

“alternative sites” for the proposed facility will be fully and thoroughly examined.

*Scoping Process:* During the preparation of the DEIS, there will be numerous other opportunities for public involvement.

*DEIS Preparation:* Public notice will be given concerning the availability of the DEIS for public review and comment.

*Address:* Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Chief, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, N.W., Washington, D.C. 20534, Telephone: (202) 514-6470, Telefacsimile: (202) 616-6024, ddorworth@BOP.gov.

Dated: January 21, 1998.

**Jeff B. Ratliff,**

*Acting Chief, Site Selection and Environmental Review Branch.*

[FR Doc. 98-1794 Filed 1-23-98; 8:45 am]

BILLING CODE 4410-05-M

Pay grade	Monthly rate
0-3 .....	4,491
0-2 .....	3,586
0-1 .....	2,713
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
0-3E .....	5,146
0-2E .....	4,282
0-1E .....	3,549
(3) Warrant Officers:	
W-5 .....	6,035
W-4 .....	5,154
W-3 .....	4,309
W-2 .....	3,666
W-1 .....	3,176
(4) Enlisted Personnel:	
E-9 .....	4,672
E-8 .....	3,958
E-7 .....	3,457
E-6 .....	3,026
E-5 .....	2,588
E-4 .....	2,156
E-3 .....	1,897
E-2 .....	1,791
E-1 .....	1,571

any other U.S. registered broker-dealers affiliated with MSTC (the Affiliated Broker-Dealers; collectively, the MS Broker-Dealers) by employee benefit plans with respect to which the MS Broker-Dealer who is borrowing such securities is a party in interest or for which MSTC acts as directed trustee or custodian and securities lending agent. In addition, PTE 96-14 permits MSTC to receive compensation in connection with securities lending transactions. These transactions are described in a notice of pendency that was published in the **Federal Register** on August 11, 1995 at 60 FR 41118. PTE 96-14 is effective as of March 12, 1996.

If granted, the proposed exemption would replace PTE 96-14 but would incorporate by reference the facts, representations and virtually all of the conditions that are contained in the notice, the final exemption and the technical correction. However, Condition (9) of PTE 96-14, which has been redesignated herein as Condition (12), would be amended. Condition (9) of PTE 96-14 provides that—

Only plans whose total assets have a market value of at least \$50 million will be permitted to lend securities to the MS Broker-Dealers. In the case of 2 or more plans maintained by a single employer or controlled group of employers, the \$50 million requirement may be met by aggregating the assets of such plans if the assets are commingled for investment purposes in a single master trust;

The applicants have requested that this condition be modified to allow two or more plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans) as well as two or more plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are invested in a single, commingled investment vehicle that is managed by a fiduciary which is independent of the MS Broker-Dealers, to aggregate their assets within the pooled investment vehicle in order to satisfy the \$50 million investment threshold for lending securities to MS Broker-Dealers. However, the fiduciary exercising investment discretion over the pooled vehicle, particularly if the fiduciary is an outside manager, must possess some minimum level of investor sophistication by satisfying an “outside business” test.

In addition, the Department has decided to revise certain of the conditions contained in PTE 96-14. In this regard, the Department has added several new conditions to the pendency notice relating to such matters as disclosures, compensation, outside

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Revised Schedule of Remuneration for the UCX Program**

Under Section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1998.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12, applies to “First Claims” for UCX which are effective beginning with the first day of the first week which begins after April 4, 1998.

Pay grade	Monthly rate
(1) Commissioned Officers:	
0-10 .....	\$11,402
0-9 .....	11,364
0-8 .....	10,462
0-7 .....	9,457
0-6 .....	8,082
0-5 .....	6,773
0-4 .....	5,556

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC., on January 15, 1998.

