

Notice to interested persons shall be provided by first class mail within fifteen (15) 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 forty-five (45) 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 6th day of March, 1996.

Ivan Strasfeld,

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

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[Prohibited Transaction Exemption 96-12 ; Exemption Application No. D-09840, et al.]

Grant of Individual Exemptions; World Omni Financial Corporation and Its Affiliates, 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, DC. 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.

World Omni Financial Corporation and Its Affiliates

Located in Deerfield Beach, Florida

[Prohibited Transaction Exemption 96-12;
Application No. D-9840]

Section I—Transactions

A. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) 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 following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A. (1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded

Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.¹

B. Effective June 27, 1994, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.² For purposes of this paragraph B.(1)(iv) only, an entity shall not be considered to service assets

contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in paragraphs B. (1)(i), (iii), and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B. (1) or (2).

C. Effective June 27, 1994, the restrictions of sections 406(a), (b) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided;

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement; and

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.³

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by the servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.S. below.

D. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975 (a) and (b) of the Code, by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely

because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poors Rating Services, Moody's Investor Service, Inc., Duff & Phelps Inc., or Fitch Investors Service, Inc. (collectively, the Rating Agencies);

(4) The trustee is not an affiliate of any member of the Restricted Group (other than BA Securities acting as a member, but not a manager, of the underwriting syndicate for the certificates during the period from October 19, 1995 until December 8, 1995, provided that BA Securities did not sell any certificates to employee benefit plans covered by this exemption during such period). However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to or retained by the sponsor pursuant to the assignment of obligations (or interest therein) to the trust represents not more than the fair market value of such obligation (or interest); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the Pooling and Servicing Agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of

¹ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

² For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

³ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) To the extent that the pool of leases used to create a portfolio for a trust is not closed at the time of the issuance of certificates by the trust, additional leases may be added to the portfolio for a period of no more than 15 consecutive months from the closing date used for the initial allocation of leases that was made to create such portfolio, provided that:

(a) all such additional leases meet the same terms and conditions for eligibility as the original leases used to create the portfolio (as described in the prospectus or private placement memorandum for such certificates), which terms and conditions have been approved by the Rating Agencies. Notwithstanding the foregoing, the terms and conditions for an "eligible lease" (as defined in Section III.X below) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies; and

(b) such additional leases do not result in the certificates receiving a lower credit rating from the Rating Agencies, upon termination of the period during which additional leases may be added to the portfolio, than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(8) Any additional period described in Section II.A.(7) shall be described in the prospectus or private placement memorandum provided to investing plans;

(9) The average annual percentage lease rate (the Average Lease Rate) for the pool of leases in the portfolio for the trust, after the additional period described in Section II.A.(7), shall not be more than 200 basis points greater than the Average Lease Rate for the original pool of leases that was used to create such portfolio for the trust;

(10) For the duration of the additional period described in Section II.A.(7), principal collections that are reinvested in the "eligible lease contract" (as defined in Section III.X. below) with the earliest origination date, then in the "eligible lease contract" with the next earliest origination date, and so forth, beginning with any lease contracts that have been reserved specifically for such purposes at the time of the initial allocation of leases to the pool of leases used to create the particular portfolio, but excluding those specific lease contracts reserved for allocation to or allocated to other pools of leases used to create other portfolios; and

(11) The trustee of the trust (or the agent with which the trustee contracts to provide trust services) is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

C. World Omni and its Affiliates abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

Section III—Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal (except during the period described in Section II.A.(7), if any), interest, and/or other payments made in connection with the assets of such trust; or

(2) A certificate denominated as a debt instrument that is issued by and is an obligation of a trust;

With respect to certificates defined in Section III.A. (1) and (2) above, the underwriter shall be an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is substantially similar to this exemption (as noted below in Section III.C.) and shall be either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Qualified motor vehicle leases (as defined in Section III.T.); or

(b) Fractional undivided interests in a trust containing assets described in paragraph (a) of this Section III.B.(1), where such fractional interest is not subordinated to any other interest in the same pool of qualified motor vehicle leases held by such trust;⁴

