TOTAL BURDEN HOURS—Continued

Activity	Number of respondents	Frequency	Total annual responses	Average reporting time (min)	Total annual burden (hours)
Unduplicated Totals	2,900				4,447
2026 COJ					
Data collection	2,900	Annual	2,900	80	3,867
Data quality follow-up	2,030	Annual	2,030	10	338
Jail status and point-of-contact verification	2,900	Annual	2,900	5	242
Unduplicated Totals	2,900				4,447
Unduplicated Totals for 2024, 2025, and 2026 COJ	2,900				16,482

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: December 6, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–27096 Filed 12–8–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023–21; Exemption Application No. D–11955]

Exemption From Certain Prohibited Transaction Restrictions Involving Morgan Stanley & Co. LLC, and Current and Future Affiliates and Subsidiaries (Morgan Stanley or the Applicant) Located in New York, New York

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

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

DATES: The exemption will be in effect on the date that this grant notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 18, 2021, the Department published a notice of proposed exemption in the **Federal Register** at 86 FR 64695, permitting Morgan Stanley & Co. LLC, or an affiliate of Morgan Stanley & Co. LLC (together, Morgan Stanley) to engage in certain transactions with Mitsubishi UFJ Financial Group, Inc., or an affiliate of Mitsubishi UFJ Financial Group, Inc. (together Mitsubishi).

Under the exemption, certain restrictions of ERISA sections 406(a) and 406(b) and certain sanctions resulting from the application of Code section 4975,[1] shall not apply to transactions involving Morgan Stanley and Mitsubishi (described below) that are modeled after the following class exemptions: Prohibited Transaction Exemption (PTE) 75–1, Part III and Part IV, PTE 77–3, PTE 77–4, PTE 79–13, PTE 86–128, and PTE 2002–12, provided the conditions of this exemption are met.[2] This exemption provides only the relief specified in its text and does not provide relief from violations of any law other than the prohibited transaction provisions of ERISA expressly stated herein. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA section 408(a) in accordance with the Department's procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Background

Currently, Mitsubishi is the largest investor in Morgan Stanley, holding 24.5 percent of Morgan Stanley's outstanding common stock. Mitsubishi also currently nominates two directors to Morgan Stanley's board of directors. Despite this ownership interest, the Applicant states that Mitsubishi does not have sufficient control over Morgan Stanley to warrant treatment of Mitsubishi and Morgan Stanley as ''affiliates'' within the meaning of certain Applicable Class Exemptions, which are described below.[3]

The Department has granted a wide variety of class exemptions that permit affiliated parties to engage in specified plan-related transactions, provided that certain protective conditions are met. The following seven class exemptions (the Applicable Class Exemptions) are relevant to this exemption:

PTE 75–1, Part III permits a fiduciary to cause a plan to purchase securities from a member of an underwriting syndicate, when the fiduciary is also a member of such syndicate, and the member selling the securities to the plan is not affiliated with the fiduciary. The

[1] For purposes of this proposed exemption reference to specific provisions of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding Code provisions.

[2] Part III and Part IV of Prohibited Transaction Exemption 75–1 (PTE 75–1 Parts III and IV)(40 FR 50845, October 31, 1975); Prohibited Transaction Exemption 77–3 (PTE 77–3) (42 FR 18734, April 8, 1977); Prohibited Transaction Exemption 77–4 (PTE 77–4) (42 FR 18732, April 8, 1977); Prohibited Transaction Exemption 79–13 (PTE 79–13) (44 FR 25533, May 1, 1979); Prohibited Transaction Exemption 86–128 (PTE 86–128) (51 FR 41686, November 18, 1986), as amended by (67 FR 64137, October 17, 2002); Prohibited Transaction Exemption 2002–12 (PTE 2002–12)(67 FR 9483, March 1, 2002).

[3] For example, Section I(b) of PTE 86–128 defines an ''affiliate'' as, in relevant part, ''any person directly controlling, controlled by, or under common control with the person . . .'' where ''[t]he term 'control' means the power to exercise a controlling influence over the management or policies of a person other than an individual.'' By granting this exemption, the Department does not express any view on whether Mitsubishi and Morgan Stanley are or are not ''affiliates'' within the meaning of the Applicable Exemptions.

class exemption defines the term ''fiduciary'' to include ''affiliates'' of the fiduciary.

PTE 75–1, Part IV permits a plan to purchase or sell securities in a principal transaction with a fiduciary that is also a ''market-maker'' with respect to such securities. For purposes of the exemption, the term ''fiduciary'' includes ''affiliates'' of the fiduciary.

PTE 77–3 permits the acquisition or sale of shares of a registered open-end investment company (a mutual fund) by a plan that covers only employees of the mutual fund, the mutual fund's investment adviser, the mutual fund's underwriter, or an affiliate thereof.

PTE 77–4 permits the purchase or sale by a plan of shares of a mutual fund, where the mutual fund's investment adviser is a plan fiduciary, or is affiliated with a plan fiduciary, but is not an employer of employees covered by the plan.

PTE 79–13 permits the purchase, ownership, and sale of shares of a closed-end mutual fund by a plan, where such plan covers only employees of the closed-end mutual fund, employees of an investment adviser to the closed-end mutual fund, or employees of an affiliate of the closed-end mutual fund or investment adviser.

