

for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file

with the Department for a complete statement of the facts and representations.

Morgan Stanley & Co. Incorporated (MS&Co) and Morgan Stanley Trust Company (MSTC) Located in New York, New York

[Application No. D-09940]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to Morgan Stanley & Co., Incorporated (MS&Co) and to any other U.S. registered broker-dealers affiliated with Morgan Stanley Trust Company (the Affiliated Broker-Dealer, collectively, the MS Group) by employee benefit plans for which Morgan Stanley Trust Company (MSTC) acts as directed trustee or custodian and securities lending agent and to the receipt of compensation by MSTC in connection with these transactions, provided that the following conditions are met:

1. Neither MS&Co nor MSTC has discretionary authority or control over a client-plan's assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

2. Any arrangement for MSTC to lend plan securities to the MS Group will be approved in advance by a plan fiduciary who is independent of MSTC and the MS Group;

3. A client-plan may terminate the arrangement at any time without penalty on five business days notice;

4. The client-plans will receive collateral consisting of cash, securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, bank letters of credit or other collateral permitted under PTE 81-6, from the MS Group by physical delivery, book entry in a securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the MS Group;

5. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned

securities and, if the market value of the collateral falls below 100 percent, the MS Group will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent;

6. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81-6 and 82-63;

7. MS&Co will indemnify each lending client-plan against any losses incurred by such plan in connection with the lending of securities to the MS Group;

8. The client-plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

9. Only plans with total assets having an aggregate market value of at least \$50 million will be permitted to lend securities to the MS Group;

10. With regard to the "exclusive borrowing" agreement (as described below), MS&Co will directly negotiate the agreement with a plan fiduciary who is independent of the MS Group and MSTC, and such agreement may be terminated by either party to the agreement at any time; and

11. Prior to any plan's approval of the lending of its securities to the MS Group, a copy of this exemption, if granted, (and the notice of pendency) will be provided to the plan.

Summary of Facts and Representations

1. MS&Co, a wholly owned subsidiary of Morgan Stanley Group Inc., is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and a member of the National Association of Securities Dealers. MS&Co is one of the largest investment firms in the United States. As of January 31, 1994, MS&Co's parent, Morgan Stanley Group Inc., had consolidated capital of over \$9.8 billion.

2. MS&Co and its Affiliated Broker-Dealers (collectively, the MS Group), acting as principal, borrows securities from institutions and either utilizes such securities to satisfy its own needs or re-lends these securities to brokerage firms and other entities which need a particular security for a certain period of time. Borrowers often need securities to satisfy deliveries in cases of short sales or where a broker fails to receive securities it is required to deliver. The MS Group, which borrows and lends

securities equal in value to approximately \$37 billion on an average daily basis, is among the largest institutional securities borrowers and lenders in the United States. In making such loans, the MS Group carefully reviews the credit worthiness of its counterparties.

3. MSTC is a wholly owned subsidiary of Morgan Stanley Group Inc. and an affiliate of MS&Co. MSTC is organized as a trust company in New York and provides a variety of services to its clients, including services as custodian and clearing agent and in the future may provide services as trustee.

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to any interest, dividends or other distributions paid on those securities. The lender generally requires that the security loans 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 certain bank letters of credit. When cash is the collateral, the lender generally invests the cash and rebates a portion of the earnings on the collateral to the borrower. The "fee" received by the lender would then be the difference between the earnings on the collateral and the amount of rebate paid to the borrower. When a loan of securities is collateralized with Government or Federal Agency securities or bank letters of credit, a fee is paid directly by the borrower to the lender. Institutional investors often utilize the services of an agent in the performance of their securities lending transactions. The lending agent is paid a fee for its services which may be calculated as a percentage of the income earned by the investor from its securities lending activity. The applicants believe that the essential functions which define a securities lending agent are the identification of appropriate borrowers of securities and the negotiation of the terms of a loan to the borrowers. There are services ancillary to securities lending which include monitoring the level of collateral and the value of the loaned securities and investing the collateral in some instances.

