

the average of three (or a minimum of two) August 4, 2000 close-of-market bid prices obtained from independent market-makers;

(g) The Ford-Owned Securities transferred to the VEBA pursuant to the Exchange were not issued by Ford and were comprised solely of cash and marketable short-term debt securities under the management of unrelated, independent investment managers;

(h) The Partnership Securities transferred to Ford pursuant to the Exchange were comprised solely of cash and marketable short-term debt securities;

(i) Upon the completion of the Exchange, no single issue of Ford-Owned Securities accounted for more than 25% of the assets of the VEBA;

(j) State Street Bank and Trust Company (SSBT), acting as an independent fiduciary on behalf the VEBA, monitored the Redemption and the Exchange; and

(k) SSBT, as independent fiduciary, approved the Redemption and the Exchange upon determining that the Redemption and the Exchange were in the best interests of the VEBA and its participants.

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 September 27, 2001 at 66 FR 49415.

**FOR FURTHER INFORMATION CONTACT:** Christopher Motta of the Department, telephone (202) 693-8544 (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 disqualified 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 accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of January, 2002.

**Ivan Strasfeld,**

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

[FR Doc. 02-1365 Filed 1-17-02; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 02-08; Exemption Application No. D-10997]**

#### **Grant of Individual Exemption To Modify Prohibited Transaction Exemption 97-08 (PTE 97-08) Involving Morgan Stanley Dean Witter & Co. Incorporated (MSDW&Co) Located in New York, NY**

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

**ACTION:** Grant of individual exemption to modify PTE 97-08.

**SUMMARY:** This document contains a final exemption before the Department of Labor (the Department) which amends PTE 97-08 (62 FR 4811, January 31, 1997), an exemption granted to Morgan Stanley & Co., Incorporated (MSC), a subsidiary of MSDW&Co.

PTE 97-08 provided relief for certain securities lending, principal transactions, and extensions of credit. This exemption modifies PTE 97-08 to permit a U.S. affiliate of a foreign broker-dealer to guaranty the obligations of such broker-dealer that arise in connection with transactions described in PTE 97-08 and affects the participants and beneficiaries of certain employee benefit plans (the Plans or Plan) participating in such transactions and the fiduciaries with respect to such plans.

**EFFECTIVE DATE:** The amendments to PTE 97-08 are effective, as of August 25, 1995, the effective date of PTE 97-08.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693-8540. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On September 7, 2001, the Department published in the **Federal Register**, at 66 FR 46843, a Notice of Proposed Exemption that would amend PTE 97-08. PTE 97-08 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. Specifically, PTE 97-08 provides retroactive exemptive relief from the restrictions of section 406(a)(1)(A) through (D) 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 (D) of the Code, for certain principal transactions between Plans and broker-dealers affiliated with MSC which are subject to British law (the MSC/UK Affiliates), the lending of securities that are assets of Plans to MSC/UK Affiliates, and any extensions of credit to Plans by MSC/UK Affiliates to permit the settlement of securities transactions or in connection with the writing of options contracts; provided certain conditions are satisfied.

The amendment was requested in an application filed on behalf of MSDW&Co, MSC, and any current and future U.K. broker-dealer affiliates of MSDW&CO and MSC, 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 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 final exemption is issued solely by the Department.

The Notice of Proposed Exemption invited all interested persons to comment on the proposed amendment to PTE 97-08 and to request a public hearing. During the comment period, the Department received no comments and no requests for a hearing.

For further information regarding the matters discussed herein, interested persons are encouraged to obtain copies

of the exemption application file (Exemption Application No. D-10997) that the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption to modify PTE 97-08.

#### 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 exemption will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) or (F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interest of plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(4) The exemption 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 exemption is subject to the express condition that the Summary of Facts and Representations set forth in the Notice of Proposed Exemption relating to PTE 97-08, as amended by the Notice of Proposed Exemption relating to this exemption, accurately describes, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

#### Exemption

Based on the facts and representations set forth in the application, 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), the Department hereby amends PTE 97-08 to include in Section I an additional transaction (D), as set forth below:

##### Section I. Transactions

D. Effective August 25, 1995, the restrictions of section 406(a)(1)(A) through (D) 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 (D) of the Code, shall not apply, to a guaranty given to a Plan by MSDW&Co or any U.S. affiliate of MSDW&Co, provided that the guaranty when given:

(a) Is in connection with one of the transactions, described in section I (A), (B), or (C) of PTE 97-08, for which the specific conditions for such transaction and all of the general conditions, as set forth in PTE 97-08 have been satisfied;

(b) Is lawful under the applicable securities laws;

(c) Is provided at no separate cost to the Plan; and

(d) Is not a prohibited transaction under section 503(b) of the Code.

The availability of this 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 application 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 97-08, refer to the Notice of Proposed Exemption (61 FR 58237, November 13, 1996) and the Final Exemption (62 FR 4811, January 31, 1997). For a more

complete statement of the facts and representations supporting the Department's decision to grant this amendment to PTE 97-08, refer to the Notice of Proposed Exemption to Modify PTE 97-08 (66 FR 46843, September 7, 2001).

Signed at Washington, DC, this 15th day of January, 2002.

**Ivan L. Strasfeld,**

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

[FR Doc. 02-1366 Filed 1-17-02; 8:45 am]

**BILLING CODE 4510-29-P**

#### DEPARTMENT OF LABOR

#### Pension and Welfare Benefits Administration

[Application No. D-11035, et al.]

#### Proposed Exemptions; Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan et al.

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

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions 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).

#### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests 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.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated