

he desires that the transaction be consummated.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in the Account of Dr. Light and he is the only participant affected by the proposed transaction, there is no need to distribute the notice of the proposed transaction to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver 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 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 that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of December 1997.

Ivan Strasfeld,

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

[FR Doc. 97-33179 Filed 12-18-97; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Nos. D-10461, D-10462 and D-10463]

Notice of Proposed Amendment to Prohibited Transaction Exemption (PTE) 93-8 Involving the Fortunoff Pension Plans (the Plans) Located in Westbury, NY

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

ACTION: Notice of proposed amendment to PTE 93-8.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend PTE 93-8 (58 FR 7258, February 5, 1993), a purchase, leaseback and license exemption involving Plans sponsored by Fortunoff Fine Jewelry and Silverware, Inc. (FFJ) and M. Fortunoff of Westbury Corporation (M. Fortunoff) and parties in interest. These transactions are described in a notice of pendency that was published in the **Federal Register** on May 8, 1992 at 57 FR 19951. The proposed exemption, if granted, would affect participants and beneficiaries of, and fiduciaries with respect to the Plans.

EFFECTIVE DATE: If granted, this proposed exemption would be effective as of the date the notice granting the exemption is published in the **Federal Register**.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 2, 1998.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, U.S.

Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application Nos. D-10461, D-10462 and D-10463. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed exemption that would amend PTE 93-8. PTE 93-8 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed on behalf of M. Fortunoff and FFJ (collectively), the Applicants) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

I. Background

PTE 93-8 provides prospective exemptive relief from 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 reason of section 4975(c)(1)(A) through (E) of the Code with respect to (1) the purchase by the Fortunoff Pension Plan—Employer Group A Plan (the Employer Group A Plan), the Fortunoff Pension Plan—Employer Group B Plan (the Employer Group B Plan) and the Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (the Profit Sharing Plan) of undivided interests in certain improved real property (the Property), for the total

cash consideration of \$6 million, from M. Fortunoff, the sponsor of the Group B Plan and a retailer of rugs, furniture and household items; (2) the leasing of the Property by the Plans, under the provisions of an amended lease (the Amended Lease), to FFJ, the sponsor of the Group A Plan and the Profit Sharing Plan as well as retailer of fine jewelry, silverware, glassware and crystal; and (3) the use of space in the Property by Fortunoff Information Services (FIS), a partnership providing data processing services to FFJ and M. Fortunoff pursuant to the terms of a license agreement (the License) between FFJ and FIS.

As noted in the Summary of Facts and Representations underlying PTE 93-8, the subject Property, which is located at One MH Plaza, Axinn Avenue, Garden City East, Nassau County, New York has the following legal description:

All that certain plot, piece or parcel of land, situate, lying and being near Westbury, Town of Hempstead, County of Nassau and State of New York, being the northerly 367.04 feet more or less of Lot 44 Block 73 on the Nassau County land and tax map as same existed on the date hereof.

The Property consists of a one story office and warehouse building containing approximately 116,000 square feet of gross building area on a site of approximately 4.0663 acres of land. There is also a parking area. The Property was originally leased by M. Fortunoff to FFJ for its warehouse and data processing services under the provisions of a written, triple net lease (the Lease) that commenced on March 1, 1989. The annual rental under the Lease was \$554,232 and was payable in monthly installments of \$46,186. In addition to the Lease, FFJ granted its affiliate, FIS, an exclusive right to use, for \$3,850 per month, approximately 8,041 square feet in the building area for FIS's information systems and data processing operations. The term of the License coincided with the term of the Lease.

Upon the granting of PTE 93-8, the Plans purchased the Property, which was unencumbered by a mortgage, from M. Fortunoff for the total cash consideration of \$6 million. The purchase price was less than the independently appraised value of the Property. The Property was then allocated among the Plans such that the Group A Plan and the Group B each acquired 40 percent interests in the Property with each Plan paying \$2.4 million. The Profit Sharing Plan acquired the remaining 20 percent interest in the Property for \$1.2 million. At the time of acquisition, the Property represented approximately 19 percent of

the Group A Plan's assets, 22 percent of the Group B Plan's assets and 13 percent of the assets of the Profit Sharing Plan. With the exception of mandatory title insurance charges, no Plan paid any real estate fees or commissions in connection with its acquisition of an interest in the Property.

