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.

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 81–6 ¹ 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 clientplan 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

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.

¹PTE 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.