**Raymond J. Uhalde,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 98-1787 Filed 1-23-98; 8:45 am]

BILLING CODE 4510-30-M

**PENSION AND WELFARE BENEFITS ADMINISTRATION**

[Application No. D-10429]

**Notice of Proposed Individual Exemption to Amend and Replace Prohibited Transaction Exemption (PTE) 96-14 Involving Morgan Stanley & Co. Incorporated (MS&Co) and Morgan Stanley Trust Company (MSTC), Located in New York, NY**

**AGENCY:** Pension and Welfare Benefits Administration, U.S. Department of Labor.

**ACTION:** Notice of proposed individual exemption to modify and replace PTE 96-14.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend and replace PTE 96-14 (61 FR 10032, March 12, 1996). PTE 96-14, as clarified by a Notice of Technical Correction dated June 4, 1996 (61 FR 28243), permits the lending of securities to MS&Co and to

borrowers and recordkeeping. The Department has also modified certain of the existing conditions and provided definitions of the terms "affiliate" and "control."

The proposed exemption would affect participants and beneficiaries of, and fiduciaries with respect to plans engaging in securities lending transactions with the MS Broker-Dealers.

**EFFECTIVE DATE:** If granted, the proposed exemption would be effective as of March 12, 1996.

**DATES:** Written comments and requests for a public hearing should be received by the Department on or before March 27, 1998.

**ADDRESSES:** All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D-10429. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219-8881. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed exemption that would amend and replace PTE 96-14. PTE 96-14 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed on behalf of MS&Co and MSTC (collectively, the Applicants) pursuant to 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, 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. Accordingly, this proposed exemption is being issued solely by the Department.

Specifically, PTE 96-14 provides exemptive relief from sections 406(a)(1)(A) through (D) 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, with respect to the lending of securities to MS&Co and to any other MS Broker-Dealers by employee benefit plans with respect to which the MS Broker-Dealer who is borrowing such securities is a party in interest or for which MSTC acts as a directed trustee or custodian and securities lending agent and to the receipt of compensation by MSTC in connection with these transactions, provided certain enumerated conditions are met.

Subsequent to the granting of PTE 96-14, the Applicants informed the Department that the specific wording of Condition (9) of the exemption would preclude master trusts, group trusts, bank collective investment funds, insurance company pooled separate accounts and other commingled investment vehicles from lending securities to the MS Broker-Dealers unless each plan participating therein had assets with an aggregate fair market value of at least \$50 million. However, the Applicants note that Representation 25 of the Summary of Facts and Representations of the proposed exemption states that the intent of the \$50 million restriction is to ensure that any lending to the MS Broker-Dealers will be monitored by an independent fiduciary of above average experience and sophistication in matters relating to securities lending. To the extent that the purpose of this restriction is to ensure the sophistication of the fiduciary who is making the lending decision on behalf of plans, the Applicants believe that the commingled investment vehicles whose total assets have an aggregate market value of at least \$50 million and which are managed by a fiduciary who is independent of the MS Broker-Dealers should also be permitted to lend securities to such broker-dealers, provided that such commingled entities have not been formed for the sole purpose of making loans of securities. Although the Department agrees with the Applicant, it has proposed certain additional requirements for pooled arrangements involving the assets of either Related Plans or Unrelated Plans. These additional requirements are as follows:

#### A. Related Plans

With respect to two or more plans, which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are invested in a master trust or any other form of plan asset look-through entity, which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the Department notes that the \$50 million threshold may be satisfied by aggregating the assets of the investing plans within the pooled vehicle. In this regard, the Department also notes that an employer may retain an independent investment manager to manage all or a portion of plan assets invested in a master trust. Under these circumstances, the fiduciary must have total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

#### B. Unrelated Plans

For two or more plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are invested in a group trust or other plan asset look-through entity, which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the \$50 million threshold will apply to the aggregate assets of such entity so long as the fiduciary responsible for making the investment decision on behalf of the group trust or other plan assets look-through entity is not the sponsoring employer, a member of the controlled group of corporations, the employee organization, or an affiliate, and has full investment responsibility<sup>1</sup> with respect to the plan assets invested therein. Also, the fiduciary must have total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

Accordingly, Condition (9) of PTE 96-14, which has been redesignated herein as Condition (12), has been revised to read as follows:

(12) Only plans with total assets having an aggregate market value of at least \$50 million will be permitted to lend securities to the MS Broker-Dealers; provided however that—

(a) In the case of two or more plans which are maintained by the same employer,

<sup>1</sup> For purposes of this exemption, the term "full investment responsibility" means that the fiduciary responsible for making the investment decision has and exercises discretionary management authority over all of the assets of the group trust or other plan assets look-through entity.

controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million, or

(b) In the case of two or more plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate,

(ii) Has full investment responsibility with respect to plan assets invested therein, and

(iii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million;

(In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.)