Following the purchase transaction, the Lease and License were assigned to the Plans. As modified by the Lease Assignment and Assumption Agreement, the Amended Lease between the Plans and FFJ, has a twelve year term that will expire on February 29, 2004. The annual rental under the Amended Lease, which is the same as that paid under the Lease, is \$554,232 (the Base Rent). The Base Rent is payable in monthly installments of \$46,186. Commencing on March 1, 1993 and including the year ending February 29, 2004, FFJ is required to pay, in addition to the Base Rent, and annual Escalation Amount based upon the fair market rental value of the Property as determined by a qualified, independent appraiser. Effective October 1, 1997, FFJ has commenced paying an annual Escalation Amount of \$35,048 on a monthly basis in equal installments of \$2,920.67. Therefore, the total rental amount being paid is \$589,280 annually of \$49,107 monthly. In the event that the fair market rental value of the Property should decline to an amount which is less than the Base Rent, the Amended Lease provides that the Plans will be paid the Base Rent. As with the Lease, the Amended Lease is also a triple net lease.

The License between FFJ and FIS, which was similarly modified by the Lease Assignment and Assumption Agreement, required FIS to pay its proportionate share of utilities as well as repair and maintain that portion of space that it occupied, also on triple net basis. Although the License had a term that was commensurate with that of the Amended Lease and required that FIS pay FFJ a base fee that was proportional to the amount that FFJ paid the Plans under the Amended Lease, it was terminated on or about January 1, 1995 after FIS vacated the Property. Currently, FFJ occupies that space.

To secure its obligations under the Amended Lease, FFJ obtained a one year, irrevocable letter of credit (the Letter of Credit) in favor of the Plans. The Letter of Credit, which was in the face amount of \$550,000, provided that Sanford Browde, the independent fiduciary for the Plans with respect to the transactions, could draw upon amounts available thereunder the FFJ ever defaulted in its rental payments under the Amended Lease and the

default continued for more than ten days after notice of the default had been given. On February 25, 1994, the Letter of Credit expired.

To further secure FFJ's obligations to the Plans under the Amended Lease, M. Fortunoff entered into an escrow agreement (the Escrow Agreement) with the Plans whereby at least one year's rental under the Amended Lease would be maintained through the sixth anniversary date of the Property's assignment to the Plans. In this regard, M. Fortunoff established a \$1.65 million special escrow account (the Escrow Account) over which it would have no withdrawing power or authority. If, at any time the Escrow Account were depleted, M. Fortunoff would be required to make up the shortfall.

Funds in the Escrow Account would not be disbursed if there had been a default under the Amended Lease during the initial six year term of the Escrow Agreement. Instead, the Escrow Agreement would continue until the end of the term of the Amended Lease. Assuming there were no defaults after this period, the balance of the Escrow Account would be delivered to M. Fortunoff after 1999.

As noted above, the transactions described in PTE 93-8 are being monitored by Mr. Browde, the independent fiduciary for the Plans. Further, as additional safeguards, the exemption contains a number of specific conditions. For example, (1) the terms of the transactions must be at least as favorable to the Plans as those obtainable in arm's length transactions with an unrelated party; (2) the independent fiduciary must (a) determine that the transactions are in the best interests of the Plans, (b) monitor and enforce compliance with the terms and the conditions of the transactions and exemption at all times, and (c) appoint one or more independent fiduciaries to resolve any conflicts of interest which may develop between the Plans with respect to the Amended Lease, the Escrow Agreement, the Property, or each Plan's interest therein; (3) the value of the proportionate interests in the Property that are acquired by each Plan must not exceed 25 percent of each Plan's assets; and (4) the Base Rent must be adjusted annually by the independent fiduciary based upon an independent appraisal of the Property.