PTE 86–128 provides an exemption for certain fiduciaries and their affiliates to receive a fee from a plan or IRA for effecting or executing securities transactions as an agent on behalf of the plan or IRA. PTE 86–128 also allows a fiduciary (or an affiliate of a fiduciary) to act as an agent in an ''agency cross transaction'' for both a plan (or IRA) and for another party to the transaction, and to receive reasonable compensation from another party to the transaction.

PTE 2002–12 permits the cross-trading of securities by and between certain index and model-driven funds managed by investment ''managers,'' and among index and model-driven funds, and certain large accounts, that engage such ''managers.'' For purposes of PTE 2002–12, the term ''manager'' includes affiliates of the ''manager.''

Assuming that Morgan Stanley and Mitsubishi are not affiliates for the purposes of the Applicable Class Exemptions, as they indicate,[4] they could not engage in the affiliated transactions described above without violating ERISA Section 406. Morgan Stanley, therefore, requested an exemption that, in general terms, would allow Morgan Stanley and Mitsubishi to treat the other as an ''affiliate'' for purposes of the Applicable Class Exemptions when engaging in transactions that would otherwise mirror the affiliated transactions described above.

The Applicant represents that the exemption would enhance plans investment and service provider options. According to Morgan Stanley, plan participants would have access to more counterparties and investment products in the market. In addition, the plans would have access to more efficient and less expensive brokerage services.

This exemption contains certain new conditions that are not otherwise found in the Applicable Class Exemptions (the New Conditions). One New Condition requires the Morgan Stanley/Mitsubishi Entities to comply with a new ''Impartial Conduct Standard'' and act in the Best Interest of plans. Another New Condition requires the Morgan Stanley/Mitsubishi Entity to provide plans with written notice that discloses (a) the ownership relationship between Morgan Stanley and Mitsubishi, and (b) that the transactions will provide a benefit to Morgan Stanley and/or Mitsubishi, and/or involve a conflict of interest.

The Department granted each Applicable Class Exemption after determining on the record that each exemption was administratively feasible and in the interest of and protective of affected plans. Given that the transactions in this exemption are substantially similar to those permitted by the Applicable Class Exemptions, subject to not only essentially the same suite of conditions, but also to the New Conditions, the Department has determined that this exemption is administratively feasible and in the interest of, and protective of, affected plans and their participants and beneficiaries.

Written Comments

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for a hearing were due to the Department by January 18, 2022. The Department received one written comment from the Applicant. The Department did not receive any requests for a public hearing.

Comments From the Applicant

Factual Clarification 1: Representation 3 of the proposed exemption states as follows: ''Immediately after the conversion, Mitsubishi-owned shares of Morgan Stanley Common Stock represented approximately 22.56% of the outstanding shares of Morgan Stanley Common Stock. Subsequently, Mitsubishi's ownership percentage of Morgan Stanley common stock gradually increased because of Morgan Stanley's ongoing repurchases of stock from other investors.'' [5]

The Applicant states: (a) Mitsubishi's ownership interest in Morgan Stanley has decreased since Morgan Stanley agreed to convert all Mitsubishi-owned Morgan Stanley Series B Preferred Stock into Morgan Stanley common stock; (b) it cannot represent that Mitsubishi's ownership interest has decreased because of stock repurchases from others; and (c) it cannot confirm the 22.56% ownership interest referenced in the proposed exemption, as that was not a fact that the Applicant provided to the Department.

Department's Response: The Department accepts the clarifications noted by the Applicant.

Factual Clarification 2: Representation 3 of the proposed exemption states as follows: ''Mitsubishi is currently the largest investor in Morgan Stanley, holding 24.5 percent of Morgan Stanley's outstanding common stock.'' The Applicant states that, while Mitsubishi did hold 24.5 percent of Morgan Stanley's outstanding common stock on the date of the Applicant's application to the Department (June 4, 2018), Mitsubishi's investment in Morgan Stanley had decreased to 20.2% as of March 22, 2021.

Department's Response: The Department accepts Applicant's requested clarification but notes that, as of June 30, 2023, Mitsubishi's investment in Morgan Stanley equaled 22.76 percent. The Department also notes that, as of June 30, 2023, Mitsubishi remained the largest investor in Morgan Stanley.

Department's Note: The summary to the proposed exemption stated that relief granted in PTE 77–4 was limited to ERISA section 406(a)(1)(B) and ERISA section 406(b). Part IV of the proposed exemption, which extends exemptive relief for PTE 77–4-type transactions, erroneously included exemptive relief from ERISA section 406(a)(1)(D). The Department has revised Part IV of this exemption for consistency with the proposed exemption's summary, and limited exemptive relief for PTE 77–4-type transactions to ERISA sections 406(a)(1)(B) and 406(b). Further, the Department revised some of the

[4] As previously stated, the Department does not express any view on whether Mitsubishi and Morgan Stanley are or are not ''affiliates'' within the meaning of the Applicable Exemptions.

[5] 86 FR 64696.

language in the sections below for clarity.

The complete application file (D–11955) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the notice of proposed exemption published in the **Federal Register** on November 18, 2021, at 86 FR 64695.

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 ERISA section 408(a) does not relieve a fiduciary or other party in interest from requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require fiduciaries to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a)(1)(B).

