

had interests in Fund E during the period covered by the proposed exemption. Notice to interested persons shall be provided by first class mail and/or posting in the workplace within sixty (60) days following the publication of the proposed exemption in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within ninety (90) days following the publication of the proposed exemption in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Mr. E. F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

#### *General Information*

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of

whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of January, 1997.

Ivan Strasfeld,

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

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**[Prohibited Transaction Exemption 97-07;  
Exemption Application Nos. D-10079  
Through D-10082, et al.]**

**Grant of Individual Exemptions;  
Pikeville National Bank & Trust  
Company; Trust Company of  
Kentucky; and First American Bank  
(Collectively, the Banks), et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The

applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

#### **Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pikeville National Bank & Trust Company; Trust Company of Kentucky; and First American Bank (Collectively, the Banks) Located in Pikeville and Ashland, Kentucky

[Prohibited Transaction Exemption 97-07;  
Application Numbers D-10079 Through D-  
10082]

#### **Exemption**

The restrictions of sections 406(a), 406(b)(1) and 406(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) of the Code, shall not apply to: (1) The cash sales on December 28, 1994 and January 13, 1995, of certain collateralized mortgage obligations (CMOs) and other mortgage-backed securities (collectively, the Securities) held by eighty-six (86) employee benefit plans, Keogh plans and individual retirement accounts (IRAs) for which the Banks act as trustee (the Plans) to Pikeville National Corporation (PKVL), a party in interest with respect to the Plans; (2) the "makewhole" payments made by PKVL to the Plans on January 20, 1995, in connection with the sale of certain Securities by the Plans on the open market on November 2, 1994; and (3) the proposed additional "makewhole" and interest payments to be made by PKVL to the Plans, as of the

date the exemption is granted, as a result of: (i) The additional amounts owed to such Plans based on the amortized cost of the Securities at the time of the transactions in situations where the amortized cost exceeded the outstanding principal balance of the Securities (plus a reasonable rate of interest on such amounts), and (ii) the additional accrued but unpaid interest on the Securities which was owed to the Plans at the time of the sale to PKVL on December 28, 1994 (plus a reasonable rate of interest on such amounts); provided that the following conditions are met:

(a) Each sale was a one-time transaction for cash;

(b) Each Plan has received or will receive a total amount for the Securities owned by the Plan, including the sale proceeds and "makewhole" payments for transactions that occurred either on the open market or with PKVL, which is equal to the greater of: (i) The outstanding principal balance for each Security owned by the Plan, plus accrued but unpaid interest, at the time of the sale; (ii) the amortized cost for each Security owned by the Plan on the date of the sale, plus accrued but unpaid interest, as determined by the Banks; or (iii) the fair market value of each Security owned by the Plan as determined by the Banks from broker-dealers or pricing services independent of the Banks at the time of the sale;

(c) With respect to the "makewhole" payments made by PKVL to the Plans on January 20, 1995, the Plans receive a reasonable rate of interest for the period from November 2, 1994 (the date of the sale of certain Securities on the open market) until January 20, 1995 (the date such payments were made), to the extent this amount is not already accounted for under the additional "makewhole" payments which are due for the Securities based on the amounts referred to above in Item (3)(i);

(d) The Plans did not pay any commissions or other expenses with respect to the transactions;

(e) The Banks, as trustee of the Plans, determined that the sale of the Securities was in the best interests of each of the Plans and their participants and beneficiaries at the time of the transaction;

(f) The Banks took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and

(g) Each Plan received a reasonable rate of return on the Securities during the period of time that it held the Securities.

**EFFECTIVE DATE:** This exemption is effective as of December 28, 1994, and January 13, 1995, for the sales of the Securities made to PKVL, and as of January 20, 1995, for the "makewhole" payments made by PKVL in connection with the sale of the Securities to an unrelated party on November 2, 1994. In addition, this exemption is effective for the additional "makewhole" and interest payments due to the Plans as of the date such payments are made to the affected Plans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Proposal) published on November 6, 1996 at 61 FR 57462.

**WRITTEN COMMENTS AND MODIFICATIONS:** The applicant submitted a comment letter on the Proposal which requested that certain modifications be made by the Department.