II. Proposed Modification to PTE 93-8

According to the Applicants, the subject Property is irregularly-shaped and resembles a flagpole or a flag lot. Corporate Property Investors (CPI), which is not affiliated with either the

Applicants or Mr. Browde, is the owner of two neighboring lots to the immediate east and west of the "pole" area of the Property which has been designated by the Applicants for employee parking. The Property currently separates the two parcels owned by CPI.

By eliminating the pole portion of the Property, the Applicants represent that the Property will become regular in shape and more suitable for expansion. If reconfigured, the Property will also provide additional parking for employees of FFJ and for others using the warehouse facility.

Therefore, the applicants propose to modify PTE 93-8 by having the Plans exchange the pole portion of the Property (the Exchange Property) for nearly equivalent portions of the two lots that are owned by CPI (the Substitute Property).¹ The Substitute Property is contiguous with the existing northern border of the flag portion of the Property and is subject to a ground lease that is currently held by CPI as ground lessor. The Substitute Property is used by CPI for parking purposes and has the following legal description:

All that certain plot, piece or parcel of land, situate, lying and being near Westbury, Town of Hempstead, County of Nassau and State of New York, being the southerly 47.50 feet, more or less, of Lots 23 and 25 in section 44 Block 73 on the Nassau County Land and Tax Map as same existed on the date hereof.

The proposed exchange will be conducted on the basis of a tax free exchange of like-kind property under section 1031 of the Code. The Substitute Property will be acquired by the Plans in fee simple and will not be subject to the ground lease. At the time of closing, CPI will transfer the Substitute Property to the Plans free of the rights of any person or entity under the ground lease. After the land exchange, the total area of the Property will be essentially the same as at present but the land will be more regular in shape. As for CPI, the proposed exchange will allow it to own one continuous parcel of land, thus enhancing the utility of its land holdings.

The Plans propose to effect the real property exchange with CPI under the terms of a Real Estate Exchange Agreement. The proposed exchange is also contingent upon the Department's approval of the arrangement and requires that the parties warrant or adhere to environmental laws and regulations affecting the respective

Properties. It is represented that the exchange will not affect the present use of the Property, the Amended Lease, or M. Fortunoff's obligations under the Escrow Agreement.

Because of the nature of the modification discussed above, the Department has determined that the exemptive relief provided under PTE 93-8 is no longer available. Therefore, the Department has decided to publish a new exemption which, if granted, would amend PTE 93-8 by allowing the Plans to lease the Substitute Property to FFJ along with the remaining Property under the provisions of the Amended Lease. In effect, the new proposed exemption will incorporate by reference many of the facts, representations and continuing conditions that are contained in PTE 93-8. However, the proposed exemption will not cover FIS's use of space in the Property pursuant to the terms of the License as such arrangement has been terminated.

III. Independent Appraisal

Bernard Goodman, MAI, CRE, and Matthew J. Guzowski, MAI, independent appraisers (the Appraiser), who are affiliated with the appraisal firm of Goodman-Marks Associates, Inc., located in Mineola, New York, have addressed the economic impact of the Exchange Property and the Substitute Property in an appraisal report dated September 9, 1997. The Appraisers note that the Exchange Property and the Substitute Property are currently part of larger parcels of real property that are zoned for industrial use. The Appraisers state that it is rare that parcels of such size are marketed in industrial-zoned areas and that their utility can only be realized by the adjoining land users. Further, because there are no comparable sales of similarly-sized parcels of real property in the area to formulate the basis for determining the fair market values of the Substitute Property and the Exchange Property, as "standalone parcels," the Appraisers state that neither parcel would have any marketable value and that to determine such values would be very speculative. However, because both parcels are of virtually the same size and are located in the same immediate area, the Appraisers conclude that they are of equal value.

In addition to opining on the respective fair market values of the Exchange Property and the Substitute Property, the Appraisers have determined that as of September 6, 1997, the Property would have a fair market value of \$6.2 million. Moreover, as of that date, the Appraisers have estimated the fair market rental value of

the Property at \$8.50, gross, per square foot of building area, or \$5.08 net rent per square foot of building area.