(2) Property which has secured any of the obligations described in Section III.B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during the period described in Section II.A.(7) above when temporary investments are made until such cash can be reinvested in additional leases described in paragraph (a) of this Section III.B.(1); and

(4) Rights of the trustee under the Pooling and Servicing Agreement, and rights under motor vehicle dealer agreements, any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any obligations described in Section III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets

⁴ It is the Department's view that the definition of "Trust" contained in Section III.B. includes a two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest categories by the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means any investment banking firm that has received an individual prohibited transaction exemption from the Department that provides relief for so-called "asset-backed" securities that is substantially similar in format and structure to this exemption (the Underwriter Exemptions);⁵ or any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. "Sponsor" means an entity, independent of World Omni or affiliated with World Omni, that organizes a trust by depositing obligations therein in exchange for certificates provided that, if such entity is independent of World Omni, the servicer of the trust is an affiliate of World Omni.

E. "Master Servicer" means World Omni or an entity affiliated with World Omni that is a party to the Pooling and Servicing Agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means World Omni or an entity affiliated with World Omni which, under the supervision of and on behalf of the master servicer, services leases contained in the trust, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means World Omni or an entity affiliated with World Omni which services leases contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means an entity that is independent of World Omni and its affiliates which is the trustee of the trust. In the case of certificates which are denominated as debt instruments,

"trustee" also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust. In addition, a person is not an insurer if such person merely provides: (1) property damage or liability insurance to an Obligor with respect to a lease or leased vehicle; or (2) property damage, excess liability or contingent liability insurance to any lessor, sponsor or servicer, if such entities are included in the same insurance policy, with respect to a lease or leased vehicle.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments for a lease in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

- (1) Each underwriter;
- (2) Each insurer;
- (3) The sponsor;
- (4) The trustee;
- (5) Each servicer;
- (6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust and at the end of the period described in Section II.A.(7); or
- (7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

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

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person shall be "independent" of another person only if:

- (1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing for the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the trust shall not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust owns or holds a security interest in the leased motor vehicle; and

(3) The trust's interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

U. "Pooling and Servicing Agreement" means the agreement or

⁵ For a current listing of the Underwriter Exemptions, see Section V(h) of Prohibited Transaction Exemption (PTE) 95-60 (60 FR 35925, July 12, 1995).

agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

V. "Lease Rate" means an implicit rate in each lease calculated as an annual percentage rate on a constant yield basis, based on the capitalized cost of the leased vehicle as determined under the particular lease contract for the vehicle. With respect to the determination of a "Lease Rate", each lease will provide for equal monthly payments such that at the end of the lease contract term the capitalized cost will have been amortized to an amount equal to the residual value of the leased vehicle established at the time of origination of such contract. The amount to which the capitalized cost has been amortized at any point in time will be the outstanding principal balance for the lease.

W. "Average Lease Rate" means the average annual percentage lease rate, as defined in Section III.V. above, for all leases included at any particular time in a portfolio used to create a trust from which certificates are issued.

X. "Eligible Lease" or "Eligible Lease Contract" means a Qualified Motor Vehicle Lease, as defined in Section III.T. above, which meets the eligibility criteria established for, among other things, the term of the lease, place of origination, date of origination, and provisions for default, as described in the particular prospectus or private placement memorandum for the certificates provided to investors, if such terms and conditions have been approved by the Rating Agencies prior to the issuance of such certificates.

The Department notes that this exemption will be included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the Federal Register on July 12, 1995 (see PTE 95-60, 60 FR 35925).

EFFECTIVE DATE: This exemption is effective for all transactions described herein which occurred on or after June 27, 1994.

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 28, 1995, at 60 FR 58652.

WRITTEN COMMENTS AND MODIFICATIONS: The applicant submitted the following

comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

With respect to Section I.C.(1) of the Proposal, the applicant suggests that the term "Pooling and Servicing Agreement", as defined in Section III.U., be substituted for the words "binding pooling and servicing arrangement". The Department concurs with the applicant's requested clarification and has so modified the language of the exemption.

With respect to Section II.A.(3) of the Proposal, the applicant states that "Standard & Poors Corporation" has changed its name to "Standard & Poors Rating Services". The Department has made the applicant's requested correction to the language of the exemption.