First, the Banks request that the abbreviation "PNC", as used in the Proposal to refer to the Pikeville National Corporation, not be used in the final exemption. The applicant notes that the abbreviation "PNC" is used for identification and promotion purposes by Pittsburgh National Corporation, a major bank holding company that was not involved in any way with the subject transactions. To avoid unnecessary confusion or misunderstandings by interested parties, the Banks request that references to the Pikeville National Corporation as "PNC" be changed to "PKVL".

In this regard, the Department has deleted references to "PNC" and substituted "PKVL".

Second, the Banks would like to clarify that there are fewer than eighty-nine plans involved in the subject transactions, as stated in the Proposal. The Banks represent that after the Proposal was published it was discovered that several "plans" were actually subaccounts to plans and not separate plans. Thus, the Banks state that the correct number of "plans" involved is eighty-six (86).

In this regard, the Department has modified the language of the exemption based on the applicant's clarification.

Accordingly, the Department has determined to grant the requested exemption as modified herein.

**FOR FURTHER INFORMATION CONTACT:** Mr. E. F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

Morgan Stanley & Co. Incorporated  
Located in New York, New York

[Prohibited Transaction Exemption 97-08;  
Exemption Application No. D-10108]

#### Exemption

##### Section I—Transactions

A. Effective August 25, 1995, the restrictions of section 406(a)(1)(A) through (D) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975 (c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of a security between an employee benefit plan and a broker-dealer affiliated with Morgan Stanley & Co. and subject to British law (MSC/UK Affiliate), if the following conditions, and the conditions of Section II, are satisfied:

(1) The MSC/UK Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer.

(2) Such transaction is on terms at least as favorable to the plan as those which the plan could obtain in an arm's length transaction with an unrelated party.

(3) Neither the MSC/UK Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 C.F.R. 2510.3-21(c)) with respect to those assets, and the MSC/UK Affiliate is a party in interest or disqualified person with respect to the plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the MSC/UK Affiliate shall not be deemed to be a fiduciary with respect to a plan solely by reason of providing securities custodial services for a plan.

B. Effective August 25, 1995, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the lending of securities that are assets of an employee benefit plan to an MSC/UK Affiliate if the following conditions, and the conditions of Section II, are satisfied:

(1) Neither the MSC/UK Affiliate (the Borrower) nor an affiliate of the Borrower has discretionary authority or control with respect to the investment of the plan assets involved in the

transaction, or renders investment advice (within the meaning of 29 C.F.R. 2510.3-21(c)) with respect to those assets;

(2) The plan receives from the Borrower, either by physical delivery or by book entry in a securities depository located in the United States, by the close of business on the day on which the securities lent are delivered to the Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a person other than the Borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day, a market value (or, in the case of letters of credit, a stated amount) equal to not less than 100 percent of the then market value of the securities lent. The collateral referred to in this Section I(B)(2) must be held in the United States;

(3) Prior to the making of any such loan, the Borrower shall have furnished the following items to the fiduciary for the plan who is making decisions on behalf of the plan with respect to the lending of securities (the Lending Fiduciary): (1) The most recent available audited statement of the Borrower's financial condition, (2) the most recent available unaudited statement of the Borrower's financial condition (if more recent than such audited stated), and (3) a representation that, at the time the loan is negotiated, there has been no material adverse change in the Borrower's financial condition since the date of the most recent financial statement furnished to the plan that has not been disclosed to the Lending Fiduciary. Such representation may be made by the Borrower's agreement that each such loan shall constitute a representation by the Borrower that there has been no such material adverse change;

(4) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as those which the plan could obtain in an arm's-length transaction with an unrelated party. Such agreement may be in the form of a master agreement covering a series of securities-lending transactions;

(5) The plan (1) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the

Borrower, if such fee is not greater than the plan would pay an unrelated party in an arm's-length transaction;

(6) The plan receives 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;

(7) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of trading on that day, the Borrower shall deliver, by the close of business on the following business day, an additional amount of collateral (as described in paragraph (2)) the market value of which, together with the market value of all previously delivered collateral, equals at least 100 percent of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to the Borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities;

(8) The loan may be terminated by the plan at any time, whereupon the Borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) three business days, or (3) the time negotiated for such delivery by the plan and the Borrower, whichever is lesser; and

(9) In the event the loan is terminated and the Borrower fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (8) above, then (i) the plan may, under the terms of the loan agreement, purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Borrower under the agreement, and any expenses associated with the sale and/or purchase, and (ii) the Borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the plan, the amount of any remaining obligations and expenses not covered by the collateral plus interest at a reasonable rate. Notwithstanding the foregoing, the Borrower may, in the event the Borrower fails to return

borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the Lending Fiduciary.