Thus, as a result of the unmarketability of the Substitute Property as a stand alone strip of real property and its size in relation to the Property, the Appraisers have determined that the acquisition by the Plans of the Substitute Property will have a minimal effect on the fair market value or the fair market rental value of the Property. The Appraisers note that the benefit to be derived by the Plans from the exchange will be the availability of additional parking spaces which will be in closer proximity to the warehouse facility. The squaring off of the Property will create a more convenient use for those accessing the warehouse.

IV. Views of the Independent Fiduciary

Mr. Browde represents that he has investigated real estate and economic considerations relating to the proposed exchange transaction and has concluded that it will benefit the Plans by enhancing the value of the Property. In this regard, Mr. Browde notes that the Substitute Property and the Exchange Property are of nearly the same size. After the land exchange, the total land area of the Property essentially will be the same but will result in a net increase of approximately 2,300 square feet of space. By eliminating the pole, the Property will become regular in shape and more suitable for use.

Mr. Browde also states that a regular-shaped parcel of real estate has more value than one that is oddly-shaped. In this regard, he states that the Substitute Property would allow two rows of parking in the same space which formerly accommodated only one row of parallel parking, thereby increasing the number of legal parking spaces at the Property by 26. This additional benefit would be a desirable consequence of the exchange.

Further, Mr. Browde represents that the warehouse on the Property could be expanded to a greater extent than at present because the land exchange would now provide a greater distance between the new property line and the exterior walls of the building's north side. He also notes that the land exchange would be without cost to the Plans, other than transaction costs which are not expected to exceed \$3,000.

Finally, Mr. Browde notes that since the granting of PTE 93-8, all of the terms and conditions of the Amended Lease, the Letter of Credit and the Escrow Agreement have been complied with by the parties. Mr. Browde also

¹ The Substitute Property that will be acquired by the Plans measures approximately 358 feet by 47 feet and 70 feet by 43 feet for a total of 19,836 square feet. The approximate dimensions of the Exchange Property are 50 feet by 367 feet or a total of 18,350 square feet.

represents that there have been no defaults or delinquencies under the Amended Lease.

V. Other Modifications

A. Plan Information

In addition to the above, the Applicants have provided updated information concerning the Plans. In this regard, the Applicants note that the Group A Plan had 1,328 participants as of December 31, 1996 and total assets having a fair market value of \$19,983,124 as of August 31, 1997. In addition, the Applicants represent that the Group B had 1,302 participants as of December 31, 1996 and total assets having a fair market value of \$10,680,155 as of August 31, 1997. Further, the Applicants state that the Profit Sharing Plan had 1,098 participants as of January 31, 1997 and total assets having a fair market value of approximately \$10,471,276 as of August 31, 1997.²

B. Stock Ownership

The Applicants state that subsequent to the granting of PTE 93-8, FFJ underwent a stock reclassification to create two classes of stock—Class A voting stock and Class B non-voting stock. On June 24, 1994, a stock dividend of 408 Class B shares was declared to holders of Class A shares. Mr. Fortunoff gifted 236 of these shares to the Alan Fortunoff Grantor Retained Annuity Trust and sold seven shares to each of his six children. Mrs. Fortunoff gifted 88 Class B shares to the Helene Fortunoff Grantor Retained Annuity Trust and sold seven shares to each of the Fortunoff children. The Fortunoff children are beneficiaries under both trusts.

At present, the Applicants note that all of the Class A voting shares are owned by Alan and Helene Fortunoff. The FFJ Class B non-voting shares are distributed as follows: Alan Fortunoff Grantor Retained Annuity Trust, 236 shares; Helene Fortunoff Grantor Retained Annuity Trust, 88 shares; and each of the Fortunoff children, 14 shares. Leonard Leibman is the sole trustee of each of the trusts.

Also since PTE 93-8 was granted, the Applicants point out that M. Fortunoff has had a change in stock ownership. Although Mr. Fortunoff does not hold any elective offices with M. Fortunoff and does not directly own any shares of

its capital stock, the Applicants explain that he is one of three co-executors of the Estate of Marjorie Mayrock, which owns 49.6 percent of M. Fortunoff's capital stock. The Applicants further explain that both Mr. and Mrs. Fortunoff are co-trustees under three trusts which each hold $5\frac{2}{3}$ shares of Mr. Fortunoff's capital stock for the benefit of the Mayrock children. On July 31, 1996, a distribution of 4.25 shares was made from the Estate of Marjorie Mayrock to each of the Mayrock children for a total distribution of 12.75 shares.