With respect to Section II.A.(4) of the Proposal, the applicant states that in one of the offerings of certificates that would be subject to this exemption, the trustee of the Securitization Trust—Bank of America, Illinois (BAI)—was affiliated from October 19, 1995, until December 8, 1995, with an entity—BA Securities—that was a member (but not a manager) of the underwriting syndicate for the certificates.⁶ As of December 8, 1995, BAI sold its trust business to First Bank, N.A., an entity unaffiliated with BA Securities, which became the new trustee of the Securitization Trust. In this regard, the applicant represents that BA Securities did not sell any certificates directly to employee benefit plans that would be covered by this exemption during the period that it was affiliated with the trustee of the trust.

Therefore, the Department has modified the language of Section II.A.(4) so that the conditions of the exemption will not fail to be met merely because BA Securities acted as a member (but not a manager) of the underwriting syndicate for the certificates from October 19, 1995 until December 8, 1995, while affiliated with BAI, provided that BA Securities did not sell any certificates to employee benefit plans covered by this exemption during such period.

Section II.A.(7) of the Proposal currently requires that the fifteen (15)

⁶ World Omni notes that Section III of Prohibited Transaction Exemption (PTE) 75-1 (40 FR 50845, 50848, October 31, 1975) permits the purchase or other acquisition of any securities by an employee benefit plan during the existence of an underwriting or selling syndicate for such securities, from any person other than a fiduciary with respect to the plan, when such a fiduciary is a member of the syndicate, provided that certain conditions are met. However, the Department is expressing no opinion in this exemption as to whether the conditions of Section III of PTE 75-1 were met at the time of the subject transactions.

month maximum "revolving period" (as discussed in Paragraph 4 of the Summary of Facts and Representations (the Summary) in the Proposal) be measured from the cut-off date used for the initial allocation of leases that was made to create a segregated portfolio. The applicant has clarified earlier representations and now suggests that the use of the actual closing date for the segregated portfolio would be more appropriate than the "cut-off" date to measure the beginning of this period. In this regard, the applicant believes that, upon further review, the term "cut-off" date is vague and can lead to unintended results in situations where the closing date is delayed through no fault of the sponsor. The applicant notes that for federal tax purposes the "revolving period" is measured from the closing date. Therefore, the applicant requests that Section II.A.(7) be modified by inserting "closing date" in place of "cut-off" date for the beginning of the 15 month "revolving period".

The Department concurs with the applicant's requested clarification and has so modified the language of the exemption.

Section II.A.(10) of the Proposal requires that for the duration of the "revolving period", principal collections that are reinvested in additional leases be first reinvested in the "eligible lease contract" (as defined in Section III.X.) with the earliest origination date beginning with any lease contracts that have been reserved specifically for such purposes at the time of the initial allocation of leases to the pool of leases used to create the particular trust, but excluding those specific lease contracts reserved for allocation to or allocated to other pools of leases used to create other trusts. The applicant states that the language which excludes lease contracts reserved for lease pools "used to create other trusts" should be clarified because such leases are actually reserved for other "Separate Units of Beneficial Interests" or "SUBIs" which are used to create other trusts.⁷ The applicant explains that the SUBIs may then either be sold or transferred to a trust or otherwise sold in a private placement. Therefore, the applicant requests that the language read "* * * used to create other SUBIs".

The Department concurs with the applicant's requested clarification and has modified the language of Section II.A.(10) by substituting the word

⁷ Paragraph 4 of the Summary notes that a segregated portfolio of leases is used to create a SUBI which becomes the basis for a securitization and the creation of a separate Securitization Trust from which certificates are issued.

“portfolio” for the word “trust” in order to refer to the leases used to create a SUBI.