5. MSTC and MS&Co request an exemption for the lending of securities owned by certain pension plans (client-plans) for which MSTC will serve as directed trustee or custodian to the MS Group, following disclosure of MSTC's affiliation with the MS Group, under either of the two arrangements described as Plan A and Plan B and for the receipt of compensation in

connection with such transactions. However, because MSTC under the proposed arrangements will have discretion with respect to whether there is a loan of plan securities to the MS Group, the lending of securities to the MS Group by plans may be outside the scope of relief provided by PTE 81-6¹ and PTE 82-63.²

6. When a loan is collateralized with cash, MSTC, at the plan's direction, will either transfer such cash collateral to the client-plan or its designated agent for investment or shall invest the cash in short-term securities or interest-bearing accounts and, in either case, will rebate a portion of the earnings on such collateral to the MS Group on behalf of the client-plan. The MS Group will pay a fee to the client-plan based on the value of the loaned securities where the collateral consists of obligations other than cash. Under Plan A and, in some instances, under Plan B (see paragraph 27 regarding the types of lending services which may be provided to plans by MSTC under Plan B), the client-plan will pay a fee to MSTC for providing lending services to the plan which will reduce the income earned by the client-plan from the lending of securities to the MS Group. The client-plan and MSTC will agree in advance to this fee which will represent a percentage of the income the client-plan earns from its lending activities. Several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the client-plan assets involved in the transactions. In addition, the applicants represent that each of the two arrangements incorporates the relevant conditions contained in PTE 81-6 and PTE 82-63.

7. *Plan A.* A fiduciary of a client-plan who is independent of MSTC and The MS Group will sign a securities lending authorization (the Authorization) before the client-plan may participate in MSTC's securities lending program. This Authorization describes the

¹ PTE 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of ERISA and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker dealers or banks which are parties in interest.

² PTE 82-63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of ERISA and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82-63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of ERISA.

operation of the lending program and allows MSTC to lend securities held by the client-plan to securities brokers, including the MS Group, as selected by MSTC. The Authorization also sets forth, in an attachment, the basis and rate for MSTC's compensation from the client-plan for the performance of securities lending services.

8. The independent fiduciary also must sign an Affiliated Broker-Dealer Lending Authorization before MSTC may include security loans to the MS Group in the lending activities of the client-plan. The Affiliated Broker-Dealer Lending Authorization will specify, in an attached exhibit, the method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by the MS Group and the maximum rebate rate payable to the MS Group. A client-plan may terminate both the Authorization and the Affiliated Broker-Dealer Lending Authorization at any time.

9. MSTC, as securities lending agent, will negotiate a Customer Securities Loan Agreement (Basic Loan Agreement) with the MS Group on behalf of its client-plans. An independent fiduciary of the client-plan will approve the form of the agreement before that fiduciary executes the Affiliated Broker-Dealer Lending Authorization. The Basic Loan Agreement will specify, among other things, the right of the client-plan to terminate a loan at any time (subject to the customary notification period) and the client-plan's rights in the event of any default by the MS Group. The agreement will explain the basis for compensation to the client-plan for lending securities to the MS Group under each category of collateral. The agreement will also contain a requirement that the MS Group must pay all transfer fees and transfer taxes related to the security loans.

10. Before entering into the Basic Loan Agreement, the MS Group will furnish its most recent publicly available audited and unaudited financial statements to MSTC, who, in turn, will provide such statements to a client-plan before the plan is asked to approve the terms of the Basic Loan Agreement. The Basic Loan Agreement will contain a requirement that the MS Group must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, MSTC will request that an independent fiduciary of the client-plan approve the loan in view of the changed financial condition.

11. The client-plan and MSTC will agree to the fee MSTC will receive for its services as lending agent prior to the commencement of any lending activity. The agreement by MSTC to provide securities lending services to a client-plan will be in writing and subject to the prior written approval of a fiduciary of the client-plan who is independent of the MS Group and MSTC.³ The Basic Loan Agreement will allow termination by the client-plan without penalty to the plan within five business days of written notice. Before entering into an agreement, MSTC will provide the client-plan with any reasonably available information which it believes is necessary for the plan to make a determination whether to enter into or renew the agreement and such other information as the plan may request.

12. Each time a client-plan loans securities to the MS Group pursuant to the Basic Loan Agreement, the MS Group will execute a designation letter specifying the material terms of the loan, including the securities to be loaned, the required level of collateral, the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the client-plan as those of a comparable arm's-length transaction between unrelated parties.

13. MSTC will credit to the account of the client-plan all interest, dividends and the like received on the loaned securities during the loan period, including distributions and rights of any kind. The Basic Loan Agreement will provide that the client-plan may terminate any loan at any time. Upon a termination, the MS Group will return the loaned securities to the client-plan within five business days of written notification. If the MS Group fails to return the securities within the designated time, the client-plan has certain rights that it may exercise under the Basic Loan Agreement.

