

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