Section II.A.(11) of the Proposal requires that the trustee be a substantial financial institution. The applicant represents that the trustee of the Origination Trust, who holds actual title to the leased assets held therein (see discussion in Paragraph 4 of the Summary), may not meet the requirement of this section. The applicant states that the trustee of the Origination Trust needs to be the same entity throughout every securitization deal which originates from the assets held by the Origination Trust because such trustee actually holds title to all of the leased vehicles held in the Origination Trust (see Paragraph 3 of the Summary). The applicant states further that in order to achieve this goal, the trustee of the Origination Trust subcontracts with an established financial institution which is qualified to provide trust services to the trust and acts as an agent of the trustee (i.e. the Trust Agent). The Trust Agent is usually an affiliate of the trustee, but is always unaffiliated with World Omni. Therefore, the applicant requests that the language of Section II.A.(11) be modified as follows:

* * * The trustee of the trust (or the agent with which the trustee contracts to provide trust services) is a substantial financial institution * * * [emphasis added]

The Department concurs with the applicant's requested clarification and has so modified the language of the exemption.

Section III.J. of the Proposal defines the term “Obligor” to include the owner of the property subject to a lease. The applicant states that since the owner of such property (i.e. the leased vehicle) is the trustee of the Origination Trust, the language of the definition should be modified to delete the reference to the “obligor” as the “owner”.

The Department concurs with the applicant's requested clarification and has modified the language of the exemption by deleting the sentence in Section III.J. which refers to the “obligor” as the “owner” of the leased vehicle.

With respect to the definition of the term “Qualified Motor Vehicle Lease” in Section III.T., the applicant suggests that the language used would be more accurate if modified by adding the words “owns or” to the description of the security interest in the lease in subsections (1) and (2), and by deleting the reference to a “security” interest in subsection (3).

The Department concurs with the applicant's requested clarification and has so modified the language of the exemption.

With respect to the information contained in the Summary, the applicant has submitted comments which attempt to clarify certain facts and representations.

First, the applicant states that Paragraph 6 of the Summary describes the amount of certificates sold publicly, including plan investors, and the amount of subordinated certificates sold privately to other investors. The applicant wishes to clarify that the percentages and other data used in this description relate only to the first lease securitization conducted by World Omni. The applicant notes that each lease securitization is slightly different.

In this regard, the Department acknowledges the applicant's clarification. However, the Department notes that each lease securitization involving sales of certificates to employee benefit plans covered by the exemption must comply with all of the General Conditions discussed in Section II. In particular, Section II.A.(2) requires that the rights and interests evidenced by such certificates must not be subordinated to the rights and interests evidenced by other certificates of the same trust. The Department also notes that the exemptive relief provided by PTE 95-60 will be available for subordinated investments in a trust described herein by insurance company general accounts as a result of this exemption being included within the meaning of the term “Underwriter Exemption” as defined in Section V(h) of PTE 95-60.

Second, with respect to the descriptions in the Summary regarding the certificates paying a fixed rate of interest, the applicant wishes the Department to clarify whether the exemption would permit a Securitization Trust to issue certificates that pay floating interest rates. The applicant states that although the Summary only discusses fixed rate certificates (see, for example, Paragraph 6), to the extent that a Securitization Trust issues floating rate certificates under substantially similar circumstances as those presented with fixed rate certificates, the exemption should be applicable.

In this regard, the Department does not believe that it has enough information in the current exemption application file to determine whether the conditions required under the Proposal could be met for the issuance of floating rate certificates by a trust. For example, the Department notes that

Section II.A.(9) requires that the Average Lease Rate for leases in the SUBI portfolio after the “revolving period” must not be more than 200 basis points greater than the Average Lease Rate for the original pool of leases used to create the SUBI portfolio. The Department would need more information than is currently available in the exemption application file, including the applicant's comments, regarding how a securitization would operate when floating rate certificates are issued by a trust. For instance, the applicant has provided no information regarding: (i) how the “spread” between the certificate rate and the Average Lease Rate, required by the Rating Agencies, would be maintained for floating rate certificates if the leases allocated to the SUBI portfolio have fixed Lease Rates; (ii) whether leases allocated to a SUBI would have floating Lease Rates; (iii) whether floating Lease Rates would be consistent with the definition of the term “Lease Rate” contained in Section III.V. of the Proposal; (iv) what interest rate indices would be used to establish the certificate rate; (v) how certain changes in interest rates would affect the operation of the SUBI portfolio during the “revolving period”; (vi) whether, if Lease Rates for leases allocated to the SUBI are fixed, interest rate swap transactions would be used to pay floating rates on the certificates; and (vii) whether the compensation provided by the trust to the Servicer and Sponsor would be impacted in any way by significant changes in interest rates.