As previously noted, in addition to the foregoing modifications, the Department has determined to revise certain of the conditions contained in PTE 96-14. In this regard, the Department has revised or added new conditions in Section I of the proposal pertaining to (a) The arm's length nature of each loan of securities by a client-plan to an MS Broker-Dealer (Condition 2); (b) approval of the general terms of the securities loan agreement by an independent fiduciary (Condition 3); (c) disclosures concerning the financial condition of the MS Broker-Dealer (Condition 7); (d) the compensation paid to a client-plan for lending securities (Condition 8); (e) indemnification and holding harmless of the client-plan by the MS Broker-Dealer against all losses, damages,

liabilities, costs and expenses (Condition 10); (f) a requirement that MSTC will not make a securities loan to any MS Broker-Dealer on any day on which the market value of the securities proposed to be loaned, when added to the market value of all client-plan securities subject to outstanding loans to MS Broker-Dealers, exceeds 50 percent of the market value of all client-plan securities that are subject to securities loans, including the market value of securities proposed to be loaned to the MS Broker-Dealer (Condition 13); (g) the receipt of monthly reports by a client-plan's independent fiduciary relating to securities lending transactions engaged in by the client-plan (Condition 16); and (h) a general recordkeeping requirement that is to be complied with by MS&Co and its affiliates (Section II). In addition, the Department has defined the terms "affiliate" and "control" in Section III.

The new or revised language, which has been incorporated herein, appears in the Summary of Facts and Representations underlying PTE 96-14 as well as in the original exemption application. For language that did not appear in these documents, the Department consulted with the Applicants before making the revisions. This new or modified language is set forth as follows:

#### Section I. Covered Transactions

(New or Revised Conditions)

(2) The terms of each loan of securities by a client-plan to the MS Broker-Dealer will be at least as favorable to such plan as those of a comparable arm's length transaction between unrelated parties;

(3) Any arrangement for MSTC to lend plan securities to the MS Broker-Dealers will be approved in advance by a plan fiduciary who is independent of MSTC and the MS Broker-Dealers; (In this regard, the independent fiduciary also will approve the general terms of the securities loan agreement between the client-plan and the MS Broker-Dealer, the specific terms of which are negotiated and entered into by MSTC which will act as a liaison between the lender and the borrower to facilitate the lending transaction.)

(7) Prior to entering into a loan agreement, the MS Broker-Dealer will furnish its most recent publicly-available audited and unaudited financial statements to MSTC, which, in turn, will provide the statements to the client-plan before the plan is asked to approve the terms of the loan agreement. The loan agreement will contain a requirement that the MS Broker-Dealer must promptly notify lenders 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 not make any further loans to the MS Broker-Dealer unless an independent fiduciary of the client-plan approves the loan in view of the changed financial condition;

(8) In return for lending securities, the client-plan either will —

(a) Receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or

(b) Have the opportunity to derive compensation through the investment of cash collateral; (Under such circumstances, the client-plan may pay a loan rebate or similar fee to the borrowing MS Broker-Dealer, if such fee is not greater than the fee the client-plan would pay in a comparable arm's length transaction with an unrelated party.)