(2) As required by ERISA section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible; (b) in the interests of affected plans and of their participants and beneficiaries; and (c) protective of the rights of participants and beneficiaries of such plans.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, 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 determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application, the Department has determined to grant the following exemption under the authority of ERISA section 408(a), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B:[6]

Exemption

Section II. Covered Transactions

Part I. Proposed Exemption From the Prohibitions Respecting Certain Classes of Transactions Involving Plans and Certain Underwriters (Modeled After PTE 75–1, Part III)

The restrictions of ERISA section 406 and the taxes imposed Code section 4975 (a) and (b), by reason of Code section 4975(c)(1), shall not apply to the purchase or other acquisition of certain securities by a plan during the existence of an underwriting or selling syndicate with respect to such securities, from any person other than Morgan Stanley or Mitsubishi, when a Morgan Stanley/Mitsubishi Entity is a fiduciary with respect to such plan, and a Related Entity is a member of such syndicate, provided that the following conditions are met:

(a) No Morgan Stanley/Mitsubishi Entity or Related Entity that is involved in causing a plan to make the purchase is a manager of such underwriting or selling syndicate. The term ''manager'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(b) The securities to be purchased or otherwise acquired are:

(1) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) or, if exempt from such registration requirement, are:

(i) Issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States, pursuant to authority granted by the Congress of the United States,

(ii) Issued by a bank,

(iii) Issued by a common or contract carrier, if such issuance is subject to the provisions of section 20a of the Interstate Commerce Act, as amended,

(iv) Exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act, or are

(v) The subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) (the 1934 Act), and the issuer of which has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of securities and has filed all the reports required to be filed thereunder with the SEC during the preceding twelve (12) months.

(2) Purchased at not more than the public offering price before the end of the first full business day after the final terms of the securities have been fixed and announced to the public, except that:

(i) If such securities are offered for subscription upon exercise of rights, they are purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such securities are debt securities, they may be purchased at a public offering price on a day after the end of such first full business day, provided that the interest rates on comparable debt securities offered to the public after such first full business day and before the purchase are less than the interest rate of the debt securities being purchased.

(3) Offered pursuant to an underwriting agreement under which the members of the syndicate are committed to purchase all securities being offered, except if:

(i) Such securities are purchased by others pursuant to a rights offering; or

(ii) Such securities are offered pursuant to an over-allotment option.

(c) The issuer of such securities has been in continuous operation for not less than three (3) years, including the operations of any predecessors, unless

(1) Such securities are non-convertible debt securities rated in one of the four (4) highest rating categories by at least one (1) of the Rating Agencies, as defined below in Part IX (e);

(2) Such securities are issued or fully guaranteed by a person described above in subparagraph (b)(1)(i) of this Part I; or

(3) Such securities are fully guaranteed by a person who has issued securities described above in subparagraph (b)(1)(ii), (iii), (iv), or (v) of Part I, and in this subparagraph (c) of Part I.

(d) The amount of such securities to be purchased or otherwise acquired by a plan, pursuant to this exemption and PTE 75–1, Part III, does not exceed 3 percent (3%) of the total amount of such securities being offered.

(e) The consideration to be paid by a plan in purchasing or otherwise acquiring such securities pursuant to this exemption and PTE 75–1, Part III, does not exceed 3 percent (3%) of the

[6] 76 FR 66637, 66644 (October 27, 2011).

fair market value of the total assets of such plan as of the last day of the most recent fiscal quarter of such plan before to such transaction, provided that if such consideration exceeds $1 million, it does not exceed one percent (1%) of such fair market value of the total assets of such plan.

If such securities are purchased by a plan from a party in interest or disqualified person with respect to such plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under ERISA section 502(i) or the taxes imposed by Code section 4975(a) and (b) if the conditions of this exemption are not met. However, if such securities are purchased from a party in interest or disqualified person with respect to a plan, the restrictions of ERISA section 406(a) shall apply to any Morgan Stanley/Mitsubishi Entity acting as fiduciary with respect to such plan, and the taxes imposed by Code section 4975(a) and (b) by reason of Code section 4975(c)(1)(A) through (D), shall apply to such party in interest or disqualified person, unless the conditions for exemption of PTE 75–1 (40 FR 50845, October 31, 1975), Part II (relating to certain principal transactions) are met.

Part II. Proposed Exemption From Prohibitions Respecting Certain Classes of Transactions Involving Plans and Market-Makers (Modeled After PTE 75–1, Part IV)

The restrictions of ERISA section 406, and the taxes imposed by Code section 4975 (a) and (b), by reason of Code section 4975(c)(1), shall not apply to any purchase or sale of any securities by a plan from or to a Related Entity which is a market-maker with respect to such securities, when a Morgan Stanley/Mitsubishi Entity is a fiduciary with respect to such plan, provided that the following conditions are met:

(a) The issuer of such securities has been in continuous operation for not less than three (3) years, including the operations of any predecessors, unless such securities are:

(1) non-convertible debt securities rated in one of the four (4) highest rating categories by at least one (1) of the Rating Agencies;

(2) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) fully guaranteed by a person described in this subparagraph (a).