The Department is willing to consider the merits of amending the exemption for securitizations involving floating rate certificates, with conditions specifically addressing any issues relating thereto, at a later date.

Third, the applicant wishes to clarify certain of the events leading to the termination of a SUBI discussed in Paragraph 10. World Omni states that if the remaining principal balance of the investor certificates in any Securitization Trust drops to a level at or below some specified percentage of the original balance, the Sponsor of that trust may elect to repurchase all of the investor certificates for an amount at least equal to the outstanding principal balance (plus accrued interest) thereon. World Omni states further that once the Sponsor repurchases the investor certificates, it may either retain them, in which case the Securitization Trust continues to operate unaffected by the repurchase, or transfer them to the holder of the “Undivided Trust Interest” (UTI) in the Origination Trust (i.e. World Omni or an affiliate, as noted in

Paragraph 4), by sale or otherwise. In this latter event, World Omni notes that the UTI holder may direct the trustee to cancel all SUBI certificates in that Securitization Trust and reallocate to the UTI interest all remaining assets in the Origination Trust supporting that particular securitization.

Fourth, with respect to the arrangements made by World Omni or an affiliate for credit support discussed in Paragraphs 12 and 13 of the Summary, the applicant states that the information contained therein does not accurately describe the type of "credit support" World Omni currently uses for its lease securitizations. Paragraphs 12 and 13 state that the Servicer may act as an insurer by advancing funds to a trust to provide temporary or permanent credit support to cover any defaulted payments on the leases in the trust. However, World Omni wishes to clarify that the Servicer advances funds if an Obligor's payments are delinquent to "smooth the transaction's cash flow", but that the Servicer is not acting as an "insurer" in this role. World Omni also notes that the description contained in Paragraph 13(d) of the Summary regarding the credit support having "floor" dollar amounts to protect investors against large losses is not reflective of World Omni's current securitizations.⁸

World Omni represents that each lease securitization conducted to date has only required the funding of a Reserve Fund, the retention by the Sponsor of a subordinated interest in each Securitization Trust, the issuance of subordinated "B" class certificates (which are not held by plan investors), and approximately a 200 basis point "spread" between the Average Lease Rate for the leases held in the SUBI and the certificate rate for certificates issued by the Securitization Trust. These securitizations have obtained the desired high credit ratings from the Rating Agencies for the certificates issued by the Securitization Trust.

World Omni states that Paragraphs 12 and 13 in the Summary are generally descriptive of credit support arrangements made in offerings of asset-backed securities made by other trusts and could be used by World Omni and its affiliates in the future. However, World Omni represents that these arrangements are not currently used by World Omni for payments made on

certificates issued by its Securitization Trusts and have not been necessary to achieve the credit ratings from the Rating Agencies required under Section II.A.(3) and Section II.A.(7)(b) of the Proposal.

Fifth, with respect to Paragraph 15 of the Summary regarding periodic reports filed with the SEC, the applicant states that a Securitization Trust and its Sponsor may, in some cases, discontinue making filings under the Securities Exchange Act of 1934 (the '34 Act) if permitted to do so under the provisions of that Act by exemptions contained therein.

Sixth, the applicant notes that Paragraphs 16 and 18(f) of the Summary state that the secondary market in these certificates makes the certificates fairly liquid investments. However, the applicant states that since in some instances the certificates may be held by fewer than 100 investors, World Omni does not believe that all of these certificates should be characterized as fairly liquid investments.

Finally, the applicant has informed the Department that the certificates issued by a Securitization Trust in the future may involve multi-class certificates. Such multi-class certificates may be one of two types: (i) "strip" certificates; and (ii) "fast-pay/slow-pay" certificates.

"Strip" certificates are a type of security in which the stream of interest payments on the underlying receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. The only difference between these multi-class certificates and the single-class certificates is the order in which distributions are made to certificateholders.