14. MSTC will establish each day separate written schedules of lending fees and rebate rates to assure uniformity of treatment among borrowing brokers and to limit the discretion MSTC would have in negotiating securities loans to the MS Group. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the client-plans. In no case will loans

be made to the MS Group at rates or lending fees less advantageous to the client-plan than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than the MS Group. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than the MS Group, and will generally track the rebate rates with respect to the same security or class of securities.

15. MSTC will adopt maximum daily rebate rates for cash collateral payable to the MS Group on behalf of a lending plan. Separate maximum daily rebate rates will be established with respect to loans of designated classes of securities such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the maximum rebate rate will be the lower of (i) the 7 day LIBOR rate, minus a stated percentage of such LIBOR rate and (ii) the client's actual reinvestment rate for the relevant cash collateral, minus a stated percentage of such reinvestment rate, as pre-approved by the independent fiduciary. Thus, when cash is used as collateral, the daily rebate rate will always be lower than the rate of return to the client-plans from authorized investments for cash collateral by such stated percentage as shall be pre-approved by the independent fiduciary. MSTC will submit the formula for determining the maximum daily rebate rates to an independent fiduciary of the client-plan for approval before lending any securities to the MS Group on behalf of the plan.

16. MSTC will also adopt minimum daily lending fees for non-cash collateral payable by the MS Group to MSTC on behalf of a plan. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities, such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. MSTC will submit such minimum daily lending fees to an independent fiduciary to the client-plan for approval before initially lending any securities to the MS Group on behalf of the plan.

17. For collateral other than cash, the lending fees charged the previous day are reviewed by MSTC for competitiveness. Based on the demand of the marketplace, this daily fee tends to remain constant and, with respect to domestic securities and international debt securities, is currently at least one tenth of one percent of the principal value of the loaned securities. With respect to international equity securities, the daily fee is currently one fifth of one percent of the principal value of the loaned securities. Because 50 percent or more of securities loans by client-plans will be to unrelated brokers or dealers,⁴ the competitiveness of MSTC's fee schedule will be continuously tested in the marketplace. Accordingly, loans to the MS Group should result in a competitive rate of income to the lending client-plan.

18. Should MSTC recognize prior to the end of a business day that, with respect to new and/or existing loans, it must change the rebate rate or lending fee formula in the best interest of client-plans, it may do so (i) with respect to borrowers other than the MS Group, at the end of such business day, and (ii) with respect to the MS Group, upon MSTC's receipt of a written approval of the client-plan's independent fiduciary.⁵

MSTC may propose a change in the lending fee or rebate rate determination, as applicable, with respect to an outstanding loan by delivering written notice of the effective date and the new determination pursuant to which a lending fee or rebate rate, as the case may be, may be determined at least five business days before the date of the proposed change. In the event that the client-plan does not consent to such change by not providing MSTC acknowledgement of its consent in writing by such means that will ensure receipt by MSTC prior to 10:00 a.m. New York time, on the effective date of the change, then MSTC will not make such change. The applicants represent that allowing MSTC to request a modification to the lending fee or the rebate rate formula with respect to an existing loan to the MS Group when market conditions change will be beneficial to the client-plans. According to the applicants, in the absence of the ability to make such modification, the MS Group may be forced by market conditions to terminate the loan and seek better terms elsewhere. Such termination may then force the client-

³ This closely parallels conditions c and d of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary".

⁴ This 50 percent requirement applies regardless of the type of collateral used to secure the loan.

⁵ MSTC represents that it will not initiate any modification in such rates or fees which would be detrimental to the client-plans.

plan to seek new borrowers for its securities who, in light of the changed market conditions, are likely to negotiate for the lending fee or rebate rate which the MS Group would have received or paid had MSTC had the written authority from the independent fiduciary to decrease the lending fee or increase the rebate rate.

19. While MSTC will normally loan securities to requesting borrowers on a first come, first served basis, as a means of assuring uniformity of treatment among borrowing brokers, it should be recognized that in some cases it may not be possible to adhere to a first come, first served allocation. This can occur, for example, in instances where (a) the credit limit established for a "first in line" borrower by the client-plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular client-plan whose securities are sought to be borrowed; or (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to differed MSTC representatives at or about the same time with respect to the same security. In situation (a) and (b), loans would normally be effected with the "second in line" borrower. In situation (c), securities would be allocated equitably among all eligible borrowers.