(b) As a result of purchasing such securities:

(1) The fair market value of the aggregate amount of securities owned, directly or indirectly, by a plan and with respect to which a Morgan Stanley/Mitsubishi Entity is a fiduciary, pursuant to this exemption and PTE 75–1, Part IV, does not exceed three percent (3%) of the fair market value of the plan's assets with respect to which the Morgan Stanley/Mitsubishi Entity is a fiduciary, as of the last day of the most recent fiscal quarter of such plan before the transaction, provided that if the fair market value of such securities exceeds $1 million, it does not exceed one percent (1%) of the fair market value of the plan's assets, except that this subparagraph shall not apply to securities described in subparagraph (a)(2) of this Part II, above; and

(2) The fair market value of the aggregate amount of all securities for which any Related Entity is a market-maker, which are owned, directly or indirectly, by a plan and with respect to which a Morgan Stanley/Mitsubishi Entity is a fiduciary, pursuant to this exemption and PTE 75–1, Part IV, does not exceed 10 percent (10%) of the fair market value of the plan's assets with respect to which the Morgan Stanley/Mitsubishi Entity is a fiduciary, as of the last day of the most recent fiscal quarter of such plan before such transaction, except that this subparagraph shall not apply to securities described in subparagraph (a)(2) of this Part II.

(c) At least one (1) person other than a Related Entity is a market-maker with respect to such securities.

(d) The transaction is executed at a net price to a plan for the number of shares or other units to be purchased or sold in the transaction that is more favorable to such plan than that which the Morgan Stanley/Mitsubishi Entity, acting as fiduciary and acting in good faith, reasonably believes to be available at the time of such transaction from all other market-makers with respect to the securities.

For purposes of this Part II, the term ''market-maker'' shall mean any specialist permitted to act as a dealer, and any dealer who, with respect to a security, holds themselves out as being willing to buy and sell such security for their own account on a regular or continuous basis by entering quotations in an inter-dealer communications system or otherwise.

Part III. Proposed Exemption Involving Mutual Fund In-House Plans (Modeled After PTE 77–3)

The restrictions of ERISA sections 406 and 407(a) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1), shall not apply to the acquisition or sale of shares of an open end investment company registered under the Investment Company Act of 1940 (the 1940 Act) by an benefit plan covering only employees of a Morgan Stanley/Mitsubishi Entity where a Related Entity is an investment adviser or principal underwriter with respect to the open-end investment company, provided the following conditions are met (whether or not such investment company, investment adviser, principal underwriter or any affiliated person thereof is a fiduciary with respect to the plan):

(a) The plan does not pay any investment management, investment advisory or other fees or compensation to any Morgan Stanley/Mitsubishi Entity or Related Entity, except to the extent expressly permitted herein. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares, unless (1) such redemption fee is paid only to the investment company, and (2) the existence of such redemption fee is disclosed in the investment company prospectus in effect both at the time of the acquisition of such shares and at the time of such sale.

(c) The plan does not pay a sales commission in connection with such acquisition or sale.

(d) All dealings between the plan and the investment company, the Related Entity, any other investment adviser or principal underwriter for the investment company, or any affiliated person (as defined in section 2(a)(3) of the 1940 Act) of the Related Entity, other investment adviser, or principal underwriter, are on a basis no less favorable to the plan than such dealings are with other shareholders of the investment company.

Part IV. Proposed Exemption for Certain Transactions Between Investment Companies and Plans (Modeled After PTE 77–4)

The restrictions of ERISA section 406(a)(1)(B) and 406(b) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(B), (D), (E) and (F), shall not apply to the purchase or sale by a plan of shares of an open-end investment company registered under the 1940 Act, where a Related Entity is the investment adviser of the investment company and a Morgan Stanley/Mitsubishi Entity is a

fiduciary with respect to the plan, but not an employer of employees covered by the plan, provided that the following conditions are met:

(a) The plan does not pay a sales commission in connection with such purchase or sale.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares unless:

(1) The redemption fee is paid only to the investment company, and

(2) The existence of the redemption fee is disclosed in the investment company prospectus in effect both at the time of the purchase of the shares and at the time of the sale.

(c) The plan does not pay an investment management, investment advisory or other fee or compensation, with respect to the plan assets invested in the shares for the entire period of the investment, except to the extent expressly permitted herein. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act. This condition also does not preclude payment of an investment advisory fee by the plan based on the total plan assets from which a credit has been subtracted representing the plan's pro rata share of the investment advisory fees paid by the investment company. If, during any fee period for which the plan has prepaid its investment management, investment advisory or similar fee, the plan purchases shares of the investment company, the requirement of this subparagraph (c) shall be deemed met with respect to such prepaid fee if, by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to the plan assets invested in the investment company shares: (1) is anticipated and subtracted from the prepaid fee at the time of payment of the fee; (2) is returned to the plan no later than during the immediately following fee period; or (3) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this subparagraph (c), a fee shall be deemed to be prepaid for any fee period if the amount of the fee is calculated as of a date no later than the first day of such period.