(10) If the Borrower fails to comply with any condition of this exemption, in the course of engaging in a securities-lending transactions, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Borrower's failure to comply with the conditions of the exemption.

C. Effective August 25, 1995, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code shall not apply to any extension of credit to an employee benefit plan by an MSC/UK Affiliate to permit the settlement of securities transactions or in connection with the writing of options contracts provided that the following conditions are met:

(a) The MSC/UK Affiliate is not a fiduciary with respect to any assets of such plan, unless no interest or other consideration is received by such fiduciary or any affiliate thereof in connection with such extension of credit; and

(b) Such extension of credit would be lawful under the Securities Exchange Act of 1934 and any rules or regulations thereunder if such act, rules or regulations were applicable.

## Section II—General Conditions

A. The MSC/UK Affiliate is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom (the S.F.A.);

B. The MSC/UK Affiliate is in compliance with all requirements of Rule 15a-6 (17 CFR 240.15a-6) under the Securities and Exchange Act of 1934, which provides for foreign broker-dealers a limited exemption from U.S. registration requirements;

C. Prior to the transaction, the MSC/UK Affiliate enters into a written agreement with the plan in which the MSC/UK Affiliate consents to the jurisdiction of the courts of the United States with respect to the transactions covered by this exemption;

D. (1) The MSC/UK Affiliate maintains or causes to be maintained within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in this section to determine whether the conditions of this

exemption have been met; except that a party in interest with respect to an employee benefit plan, other than the MSC/UK Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the MSC/UK Affiliate, such records are lost or destroyed prior to the end of such six year period;

(2) The records referred to in subsection (1) above are unconditionally available for examination during normal business hours by duly authorized employees of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by such plan; except that none of the persons described in this subsection shall be authorized to examine trade secrets of Morgan Stanley & Co. or the MSC/UK or any commercial or financial information which is privileged or confidential.

### III—Definitions

“Affiliate” of a person shall include:

- (i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
- (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and
- (iii) any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this definition, the term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

“Security” shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term “security” does not include swap agreements or other notional principal contracts.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on November 13, 1996 at 61 FR 58237.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### Cassemco, Inc. Retirement Plan and Trust Agreement (the Plan) Located In Cookeville, Tennessee

[Prohibited Transaction Exemption 96-09; Exemption Application No. D-10350]

#### Exemption

The restrictions of sections 406(a) and 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) of the Code, shall not apply to the cash sale (the Sale) by the Plan of certain securities (the Securities) to Cassemco, Inc., the sponsoring employer and party in interest with respect to the Plan; provided (1) the Sale is a one-time transaction for cash, (2) the Plan pays no commissions nor incurs any expenses in connection with the Sale, and (3) the Plan receives as consideration for the Sale no less than the fair market value of the Securities as of the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 3, 1996, at 61 FR 64160.

**FOR FURTHER INFORMATION CONTACT:** Mr. C.E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### PanAgora Asset Management, Inc. (PanAgora) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 97-10; Exemption Application No. D-10351]

#### Exemption

PanAgora shall not be precluded from functioning as a “qualified professional asset manager” pursuant to Prohibited Transaction Exemption 84-14 (PTE 84-14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy Section I(g) of PTE 84-14, as a result of affiliation with E.F. Hutton & Company, Inc. and Shearson Lehman Brothers, Inc., formerly Shearson Lehman Hutton, Inc.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 3, 1996 at 61 FR 64161.

**EFFECTIVE DATE:** This exemption is effective as of September 22, 1989, the date on which PanAgora was formed.

**FOR FURTHER INFORMATION CONTACT:** Gary Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualify a person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of January, 1997.

Ivan Strasfeld,

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

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