(10) The MS Broker-Dealer will indemnify and hold harmless each lending client-plan against any and all losses, damages, liabilities, costs and expenses (including attorney's fees) incurred by such plan in connection with the lending of securities to the MS Broker-Dealers;

(13) No loan of securities will be made by MSTC as securities lending agent to any MS Broker-Dealer on any day on which the market value of the securities proposed to be loaned, when added to the market value of all client-plan securities subject to outstanding loans to MS Broker-Dealers, exceeds 50 percent of the market value of all client-plan securities subject to securities loans, including the market value of securities proposed to be loaned to the MS Broker-Dealer. (For purposes of this paragraph, market value shall be determined in U.S. dollars, based on the last preceding business day's closing prices of the securities and the last preceding business day's closing foreign exchange rates, if applicable.);

(16) Each client-plan will receive monthly reports with respect to securities lending transactions so that an independent fiduciary of a client-plan may monitor such transactions with the MS Broker-Dealer;

#### Section II. General Conditions

(1) The MS Broker-Dealers will maintain, or cause to be maintained, for a period of six years from the date of such transactions, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (2) to determine whether the conditions of the exemption have been met, except that—

(a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the MS Broker-Dealers, the records are lost or destroyed prior to the end of the six year period, and

(b) No party in interest other than the MS Broker-Dealers shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (2);

(2) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) are unconditionally available at their customary location during normal business hours by—

(a) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC),

(b) Any fiduciary of a participating client-plan or any duly authorized representative of such fiduciary, and

(c) Any contributing employer to any participating client-plan or any duly authorized employee representative of such employer;

(3) None of the persons described above in paragraphs (b)-(c) of paragraph (2) are authorized to examine the trade secrets of MS&Co or its affiliates or commercial or financial information which is privileged or confidential.

### Section III. Definitions.

For purposes of this proposed exemption,

(1) An "affiliate" of a person includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

(2) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

### Notice To Interested Persons

Notice of the proposed exemption will be mailed by first class mail to each plan participating in securities lending arrangements with the MS Broker-Dealers within 30 days of the publication of the notice of pendency in the **Federal Register**. The notice will contain a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 60 days of the publication of the proposed exemption the **Federal Register**.

### 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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and 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 require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

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

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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

(5) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notice of proposed exemption relating to PTE 96-14, as amended by this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within 30 days after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested 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, August 10, 1990).

### Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) 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, effective March 12, 1996, 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 Broker-Dealers) by employee benefit plans with respect to which the MS Broker-Dealer who is borrowing such securities is a party in interest or 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 will have any 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) The terms of each loan of securities by a client-plan to the MS Broker-Dealer will be at least as favorable to such plan as those of a comparable arm's length transaction between unrelated parties;

(3) Any arrangement for MSTC to lend plan securities to the MS Broker-Dealers will be approved in advance by a plan fiduciary who is independent of MSTC and the MS Broker-Dealers;<sup>2</sup> (In this regard, the independent fiduciary also will approve the general terms of the securities loan agreement between the client-plan and the MS Broker-Dealer, the specific terms of which will be negotiated and entered into by MSTC which will act as a liaison between the lender and the borrower to facilitate the lending transaction.)

(4) A client-plan may terminate the arrangement at any time without penalty on five business days notice;

(5) 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

<sup>2</sup> The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than MSTC, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82-63 (47 FR 14804, April 6, 1982).

81-6 (46 FR 7527, January 23, 1981) or any successor, from the MS Broker-Dealers 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 Broker-Dealers;

(6) 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 Broker-Dealers will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent;

(7) Prior to entering into a loan agreement, the MS Broker-Dealer will furnish its most recent publicly-available audited and unaudited financial statements to MSTC, which, in turn, will provide the statements to the client-plan before the plan is asked to approve the terms of the loan agreement. The loan agreement will contain a requirement that the MS Broker-Dealer must promptly notify lenders 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 not make any further loans to the MS Broker-Dealer unless an independent fiduciary of the client-plan approves the loan in view of the changed financial condition;

(8) In return for lending securities, the client-plan either will—

(a) Receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or

(b) Have the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the client-plan may pay a loan rebate or similar fee to the borrowing MS Broker-Dealer, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(9) All procedures regarding the securities lending activities will, at a minimum, conform to the applicable provisions of Prohibited Transaction Exemption (PTE) 81-6 and PTE 82-63 (47 FR 14804, April 6, 1992);

(10) The MS Broker-Dealer will indemnify and hold harmless each lending client-plan against any and all losses, damages, liabilities, costs and expenses (including attorney's fees) incurred by such plan in connection with the lending of securities to the MS Broker-Dealers;

(11) 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;

(12) Only plans with total assets having an aggregate market value of at least \$50 million will be permitted to lend securities to the MS Broker-Dealers; provided, however that—

(a) In the case of two or more plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million, or

(b) In the case of two or more plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the MS Broker-Dealers, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate,

(ii) Has full investment responsibility with respect to plan assets invested therein, and

(iii) Has total assets under its management and control, exclusive of the \$50 million threshold amount

attributable to plan investment in the commingled entity, which are in excess of \$100 million; (In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.)