Notice to Interested Persons

Notice of the proposed exemption will be sent by first class mail to each participant in the Plans within 15 days of the publication of the pending exemption in the Federal Register. The notice will contain a copy of the proposed exemption as published in the Federal Register and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Comments and hearing requests regarding the proposed exemption will be due 45 days from the publication of the notice of proposed exemption 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)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the

Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notice of proposed exemption relating to PTE 93-8, as amended by this notice, accurately describe, where relevant, the material terms of the transactions consummated pursuant to that 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 15 days after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 19, 1990).

If the proposed exemption is granted, 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 reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the leasing by the Plans to FFJ, under the provisions of the Amended Lease described in PTE 93-8, of certain Substitute Property, acquired by the Plans through a third party exchange, as well as all remaining real estate which constitutes the Property, provided the following conditions are met:

(a) The terms of the Amended Lease remain at least as favorable to the Plans

²Based upon these valuations, it should be noted that the property, valued at \$6.2 million by the Appraisers as of September 6, 1997, represents 12.41 percent of the assets of the Group A Plan, 23.22 percent of the assets of the Group B Plan and 11.84 percent of the assets of the Profit Sharing Plan.

as those obtainable in an arm's length transaction with an unrelated party.

(b) The independent fiduciary—

(i) Determines that the acquisition and subsequent leasing of the Substitute Property by the Plans under the Amended Lease are in the best interest of the Plans and their participants and beneficiaries;

(ii) Monitors and enforces compliance with the terms and conditions of the Amended Lease, the Escrow Agreement and the new exemption, at all times; and

(iii) Appoints one or more independent fiduciaries to resolve any conflicts of interest which may develop among the Plans with respect to the Amended Lease, the Escrow Agreement, the Property, or the Plans' respective interests therein.

(c) The fair market value of the proportionate interests held by each Plan in the Property as a whole following the exchange transaction does not exceed 25 percent of each Plan's assets.

(d) The Property, the Exchange Property and the Substitute Property are all appraised by qualified, independent appraisers prior to the consummation of the exchange transaction.

(e) The Base Rent for the Property is adjusted annually by the independent fiduciary based upon an independent appraisal of such Property.

(f) FFJ incurs all real estate taxes and other costs which are incident to the Amended Lease.

(g) The Escrow Agreement is maintained by M. Fortunoff, in favor of the Plans, as security for FFJ's rental obligations under the Amended Lease.

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 application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 93-8, refer to the proposed exemption, grant notice and technical correction notice which are cited above.

Signed at Washington, D.C., this 16th day of December 1997.

Ivan L. Strasfeld,

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

[FR Doc. 97-33180 Filed 12-18-97; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Prohibited Transaction Exemption 97-63; Exemption Application No. D-10159, et al.; Grant of Individual Exemptions; State Street Bank

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

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

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975 of the Code, by reason of 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.

State Street Bank and Trust Company Located in Boston, Massachusetts

[Prohibited Transaction Exemption 97-63; Application No. D-10159]

Exemption

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code,¹ shall not apply to the lending of securities to State Street Bank and Trust Company (State Street), acting through its Financial Markets Group (FMG) (formerly the Money Market Division of the Capital Markets Area) or acting through any other division or U.S. affiliate of State Street that is a successor to the activities of FMG; and shall not apply to the lending of securities to any U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealers)² by employee benefit plans (the Client Plans or the Client Plan), including commingled investment funds holding plan assets for which State Street, through its Master Trust Services Division (the Trust Division) acts as directed trustee or custodian, and for which State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent); and shall not apply to the receipt of compensation by GSL in connection with the transactions; provided that the following conditions are met:

a. Neither State Street, the SSB Group, GSL, nor any other division or affiliate of State Street has or exercises

¹ 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.

² FMG, any division or U.S. affiliate of State Street that becomes a successor to the activities of FMG, and the Affiliated Broker Dealers are collectively referred to, herein, as the SSB Group.