20. MS&Co will indemnify each lending client-plan against any losses due directly to the lending of such plan's securities to the MS Group. Accordingly, MS&Co will assure the client-plan that the rate of return on each loan will at a minimum equal the transactional cost to the plan of lending securities to The MS Group. The applicants contend that, as a result of this indemnity, the rate of return earned by client-plans from lending to the MS Group will, in total, exceed the return from lending securities to other brokers.

21. By the close of business on the day the loaned securities are delivered to the MS Group, MSTC will receive from the MS Group non-cash collateral by physical delivery or book entry in a securities depository, or, cash collateral by wire transfer or book entry. At the discretion of the client-plan, cash collateral may be managed either by the plan, by its designated agent or by MSTC. If a client-plan chooses to manage its cash collateral, MSTC will promptly forward the cash collateral to the client-plan. The non-cash collateral will consist of securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit (issued by a person other than MS&Co or its affiliates) or other collateral permitted under PTE 81-6 or

any successor. The market value of the collateral on the day the loan settles will be at least 102 percent of the market value of the loaned securities. The Basic Loan Agreement will give the client-plan a continuing security interest in and a lien on the collateral. MSTC will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent of that of the loaned securities, MSTC will require the MS Group to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

22. A client-plan that loans securities to the MS Group will receive a weekly report with which to monitor lending activity, rates on loans to the MS Group compared with loans to other brokers, and the level of collateral on the loans. The weekly report will show, on a daily basis, the market value of all outstanding security loans to the MS Group and to other borrowers as compared to the total collateral held for both categories of loans.

23. The weekly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The weekly report also will state, on a daily basis, the rates at which securities are loaned to the MS Group compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

24. MSTC will send a monthly transaction report to each client-plan participating in the lending program. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rate at which the security is loaned, and the number of days the security has been on loan.

25. Only client-plans with assets having an aggregate market value of at least \$50 million will be permitted to lend securities to the MS Group. The applicants maintain that this restriction is intended to assure that any lending to the MS Group will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind.

26. MSTC will record on audio tape all telephone traffic between its securities lending department and all borrowers, including the MS Group. The telephone tapes will be retained for a

period of at least six months. This recording procedure will enable client-plans and the Department to review MSTC's adherence to its policy of lending securities to the first interested borrower at rates or lending fees on the daily schedule, or at rates or lending fees which are more advantageous to the client-plans.

27. *Plan B.* MS&Co will directly negotiate "exclusive borrowing" agreements with fiduciaries of plans, including plans for which MSTC serves as custodian or in the future may serve as directed trustee, where such fiduciary is independent of the MS Group and MSTC. Under such an agreement, the MS Group will have exclusive access for a specified period of time to borrow certain securities of the plan pursuant to certain conditions. MSTC will not participate in the negotiation of the agreement. The involvement of MSTC, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the plans with certain reports. The applicants represent that, under the exclusive borrowing agreement, neither the MS Group nor MSTC will perform for client-plans the functions which constitute the essential functions of a securities lending agent.

28. Upon delivery of loaned securities to the MS Group, MSTC, or another custodian, on behalf of a client-plan, will receive from the MS Group, the same day by wire transfer or book entry cash collateral or, by physical delivery or book entry in a securities depository, collateral consisting of securities issued or guaranteed by the U.S. Government or its agencies, irrevocable bank letters of credit, or other non-cash collateral permitted under PTE 81-6. The market value of the collateral on the day the loan settles will be at least 102 percent of the market value of the loaned securities. MSTC or such other custodian will monitor the level of the collateral daily and, if its market value falls below 100 percent, the MS Group will deliver sufficient additional collateral on the following day such that the market value of all collateral will equal at least 102 percent of the market value of the loaned securities. The MS Group or, in the case of some client plans, MSTC, will provide a weekly report to the plan showing, on a daily basis, the aggregate market value of all outstanding security loans to the MS Group and the aggregate market value of the collateral.

29. Before entering into an exclusive borrowing agreement, the MS Group will furnish to the plan the most recent

publicly available audited and unaudited statements of its financial condition. Further, the agreement will contain a representation by the MS Group, as provided in section 18(c)(ii) of the Securities Lending Agreement, that as of each time it borrows securities, there have been no material adverse changes in its financial condition. All the procedures under the agreement will, at a minimum, conform to the applicable provisions of PTE 81-6 and PTE 82-63.