(d) A second fiduciary with respect to the plan, who is independent of and unrelated to Morgan Stanley and Mitsubishi, receives a current prospectus issued by the investment company, and full and detailed written disclosure of the investment advisory and other fees charged to or paid by such plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the Morgan Stanley/Mitsubishi Entity may consider such purchases to be appropriate for the plan, and whether there are any limitations on the Morgan Stanley/Mitsubishi Entity with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations. For purposes of this subparagraph (d), the second fiduciary will not be deemed to be independent of and unrelated to Morgan Stanley and Mitsubishi if:

(1) The second fiduciary directly or indirectly controls, is controlled by, or is under common control with Morgan Stanley or Mitsubishi;

(2) The second fiduciary, or any officer, director, partner, employee or relative of such second fiduciary is an officer, director, partner or employee of Morgan Stanley or Mitsubishi; or

(3) The second fiduciary directly or indirectly receives any compensation or other consideration for their own personal account in connection with any transaction described in this Part IV.

Subparagraph (d)(2) of this Part IV shall not apply If an officer, director, partner, employee or relative of any Morgan Stanley or Mitsubishi entity is a director of such second fiduciary, and if they abstain from participation in:

(i) The choice of the plan's investment adviser,

(ii) The approval of any purchase or sale between the plan and the investment company, and

(iii) The approval of any change of fees charged to or paid by such plan.

For purposes of subparagraph (d)(1) above, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual, and the term ''relative'' means a ''relative'' as that term is defined in ERISA section 3(15) (or a ''member of the family'' as that term is defined in Code section 4975(e)(6)), or a brother, a sister, or a spouse of a brother or a sister.

(e) On the basis of the prospectus and disclosure referred to in subparagraph (d), the second fiduciary referred to in subparagraph (d) approves such purchases and sales consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of ERISA. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by such plan and need not relate to any other aspects of such investments. In addition, such approval must be either:

(1) Set forth in such plan's plan documents or in the investment management agreement between the plan and the Morgan Stanley/Mitsubishi Entity,

(2) Indicated in writing before each purchase or sale, or

(3) Indicated in writing before commencement of a specified purchase or sale program in the shares of such investment company.

(f) The second fiduciary referred to in subparagraph (d) above, or any successor thereto, is notified of any change in any of the rates and fees referred to in subparagraph (d) and approves in writing the continuation of such purchases or sales and the continued holding of any investment company shares acquired by such plan prior to such change and still held by such plan. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by such plan and need not relate to any other aspects of such investment.

(g) Each Morgan Stanley/Mitsubishi Entity and Related Entity must satisfy ERISA section 408(b)(2) or Code section 4975(d)(2), as applicable.

Part V. Proposed Exemption Involving Closed-End Investment Company and In-House Plans (Modeled After PTE 79–13)

The restrictions of ERISA sections 406 and 407(a), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1), shall not apply to the acquisition, ownership, or sale of shares of a closed-end investment company which is registered under the Investment Company Act of 1940 Act (1940 Act) and is not a ''small business investment company,'' as defined in section 103 of the Small Business Investment Company Act of 1958, with respect to which a Related Entity is an investment adviser, by an employee benefit plan covering only employees of a Morgan Stanley/Mitsubishi Entity, provided that the following conditions are met (whether or not such investment company, investment adviser or any affiliated person thereof is a fiduciary with respect to the plan):

(a) The plan does not pay any investment management, investment advisory, or other fee or compensation to any Morgan Stanley/Mitsubishi Entity or Related Entity, except as expressly permitted herein. This condition does not preclude the payment of investment advisory fees by

the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act.

(b) The plan does not pay a sales commission in connection with such acquisition or sale to any such investment company, or investment adviser, or any Morgan Stanley/Mitsubishi Entity or Related Entity; and

(c) All dealings between the plan and such investment company, the investment adviser, or any Morgan Stanley/Mitsubishi Entity or Related Entity, are on a basis no less favorable to the plan than such dealings are with other shareholders of the investment company.

Part VI. Proposed Exemption for Securities Transactions Involving Plans and Broker-Dealers (Modeled After PTE 86–128)

Section I: Definition and Special Rules

The following definitions and special rules apply to this Part VI:

(a) The term ''Morgan Stanley/Mitsubishi Entity'' means Morgan Stanley & Co. LLC (MS) or one of its ''affiliates,'' or Mitsubishi UFJ Financial Group, Inc. (Mitsubishi UFJ) or one of its ''affiliates,'' acting as the plan fiduciary authorizing a transaction covered by this Part.

(b) An ''affiliate'' of a Morgan Stanley/Mitsubishi Entity or a Related Entity, which is defined below, includes the following:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, MS or with Mitsubishi UFJ;

(2) Any officer, director, partner, employee, relative (as defined in ERISA section 3(15)), brother, sister, or spouse of a brother or sister, of a Morgan Stanley/Mitsubishi Entity or a Related Entity; and

(3) Any corporation or partnership of which a Morgan Stanley/Mitsubishi Entity or a Related Entity is an officer(s), director(s), or partner(s).

A person is not an affiliate of another person solely because such person has investment discretion over the other's assets. The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An ''agency cross transaction'' is a securities transaction in which the same Related Entity acts as agent for both any seller and any buyer for the purchase or sale of a security.

(d) The term ''covered transaction'' means an action described in Section II (a), (b), or (c) of this Part VI.

(e) The term ''effecting or executing a securities transaction'' means the execution of a securities transaction as agent for another person and/or the performance of clearance, settlement, custodial, or other functions ancillary thereto.