(13) No loan of securities will be made by MSTC as securities lending agent to any MS Broker-Dealer on any day on which the market value of the securities proposed to be loaned, when added to the market value of all client-plan securities subject to outstanding loans to MS Broker-Dealers, exceeds 50 percent of the market value of all client-plan securities subject to securities loans, including the market value of securities proposed to be loaned to the MS Broker-Dealer. (For purposes of this paragraph, market value shall be determined in U.S. dollars, based on the last preceding business day's closing prices of the securities and the last preceding business day's closing foreign exchange rates, if applicable.);

(14) With regard to the "exclusive borrowing" agreement, the MS Broker-Dealer will directly negotiate the agreement with a plan fiduciary who is independent of the MS Broker-Dealers and MSTC, and such agreement may be terminated by either party to the agreement at any time;

(15) Prior to any plan's approval of the lending of its securities to an MS Broker-Dealer, a copy of this exemption (and the notice of pendency) will be provided to the client-plan;

(16) Each client-plan will receive monthly reports with respect to securities lending transactions so that an independent fiduciary of a client-plan may monitor such transactions with the MS Broker-Dealer;

## Section II. General Conditions

(1) MS Broker-Dealers will maintain, or cause to be maintained, for a period of six years from the date of such transactions, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (2) to determine whether the conditions of this exemption have been met, except that —

(a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the MS Broker-Dealers, the records are lost or destroyed prior to the end of the six year period, and

(b) No party in interest other than the MS Broker-Dealers shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for

examination as required below by paragraph (2);

(2) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) are unconditionally available at their customary location during normal business hours by —

(a) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC),

(b) Any fiduciary of a participating client-plan or any duly authorized representative of such fiduciary, and

(c) Any contributing employer to any participating client-plan or any duly authorized employee representative of such employer;

(3) None of the persons described above in paragraphs (b)-(c) of paragraph (2) are authorized to examine the trade secrets of MS&Co or its affiliates or commercial or financial information which is privileged or confidential.

### Section III. Definitions

For purposes of this proposed exemption,

(1) An "affiliate" of a person includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

(2) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

**EFFECTIVE DATE:** If granted, this proposed exemption will be effective as of March 12, 1996.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the

Department's decision to grant PTE 96-14, refer to the proposed exemption, grant notice and technical correction notice which are cited above.

Signed at Washington, D.C., this 21st day of January, 1998.

**Ivan L. Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98-04; Exemption Application No. D-10472, et al.]

### Grant of Individual Exemptions; Pentair Retirement Savings and Stock Incentive Plan (the Plan), 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.

### Pentair Retirement Savings and Stock Incentive Plan (the Plan) Located in St. Paul, MN

[Prohibited Transaction Exemption No. 98-04; Application No. D-10472]

### 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 past sale by the Plan (the Sale) of the Plan's remaining interest (the Interest) in two guaranteed investment contracts (the GICs) of Confederation Life Insurance Company (CL) to Pentair, Inc. (Pentair), the sponsoring employer and a party in interest with respect to the Plan; provided the following conditions were met:

(1) the Sale was a one-time transaction for cash;

(2) the Plan received no less than the fair market value of the Interests at the time of the Sale;

(3) the Plan and its participants and beneficiaries have not incurred any expenses or any losses from the Sale; and

(4) any future distributions from the GICs that exceed the consideration paid by Pentair to the Plan for the Interests shall be paid to the Plan and allocated to the respective accounts of the affected Plan participants.

**EFFECTIVE DATE:** This proposed exemption will be effective on June 13, 1997.

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 November 24, 1997, at 62 FR 62639.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. E. Beaver of the Department,