30. In exchange for the exclusive right to borrow certain securities from a client-plan, the MS Group will pay the plan either a flat fee, or a minimum flat fee plus a percentage (negotiated at the time the exclusive borrowing agreement is entered into) of the total balance outstanding of borrowed securities, or a percentage of the total balance outstanding without any flat fee. In light of this fee arrangement, all earnings generated by cash collateral will be returned to the MS Group. The client-plan will receive credit for all interest dividends or other distributions on any borrowed securities.

31. The exclusive borrowing agreement may be terminated by either party to the agreement at any time. MS&Co will agree that upon termination it will deliver any borrowed securities back to the client-plan within five business days of written notice of termination. If the MS Group fails to return the securities or the equivalent thereof, the client-plan will have certain rights under the agreement to realize upon the collateral. Pursuant to the terms of the agreement, the MS Group will indemnify the plan against any losses due to its use of the borrowed securities equal to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default.

32. With regard to those plans for which MSTC provides custodial, clearing and/or reporting functions relative to securities loans, MSTC and a plan fiduciary independent of MSTC and the MS Group will agree in advance and in writing to any fee that MSTC is to receive for such services. Such fees, if any, would be fixed fees (e.g., MSTC might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services or to receive a stated dollar amount) and any such fee would be in addition to any fee MSTC has negotiated to receive from any such client-plan for standard custodial or other services unrelated to the securities lending activity. The arrangement to have MSTC provide such functions relative to

securities loans to the MS Group will be terminable by the client-plan within five business days of receipt of written notice without penalty to the plan except for the return to the MS Group of part of any flat fee paid by the MS Group to the plan, if the client-plan has also terminated its exclusive borrowing agreement with the MS Group. Before entering into an agreement with a plan to provide such functions relative to securities loans to the MS Group, MSTC will furnish to the plan any publicly available information which it believes is necessary for the plan to determine whether to enter into or renew the agreement.

33. In summary, the applicants represent that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Plan A requires approval of the form of a basic loan agreement and the execution of the Affiliated Broker-Dealer Lending Authorization by a plan fiduciary independent of the MS Group and MSTC before a client-plan lends any securities to the MS Group, while under Plan B, The MS&Co will directly negotiate exclusive borrowing agreements with a client-plan; (b) the lending arrangements will permit the client-plans to benefit from the MS Group's substantial market position as securities lenders and will enable the plans to earn additional income from the loaned securities while still receiving dividends, interest and other distributions on those securities; (c) the client-plan will receive sufficient information concerning the MS Group's financial condition before the plan lends any securities to the MS Group; (d) the collateral on each loan to the MS Group initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81-6, and will be monitored daily by MSTC; (e) the client-plans will receive a weekly report and monthly report, so that an independent fiduciary of the client-plans also may monitor loan activity, fees, the level of the collateral and loan return/yield; (f) MSTC will have no discretionary authority or control over the plan's acquisition or disposition of securities available for loan; (g) the terms of each loan will be at least as favorable to the plans as those of a comparable arm's-length transaction between unrelated parties; and (h) all the procedures under the proposed transactions will, at a minimum, conform to the applicable provisions of PTE 81-6 and PTE 82-63.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department,

telephone (202) 219-8971. (This is not a toll-free number.)

Central Freight Lines Employees Profit Sharing and Retirement Plan (the Plan) Located in Waco, TX

[Application No. D-09994]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed cash sale by the Plan of certain unimproved real property (the Property) to Central Freight Lines, Inc. (the Employer), a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any real estate commissions or fees in connection with the proposed transaction; and (4) the Plan receives a sales price for the Property which is not less than the greater of (a) the fair market value of the Property as determined by a qualified, independent appraiser, or (b) the net acquisition cost of the Property.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 3,149 participants and net assets available for benefits of approximately \$103,639,097 as of December 31, 1994. The trustee of the Plan and decisionmaker with respect to Plan investments is A.G. Edwards Trust Company of St. Louis, Missouri.

2. The Employer, which maintains its general offices in Waco, Texas, is a trucking company that is involved in the transportation and delivery of freight throughout the midwestern and southwestern United States. The Employer is a wholly-owned subsidiary of Roadway Services, Inc. (Roadway), a publicly-owned trucking company which maintains its corporate offices in Akron, Ohio.

3. Prior to 1989, the Plan, through two separate purchases, acquired a 38.810 acre tract of undeveloped land for a total purchase price of \$1,495,352. The