(f) A plan fiduciary is independent of a Morgan Stanley/Mitsubishi Entity and a Related Entity only if the fiduciary has no relationship to and no interest in MS and no interest in Mitsubishi UFJ that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) The term ''profit'' includes all charges relating to effecting or executing securities transactions, less reasonable and necessary expenses including reasonable indirect expenses (such as overhead costs) properly allocated to the performance of these transactions under generally accepted accounting principles.

(h) The term ''securities transaction'' means the purchase or sale of securities.

(i) The term ''nondiscretionary trustee'' of a plan means a trustee or custodian whose powers and duties with respect to any assets of the plan are limited to:

(1) The provision of nondiscretionary trust services to the plan, and

(2) Duties imposed on the trustee by any provision or provisions ERISA or the Code. The term ''nondiscretionary trust services'' means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this Part VI, a person does not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

(j) The term ''Related Entity'' means MS or one of its ''affiliates,'' or Mitsubishi UFJ or one of its ''affiliates,'' where the entity is not the plan fiduciary authorizing a transaction covered by this Part.

Section II: Covered Transactions

If each condition in Section III below is either satisfied or not applicable under Section IV, the restrictions of ERISA section 406(b) and the taxes imposed by Code section 4975(a) and (b) by reason of Code section 4975(c)(1)(E) and (F) shall not apply to:

(a) a Morgan Stanley/Mitsubishi Entity, as a plan fiduciary, using its authority to cause the plan to pay a fee to a Related Entity, for effecting or executing securities transactions on behalf of the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency;

(b) a Related Entity, as the agent in an agency cross transaction, acting on behalf of: (1) a plan with a Morgan Stanley/Mitsubishi Entity as the plan fiduciary that used its authority to cause the transaction; and (2) one or more other parties to the agency cross transaction; and

(c) the receipt of reasonable compensation by a Related Entity for effecting or executing an agency cross transaction on behalf of a plan with a Morgan Stanley/Mitsubishi Entity as the plan fiduciary that used its authority to cause the transaction, where the reasonable compensation is received from one or more other parties to the agency cross transaction.

Section III: Conditions

Except to the extent otherwise provided in Section IV below, Section II applies only if the following conditions are satisfied:

(a) The Morgan Stanley/Mitsubishi Entity or Related Entity engaging in the covered transaction is not an administrator of the plan, or an employer any of whose employees are covered by the plan.

(b) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each plan whose assets are involved in the transaction that is independent of MS and Mitsubishi UFJ.

(c) The authorization referred to above in subparagraph (b) of this Section III is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized Morgan Stanley/Mitsubishi Entity of written notice of termination. A form expressly providing an election to terminate the authorization described in subparagraph (b) of this Section III with instructions on the use of the form must be supplied to the authorizing plan fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized Morgan Stanley/Mitsubishi Entity of written notice from the authorizing plan fiduciary or other plan official having authority to terminate the authorization; and

(2) Failure to return the form will result in the continued authorization of the authorized Morgan Stanley/Mitsubishi Entity to engage in the covered transactions on behalf of the plan.

(d) Within three (3) months before an authorization is made, the authorizing plan fiduciary is furnished with any reasonably available information that the Morgan Stanley/Mitsubishi Entity

seeking authorization reasonably believes is necessary for the authorizing plan fiduciary to determine whether the authorization should be made, including (but not limited to) (i) a copy of this proposed exemption and the associated granted exemption, (ii) the form for termination of authorization described in Section III(c) of this Part VI, (iii) a description of the Morgan Stanley/Mitsubishi Entity's brokerage placement practices, and (iv) any other reasonably available information regarding the matter that the authorizing plan fiduciary requests.

(e) The authorizing plan fiduciary is furnished with either:

(1) A confirmation slip for each securities transaction underlying a covered transaction within ten (10) business days after the securities transaction containing the information described in Rule 10b–10(a)(1–7) under the Securities and Exchange Act of 1934 (1934 Act), 17 CFR 240.10b–10; or

(2) At least once every three (3) months and not later than forty-five (45) days following the period to which it relates, a report disclosing:

(i) A compilation of the information that would be provided to a plan pursuant to subparagraph (e)(1) of this Section III during the three-month period covered by the report;

(ii) The total of all securities transaction-related charges incurred by the plan during such period in connection with such covered transactions; and

(iii) The amount of the securities transaction-related charges retained by the Related Entity and the amount of such charges paid to other persons for execution or other services.

For purposes of this subparagraph (e), the words ''incurred by the plan'' shall be construed to mean ''incurred by the pooled fund'' with respect to covered transactions engaged in on behalf of a pooled fund in which the plan participates.

(f) The authorizing plan fiduciary is furnished with a summary of the information required under subparagraph (e)(1) of this Section III at least once per year. The summary must be furnished within forty-five (45) days after the end of the period to which it relates, and must contain the following:

(1) The total of all securities transaction-related charges incurred by the plan during the period in connection with covered securities transactions.

(2) The amount of the securities transaction-related charges retained by the authorized Related Entity and the amount of these charges paid to other persons and their affiliates for execution or other services.

(3) A description of the Morgan Stanley/Mitsubishi Entity's brokerage placement practices, if such practices have materially changed during the period covered by the summary.

