

Committees, assisted by Buck Consultants (Buck), established a special telephone line containing a menu driven voice response system. The line was manned by employees of Buck. Participants were notified in writing that their elections were to be made through the use of this telephone system. The elections were collected by Buck, and aggregate results for the Plans were forwarded to the Plans' Trustee, Wells Fargo Bank (the Bank). The Bank then exercised and sold the appropriate number of Talbert Rights in accordance with the Participants' directions. Each Talbert Right sold was to be treated as having been sold for the average sale price (net of selling expenses) of the Talbert Rights sold by the Plans. The proceeds from the sale of the Talbert Rights credited to a participant's accounts were to be invested in accordance with such participant's existing investment directions applicable to new contributions, and if there were no such directions, in an investment fund designated under the Plan if the Talbert Rights had value at the time of the sale. Talbert Rights held as unallocated forfeitures were to be sold by the Plans if the Talbert Rights had value at the time of the sale.

16. In summary, the applicant represents that the transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Plans' acquisition of the Talbert Rights resulted from the independent acts of FHP and Talbert as corporate entities; (b) all holders of FHP Common Stock, including the Plans, were treated in a like manner with respect to the Talbert Rights; (c) with respect to Talbert Rights allocated to the Plans, the Talbert Rights were acquired solely for the accounts of participants who had directed investment of all or a portion of their account balances in FHP Common Stock pursuant to plan provisions for individually-directed investment of participant accounts; (d) the Talbert Rights offering period extended only from April 21, 1997 through May 20, 1997, so the Talbert Rights were held by the Plans for no more than 30 days; (e) the Plans' participants and beneficiaries were afforded a reasonable opportunity to direct the sale or exercise of the Talbert Rights credited to their accounts; (f) the Plans' participant direction procedure was administered by an independent fiduciary (*i.e.*, the Bank); and (g) the Plan Committees exercised investment discretion only with respect to undirected investments in Talbert Rights and acted only in accordance with the procedures specified in the disclosures made to the

Plan participants who received the Talbert Rights.

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

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or 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 that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of September, 2001.

**Ivan Strasfeld,**

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

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#### DEPARTMENT OF LABOR

##### Pension and Welfare Benefits Administration

[Application No. D-10997]

##### **Notice of Proposed 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:** Notice of proposed individual exemption to modify PTE 97-08.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual administrative exemption which, if granted, would amend PTE 97-08 (62 FR 4811, January 31, 1997), an exemption which was 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. If granted, this proposed exemption to modify PTE 97-08 would 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 would affect 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:** If granted, the proposed amendments will be effective, as of August 25, 1995, the effective date of PTE 97-08.

**DATES:** Written comments and requests for a public hearing should be received by the Department on or before October 22, 2001.

**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-10997.

The application pertaining to the proposed exemption to amend PTE 97-08 and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**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) 219-8883. (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 modify 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 proposed amendment has been 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 (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 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 issued solely by the Department.

MSDW&Co is the parent holding company for a number of subsidiaries

which, among other businesses, perform securities underwriting, distribution and trading, merger, acquisition, restructuring and other corporate finance services for clients around the world and provides investment advisory services, equipment and other finances businesses credit card services. Further, MSDW&Co currently has foreign affiliates that are registered under foreign broker-dealer registration laws that are represented to be comparable to the Securities Exchange Act of 1934 (the Exchange Act).

MSC, an affiliate of MSDW&Co, is a broker-dealer registered with the Securities and Exchange Commission under the Exchange Act, providing, among other things, investment banking, securities and asset management services to institutional investors, including multinational corporations, governments, emerging growth companies, financial institutions, employee benefit plans, universities, foundations, and individual investors.

Pursuant to PTE 97-08, the MSC/UK Affiliates, in particular Morgan Stanley & Co. International LTD, which is regulated by the Securities and Futures Authority in the United Kingdom, effective August 25, 1995, may enter into principal transactions with Plan accounts, borrow securities from such Plan accounts, and engage in extensions of credit to such Plans, including those in connection with the settlement of securities transactions and the writing of options contracts; provided certain conditions, as set forth in PTE 97-08, are satisfied. With respect to that section of PTE 97-08 that permits extensions of credit, the MSC/UK Affiliates have found that Plans often seek a guaranty of the MSC/UK Affiliates' obligations, particularly in connection with the writing of options contracts. The requested modification to PTE 97-08 would permit a guaranty to be given to a Plan by MSDW&Co or any U.S. affiliate of MSDW&Co, so long as such 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. In the absence of a modification to PTE 97-08, a violation of section 406(a)(1)(B) of the Act could occur, if MSDW&Co or one of its affiliates were a party in interest with respect to a Plan and also provided a guaranty to such

Plan. It is represented that the Plans that potentially could be affected by this proposed modification of PTE 97-08 have not been identified, either because they are not capable of being known or are too numerous to mention.