The applicant represents that any "strip" or "fast-pay/slow-pay" certificates issued by a trust will be the same as the type described in the Underwriter Exemptions previously granted by the Department. The applicant emphasizes that the rights of a plan purchasing such certificates will not be subordinated to the rights of another certificateholder in the event of default on any payment obligations for the certificates. With respect to "fast-pay/slow-pay" certificates, the applicant states that if the amount available for distribution to certificateholders is less than the amount required to be so

distributed, all senior certificateholders then entitled to receive distributions would share in the amount distributed on a pro rata basis. Thus, if a trust issues subordinate certificates, holders of such subordinate certificates would not be able to share in the amount distributed on a pro rata basis.

In this regard, the Department notes that although it believes that either the "strip" or the "fast-pay/slow-pay" certificates described above are included within the scope of the final exemption, it further notes that no relief is provided under the exemption for plan investments in subordinate certificates (other than as permitted herein for certain insurance company general accounts). In addition, the Department notes that the conditions of the exemption would require that any "strip" or "fast-pay/slow-pay" certificates receive one of the three highest ratings available from the Rating Agencies and that such certificates not receive a lower credit rating upon termination of the period during which additional leases may be added to the SUBI portfolio.⁹

The Department acknowledges all of the clarifications made by the applicant to the information contained in the Summary. For further information regarding the applicant's comments or other matters discussed herein, interested persons are encouraged to obtain a copy of the exemption application file [No. D-9840] which is available in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, based on all of the facts and representations made by the applicant, the Department has determined to grant the proposed exemption as modified.

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

Pediatric Dentistry Ltd. Profit Sharing Trust (the Plan) Located in Fargo, North Dakota

[Prohibited Transaction Exemption 96-13; Exemption Application No. D-09903]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and

⁸The Department notes that if World Omni's future securitizations involve an entity acting as an "insurer" of a trust, as defined in Section III.I., such entity must be independent of the Servicer and should provide credit support arrangements consistent with the applicant's representations in Paragraph 13(d) of the Summary.

⁹The Department cautions plan fiduciaries to fully understand the risks involved with either "strip" or "fast-pay/slow-pay" certificates prior to any acquisitions of such certificates, and to make prudent determinations as to whether such certificates would adequately meet the investment objectives and liquidity needs of the plan.

the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code¹⁰ shall not apply to the cash sale of a parcel of improved real property (the Property) by the Plan to William Hunter, M.D. (Dr. Hunter), a party in interest with respect to the Plan; provided that: (1) The sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan will receive in cash the *greater* of the cost to the Plan to acquire the Property or the fair market value of the Property, as of the date of the sale, as determined by the same independent, qualified appraiser who prepared the appraisal of the Property submitted by Dr. Hunter in the application for exemption; (3) the Plan will pay no commissions, fees, or other expenses as a result of the transaction; and (4) the terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the Federal Register on May 10, 1995. All comments and requests for hearing were due by June 26, 1995.

During the comment period, the Department received no requests for hearing. However, the Department did receive a comment letter from Dr. Hunter, dated June 22, 1995. Dr. Hunter requested a modification of the operant language of condition number two on page 24901 of the Notice. In this regard, the proposed sale of the Property by the Plan to Dr. Hunter was conditioned on the Plan receiving cash, as a result of the sale, in the amount of the *greater* of \$79,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale.

Dr. Hunter believes that the appraisal prepared by Jerry Link (Mr. Link) of Appraisal Services, Inc. in Fargo North, Dakota and submitted by Dr. Hunter with the application did not accurately reflect the fair market value of such Property. In this regard, Mr. Link determined that the fair market value of the Property was \$79,000, as of January 13, 1994. In his comment, Dr. Hunter

points out that a previous attempt to sell the Property in 1992 was unsuccessful at a purchase price of \$68,950. Further, Dr. Hunter indicates that the Property is located on the corner of a busy commercial intersection; and therefore, is less desirable than homes in the immediate area of quiet residential neighborhoods which were used as market comparables in the preparation of the previous appraisal. Dr. Hunter states that if the Property could be sold net by the Plan to an unrelated third party for \$79,000 or greater, he would do so. However, if there are no buyers for the Property at \$79,000 or greater, Dr. Hunter proposes to purchase the Property for cash at the fair market value of the Property, as determined by an independent qualified appraiser, as of the date of the sale.