(4) (i) A portfolio turnover ratio, calculated in a manner which is reasonably designed to provide the authorizing plan fiduciary with the information needed to assist in discharging its duty of prudence. The requirements of this subparagraph (f)(4)(i) will be met if the ''annualized portfolio turnover ratio'', calculated in the manner described in subparagraph (f)(4)(ii), is contained in the summary.

(ii) The ''annualized portfolio turnover ratio'' must be calculated as a percentage of the plan assets consisting of securities or cash over which the authorized Morgan Stanley/Mitsubishi Entity had discretionary investment authority, or with respect to which such Morgan Stanley/Mitsubishi Entity rendered, or had any responsibility to render, investment advice (the portfolio) at any time or times (management period(s)) during the period covered by the report. First, the ''portfolio turnover ratio'' (not annualized) is obtained by dividing:

(A) The lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the management period(s) by

(B) The monthly average of the market value of the portfolio securities during all management period(s). Such monthly average is calculated by totaling the market values of the portfolio securities as of the beginning and ending of each management period and as of the end of each month that ends within such period(s) and dividing the sum by the number of valuation dates so used. For purposes of this calculation, all debt securities whose maturities at the time of acquisition were one (1) year or less are excluded from both the numerator and the denominator. The ''annualized portfolio turnover ratio'' is then derived by multiplying the ''portfolio turnover ratio'' by an annualizing factor. The annualizing factor is obtained by dividing (C) the number twelve (12) by (D) the aggregate duration of the management period(s) expressed in months (and fractions thereof).

(iii) The information described in this subparagraph (f)(4) is not required to be furnished in any case where the authorized Morgan Stanley/Mitsubishi Entity acting as plan fiduciary has not exercised discretionary authority over trading in the plan's account during the period covered by the report.

For purposes of this subparagraph (f), the words, ''incurred by the plan,'' shall be construed to mean ''incurred by the pooled fund'' with respect to covered transactions engaged in on behalf of a pooled fund in which the plan participates.

(g) For an agency cross transaction with respect to which Section IV(a) of this Part VI does not apply, the following conditions must also be satisfied:

(1) The information required under Section III(d) or Section IV(c)(1)(ii) of this Part VI includes a statement to the effect that with respect to agency cross transactions, the entity effecting or executing the transactions will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions;

(2) The summary required under Section III(f) of this Part VI includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by the Related Entity engaging in the transactions in connection with those transactions during the period;

(3) The Morgan Stanley/Mitsubishi entity has the discretionary authority to act on behalf of, and/or provide investment advice to, either:

(i) One or more sellers, or

(ii) One or more buyers with respect to the transaction, but not both.

(4) The agency cross transaction is a purchase or sale for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available; and

(5) The agency cross transaction is executed or effected at a price that is at or between the independent bid and independent ask prices for the security prevailing at the time of the transaction.

(h) A Morgan Stanley/Mitsubishi Entity serving as trustee (other than a nondiscretionary trustee) may only engage in a covered transaction with a plan that has total net assets with a value of at least $50 million. In the case of a pooled fund, the $50 million net asset requirement will be met, if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans each of which has total net assets with a value of at least $50 million.

For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in ERISA section 407(d)(7), the $50 million net asset requirement may be met by aggregating the assets of such

plans, if the assets are pooled for investment purposes in a single master trust.

(i) The Morgan Stanley/Mitsubishi Entity serving as trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing plan fiduciary of each plan the following:

(1) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms affiliated with such trustee;

(2) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms not affiliated with such trustee;

(3) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with such trustee; and

(4) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms not affiliated with such trustee.

For purposes of this subparagraph (i), the words, ''paid by the plan,'' should be construed to mean ''paid by the pooled fund'' when the trustee engages in covered transactions on behalf of a pooled fund in which the plan participates.

Section IV: Exceptions From Conditions

(a) Certain agency cross transactions. Section III of this Part VI does not apply in the case of an agency cross transaction, provided that the Morgan Stanley/Mitsubishi Entity and/or Related Entity:

(1) Does not render investment advice to any plan for a fee within the meaning of ERISA section 3(21)(A)(ii) with respect to the transaction;

(2) Is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction, *see* 29 CFR 2510.3–21(d); and

(3) Does not have the authority to engage, retain or discharge any person who is or is proposed to be a fiduciary regarding any such plan assets.

(b) Recapture of profits. Section III(a) of this Part VI does not apply in any case where the entity engaging in a covered transaction returns or credits to the plan all profits earned by the entity in connection with the securities transactions associated with the covered transaction.

(c) Special rules for pooled funds. In the case of a covered transaction involving an account or fund for the collective investment of the assets of more than one plan (pooled fund):

(1) Section III (b), (c), and (d) of this Part VI do not apply if:

(i) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this subparagraph (c)(1), of an authorizing plan fiduciary with respect to each plan whose assets are invested in the pooled fund who is independent of the Morgan Stanley/Mitsubishi Entity and the Related Entity. The requirement that the authorizing plan fiduciary be independent shall not apply in the case of a plan covering only employees of a Morgan Stanley/Mitsubishi Entity, if the requirements of Section IV(c)(2)(i) and (ii) of this Part VI are met.

