driven Fund. In this regard, the Applicants

have requested that in the case of a State Street Plan that has invested in a Commingled Index Fund or Commingled Model-Driven Fund, the requirement that the fiduciary be independent shall not apply; provided that at all times the holdings of all State Street Plans invested in such fund in the aggregate comprise less than 10% of the assets of such fund.

In addition, the Applicants have suggested a number of definitions for terms utilized in this proposed exemption. These definitions are set forth in section III of this proposed exemption.

Finally, the Department has determined to include the following conditions to this proposed exemption which provide additional safeguards for the Client Plans:

(1) A new section II(s) and a new section II(t) concerning the requirement that the Applicants establish and maintain certain records for a period of six years; and

(2) A new section II(o) which would require that at least 50% of the dollar value of all securities lending transactions negotiated by GSL be negotiated with borrowers unrelated to both State Street and the Clearing Broker. The language of section II(o), as set forth in this proposed exemption, tracks the language that was included in the Summary of Facts and Representations relating to PTE 97-63 (62 FR 51684, at 51686, October 2, 1997), but which did not appear in the operative language or conditions of PTE 97-63.

It is represented that the proposed exemption would be administratively feasible, because it involves identifiable transactions which will require minimal on-going monitoring by the Department. Specifically, it is represented that any loans of securities made pursuant to this proposed exemption are clearly identifiable and do not raise any issues from the perspective of administrative feasibility that are any different from the issues raised by PTE 97-63. Further, the Applicants maintain that the requested exemption incorporates approaches and concepts that the Department has utilized in other comparable contexts and has determined to be administratively feasible in those contexts.

It is represented that the proposed exemption is in the interest of affected Client Plans, because the ability to lend securities to the Clearing Broker in situations where the Affiliated Broker Dealer is acting as the Introducing Broker will enable the Client Plans to have access to the additional securities lending opportunities generated by the

prime brokerage business of the Introducing Broker. Such additional securities lending opportunities will, in turn, enable the Client Plans to generate additional securities lending revenue.

The proposed exemption is protective of the Client Plans, because it provides all of the same protections for the Client Plans as does PTE 97-63, including, without limitation, the collateral requirement contained in Condition (d) of PTE 97-63 and the indemnity requirement imposed by Condition (g) of PTE 97-63.

In summary, the Applicants represent that the proposed replacement of PTE 97-63 satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

a. The proposed exemption will be as administratively feasible as PTE 97-63 and will provide all of the same benefits and protections as PTE 97-63;

b. To the extent that securities are lent to the Clearing Broker, the Client Plans will be able to look to the creditworthiness of both the Clearing Broker (as the borrower, pursuant to the terms of the securities loan agreement) and the SSB Group (as indemnitor, pursuant to section II(g) of this proposed exemption);

c. The proposed exemption will benefit Client Plans in that it will enable them to take advantage of additional securities lending opportunities that will be generated by the prime brokerage business of the Affiliated Broker Dealer during any period that the such broker-dealer acts only as an Introducing Broker which, in turn, will permit the Client Plans to generate incremental securities lending revenue; and

d. For each Client Plan, neither the SSB Group, the Clearing Broker, nor any affiliate of the SSB Group or the Clearing Broker will have or exercise discretionary investment authority or control with respect to the investment of the assets of such Client Plan involved in the transaction or render investment advice with respect to such assets, including a Client Plan's acquisition or disposition of securities available for loan, except to the extent that State Street or a division or affiliate of State Street exercises discretionary authority or control or renders investment advice in connection with an Index Fund or Model-Driven Fund in which Client Plans invest.

Notice to Interested Persons

Notification of the publication of the notice in the **Federal Register** will be mailed by first class mail to sponsors of the Client Plans who participate in securities lending transactions, as