The Department believes that it would be protective of the Plan and in the interest of the participants and beneficiaries of the Plan to sell the Property to Dr. Hunter for cash. However, it is the Department's position that under no circumstances should the Plan receive less than the Plan expended in acquiring the Property. In this regard, the Department has determined to impose two (2) additional safeguards on the transaction. First, the Department will require that, as a result of the cash sale of the Property by the Plan to Dr. Hunter, the Plan will receive the *greater* of the cost to the Plan to acquire the Property or the fair market value of the Property as of the date of the sale. Second, the Department will require that the fair market value of the Property, as of the date of the sale, be determined by the same independent, qualified appraiser who prepared the appraisal of the Property in the amount of \$79,000 submitted by Dr. Hunter in the application for exemption.

Accordingly, the language in condition number two on page 24901 of the Notice which states, "as a result of the sale, the Plan will receive in cash the *greater* of \$79,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale," has been altered. The amended language of condition number two reads, "as a result of the sale, the Plan will receive in cash the *greater* of the cost to the Plan to acquire the Property or the fair market value of the Property, as of the date of the sale, as determined by the same independent, qualified appraiser who prepared the appraisal of the Property submitted by Dr. Hunter in the application for exemption."

After giving full consideration to the entire record, including the written comment from Dr. Hunter, the

Department has decided to grant the exemption, as described and amended above. In this regard, the comment letter submitted by Dr. Hunter to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-5638, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on May 10, 1995, at 60 FR 24901.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

Morgan Stanley & Co. Incorporated (MS&Co) and Morgan Stanley Trust Company (MSTC) Located in New York, New York

[Prohibited Transaction Exemption 96-14; Application No. D-09940]

Exemption

The restrictions of sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lending of securities to Morgan Stanley & Co., Incorporated (MS&Co) and to any other U.S. registered broker-dealers affiliated with Morgan Stanley Trust Company (the Affiliated Broker-Dealer, collectively, the MS Broker-Dealers) by employee benefit plans with respect to which MS&Co 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 has discretionary authority or control over a client-plan's assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

2. Any arrangement for MSTC to lend plan securities to the MS Broker-Dealers will be approved in advance by a plan fiduciary who is independent of MSTC and the MS Broker-Dealers;

3. A client-plan may terminate the arrangement at any time without penalty on five business days notice;

¹⁰ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

4. The client-plans will receive collateral consisting of cash, securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, bank letters of credit or other collateral permitted under PTE 81-6 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;

5. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, the MS Broker-Dealers will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent;

6. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81-6 and 82-63;

7. The MS Broker-Dealer will indemnify each lending client-plan against any losses incurred by such plan in connection with the lending of securities to the MS Broker-Dealers;

8. The client-plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

9. Only plans 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;

10. With regard to the "exclusive borrowing" agreement (as described below), 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; and

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

WRITTEN COMMENTS: In the Notice of Proposed Exemption (the Notice), the

Department invited all interested persons to submit written comments on the proposed exemption within 45 days from the date of publication of the Notice in the Federal Register. All written comments were to have been received by the Department by September 25, 1995. The Department received one written comment. The comment was submitted on behalf of MS&Co and MSTC (the Applicants). The issues addressed in the comment and the Department's responses are summarized as follows:

1. In the introductory paragraph of the proposed exemption, MS&Co and its affiliated broker-dealers are collectively defined as the "MS Group". The Applicants believe that the use of the term "MS Group" will cause confusion because clients and internal personnel often refer to Morgan Stanley Group Inc. (the parent entity of MS&Co and MSTC) as the MS Group. Consequently, the Applicants request that all references to the "MS Group" be replaced with "MS Broker-Dealers". The Department does not object to this requested modification.

2. The first sentence of paragraph 5 of the Summary of Facts and Representations (SFR) on page 41120 stated:

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.