The Applicants have requested that the modification to PTE 97-08 be made retroactive, as of August 25, 1995, the effective date of PTE 97-08. The Applicants represent that, to their knowledge, while there has never been an occasion on which a guaranty has been drawn on by a Plan, guaranties have been made with respect to many transactions.

The Applicants maintain that principal transactions, securities lending transactions, and extensions of credit in connection with the global securities business are a typical and increasingly common part of a Plan's investment strategy. It is represented that guaranties by affiliates of broker-dealers are common in many transactions, and in particular, in the purchase and sale of options. The Applicants argue that to the extent that an affiliate of a broker-dealer adds a credit guaranty to the obligations of such broker-dealer, a Plan would be advantaged.

The proposed modification of PTE 97-08 would be administratively feasible, because the guaranty will be part of the contract between the Plan and the party in interest and will be enforceable by the Plan in the U.S. courts. Further, because Standard & Poor's provides a rating for the outstanding debt of MSDW&Co (AA -, as of May 2001), Plans are able to effectively monitor the credit quality of the guaranty.

The Applicants maintain that the proposed modification of PTE 97-08 would be in the interest of affected Plans. In this regard, it is represented that the guaranty can only benefit Plans, as it provides an additional party for a Plan to look to in the event of a default by a broker-dealer.

The proposed modification of PTE 97-08 will be protective of Plans, because the guaranty will add safety and provide credit enhancement to many securities transactions. If the requested modification of PTE 97-08 were to be denied, affected Plans would not have the benefit in their dealings with parties in interest of the security provided by the guaranty.

In summary, the Applicants represent that the proposed modification of PTE 97-08 satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The guaranty has been and will be given in connection with any transaction

which is exempt, pursuant to PTE 97-08; (b) the guaranty has been and will be lawful under the applicable securities laws; (c) the guaranty has been and will be provided at no separate cost to the Plan; (d) the guaranty has not been and will not be a prohibited transaction under section 503(b) of the Code; (e) the guaranty has been and will be enforceable by the Plan in the U.S. courts; (f) Plans have benefited and will benefit from the addition of a credit guaranty by MSDW&Co of the obligations of its broker-dealer affiliates; (g) various rating agencies are able to determine the quality of the outstanding debt of MSDW&Co, thus providing a mechanism by which Plans are able to monitor the viability of the guaranty; (h) Plans have had and will have an additional party to look to in the event of a default by a broker-dealer.

#### Notice to Interested Persons

Notification of the publication of the Notice of Proposed Exemption to Modify PTE 97-08 (the Notice) will be mailed by first class mail to those Plan accounts that trade most frequently with the MSC/UK Affiliates. Such notification will be given within 15 days of the publication of the Notice in the **Federal Register**. The notification will contain a copy of the Notice, as published in the **Federal Register**, and a copy of the 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 45 days of the publication of the Notice in 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) of the Act and section 4975(c)(1) (E) or (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 97-08, as modified 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 the time frame set forth above, 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, 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 proposes to modify PTE 97-08 to include in Section I an additional transaction (D), as set forth below:

##### Section I. Transactions

D. If the exemption is granted, 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 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 97-08, refer to the proposed exemption and the grant notice that are cited above.

Signed at Washington, DC, this 4th day of September, 2001.

**Ivan L. Strasfeld,**

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

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#### NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

##### Advisory Committee on Presidential Libraries Meeting

Notice is hereby given that the Advisory Committee on Presidential Libraries will meet on September 21, 2001, at 1:30 p.m., at the Houston I meeting room on the second floor of the Double Tree Guest Suites, 303 W. 15th Street in Austin, Texas.

The agenda for the meeting will be the Presidential library programs and a discussion of several critical issues including dialogue concerning the symposium on the "Future of Presidential Libraries" and a report by