The Applicants request that, to clarify that, under Plan B MSTC will not always serve as directed trustee or custodian, the above quoted sentence should read as follows:

MSTC and MS&Co request an exemption for the lending of securities owned by certain pension plans (client-plans) with respect to which MS&Co is a party in interest or for which MSTC serves as directed trustee or custodian and securities lending agent, under either of the two arrangements described as Plan A and Plan B and for the receipt of compensation in connection with such transactions. When MSTC serves as directed trustee or custodian for the client-plans, MSTC will apprise the client-plans of its affiliation with the MS Broker-Dealers.

The Department does not object to this requested revision.

3. The Applicants wish to clarify that under Plan B a client plan may hire another custodian, instead of MSTC, to monitor the level of collateral held by a client plan. Accordingly, the Applicants state that clause (d) of paragraph 33 of the SFR should have read:

the collateral on each loan to the MS Broker-Dealers initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81-6, and will be monitored daily by MSTC under Plan A and by MSTC or another custodian under Plan B.

The Department concurs.

4. The applicants have requested that the following language be added to condition (9) and also immediately after the first sentence of paragraph 25 of the SFR.

In the case of 2 or more employee benefit 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 Department has no objection to the proposed additional language, and, accordingly, has made the requested modification.

5. The Applicants have requested that the references to "MS&Co" in conditions (7) and (10) be replaced with "MS Broker-Dealers" to correctly reflect the respective responsibilities of the parties. The Department has made the requested modifications to the exemption.

6. The Applicants state that the reference to the "Basic Loan Agreement" and the "agreement" in paragraph 11 are incorrect and should be replaced with references to the "Authorization" because the agreement by MSTC to provide securities lending services to a client-plan will be included in the securities lending authorization (the Authorization), not the Basic Loan Agreement.

7. The Applicants note that paragraph 21 of the proposed exemption, which concerns Plan A, refers to the types of non-cash collateral permitted under "PTE 81-6 or any successor" while paragraph 28, which relates to Plan B, refers to "other non-cash collateral permitted under PTE 81-6." The Applicants request that the reference in paragraph 28 be modified to clarify that the permissible collateral under Plan B includes non-cash collateral permitted under any successor to PTE 81-6. The Department concurs.

The changes described above are hereby incorporated into the exemption as granted. Accordingly, after giving full consideration to the record, the Department has determined to grant the exemption, as described herein. In this regard, the Applicants' comments have been included as part of the public record of the exemption application. The complete application file is made available for public inspection in the

Public Documents Room of the Pension and Welfare Benefits Administration, room N-5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on August 11, 1995 at 60 FR 41119.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

Life Insurance Corporation Retirement Savings Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 96-15, Exemption Application No. D-10048]

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 Code¹¹ shall not apply to the cash sale of 16 residential mortgage loans (the Loans) by the Life Insurance Company of the Southwest Holding Corporation Retirement Savings Plan (the Plan) to the Life Insurance Company of the Southwest (the Employer), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) as of the date of sale, the Employer will pay the greater of: (1) the outstanding principal balance plus any accrued, unpaid interest on each of the individual Loans, or (2) the fair market value of each of the individual Loans, as determined by a contemporaneous independent appraisal;

(b) the sale will be a one-time cash transaction; and

(c) the Plan will pay no costs or commissions as a result of the transaction.

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 28, 1995 at 60 FR 58667.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

¹¹ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

LEGENT Retirement Security Plan (the Plan) Located in Pittsburgh, PA

[Prohibited Transaction Exemption 96-16; Exemption Application No. D-10113]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan of a limited partnership interest (the Interest) in Consolidated Capital Institutional Properties Two Limited Partnership (CCIP/2) to LEGENT Corporation, a party in interest with respect to the Plan.

This transaction is conditioned upon the following requirements: (1) all terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price which is not less than the greater of: (a) the fair market value of the CCIP/2 Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost plus opportunity costs attributable to the CCIP/2 Interest.

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 28, 1995 at 60 FR 58679.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady 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 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 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, D.C., this 6th day of March, 1996.

Ivan Strasfeld,

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

[FR Doc. 96-5745 Filed 3-11-96; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96-026]

NASA Advisory Council, Minority Business Resource Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee. **DATES:** March 20, 1996, 9 a.m. to 4 p.m. **ADDRESSES:** NASA Kennedy Space Center, Headquarters Building, Room 4102 (4th Floor Conference Room), Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space