(ii) The authorizing plan fiduciary is furnished with any reasonably available information that the Morgan Stanley/Mitsubishi Entity engaging or proposing to engage in the covered transactions reasonably believes to be necessary for the authorizing plan fiduciary to determine whether the authorization should be given or continued, not less than thirty (30) days prior to implementation of the arrangement or material change thereto, including (but not limited to) a description of the Morgan Stanley/Mitsubishi Entity's brokerage placement practices, and, where requested, any reasonably available information regarding the matter upon the reasonable request of the authorizing plan fiduciary at any time.

(iii) In the event an authorizing plan fiduciary submits a notice in writing to the Morgan Stanley/Mitsubishi Entity engaging in or proposing to engage in the covered transaction objecting to the implementation of, material change in, or continuation of, the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the pooled fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to withdraw under this subparagraph (c)(1)(iii), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

(iv) In the case of a plan whose assets are proposed to be invested in the pooled fund after the implementation of the arrangement and that has not authorized the arrangement in the manner described in subparagraphs (c)(1)(ii) and (c)(1)(iii) of this Section IV, such plan's investment in the pooled fund is subject to the prior written authorization of an authorizing fiduciary who satisfies the requirements of subparagraph (c)(1)(i).

(2) To the extent that Section III(a) of this Part VI prohibits any Morgan Stanley/Mitsubishi Entity or Related Entity from being the employer of employees covered by a plan investing in a pool managed by the Morgan Stanley/Mitsubishi Entity, Section III(a) of this Part VI does not apply if:

(i) The Morgan Stanley/Mitsubishi Entity is an ''investment manager'' as defined in ERISA section 3(38), and

(ii) Either

(A) The Morgan Stanley/Mitsubishi Entity returns or credits to the pooled fund all profits earned by the Related Entity in connection with all covered transactions engaged in by the Related Entity on behalf of the fund, or

(B) The pooled fund satisfies the requirements of Section IV(c)(3) of this Part VI.

(3) A pooled fund satisfies the requirements of this subparagraph for a fiscal year of the fund if:

(i) On the first day of such fiscal year, and immediately following each acquisition of an interest in the pooled fund during the fiscal year by any plan covering employees of any Morgan Stanley/Mitsubishi Entity or Related Entity, the aggregate fair market value of the interests in such fund of all plans covering employees of any Morgan Stanley/Mitsubishi Entity and Related Entity, acquired under this exemption and PTE 86–128, does not exceed 20 percent (20%) of the fair market value of the total assets of the fund; and

(ii) The aggregate brokerage commissions received by any Related Entity, in connection with covered transactions engaged under this exemption and PTE 86–128, on behalf of all pooled funds in which a plan covering employees of any Morgan Stanley/Mitsubishi Entity or Related Entity participates, do not exceed five percent (5%) of the total brokerage commissions received by any Related Entity from all sources in such fiscal year.

Part VII. Proposed Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (Modeled After PTE 2002–12)

Section I. Proposed Exemption for Cross-Trading of Securities by Index and/or Model-Driven Funds

The restrictions of ERISA sections 406(a)(1)(A) and 406(b)(2), and the sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1)(A), shall not apply to the transactions described below, if the

applicable conditions set forth in Sections II and III of this exemption, below, are satisfied.

(a) The purchase and sale of securities between an Index Fund or a Model-Driven Fund, as defined in Section IV(a) and (b), below, and another Index Fund or Model-Driven Fund (hereinafter, either referred as a Fund), at least one of which holds ''plan assets'' subject to the Act; or

(b) The purchase and sale of securities between a Fund and a Large Account, as defined in Section IV(e) of this Part VII, at least one of which holds ''plan assets'' subject to the Act, pursuant to a portfolio restructuring program, as defined in Section IV(f) of this Part VII, of the Large Account, where a Morgan Stanley entity is the Manager on one side of the cross-trade and a Mitsubishi entity is the Manager on the other side of the cross-trade. Each Manager must comply with each condition below and is deemed a Morgan Stanley/Mitsubishi Entity for purposes of Parts VIII and IX below.

Notwithstanding the foregoing, this Part VII shall apply to cross-trades between two (2) or more Large Accounts pursuant to a portfolio restructuring program, if such cross-trades occur as part of a single cross-trading program involving both Funds and Large Accounts for which securities are cross-traded solely because of the objective operation of the program.

Section II. Specific Conditions

(a) The cross-trade is executed at the closing price, as defined below in Section IV(h) of this Part VII.

(b) Any cross-trade of securities by a Fund occurs as a direct result of a ''triggering event,'' as defined in Section IV(d), and is executed no later than the close of the third business day following such ''triggering event.''

(c) If the cross-trade involves a Model-Driven Fund, the cross-trade does not take place within three (3) business days following any change made by the Manager to the model underlying the Fund.

(d) The Manager has allocated the opportunity for all Funds or Large Accounts to engage in the cross-trade on an objective basis which has been previously disclosed to the authorizing fiduciaries of plan investors, and which does not permit the exercise of discretion by the Manager (*e.g.,* a pro rata allocation system).

(e) No more than 20 percent (20%) of the assets of the Fund or Large Account at the time of the cross-trade is comprised of assets of plans maintained by the Manager for its own employees (the Manager Plan(s)) for which the Manager exercises investment discretion.

(f)(1) Cross-trades of equity securities involve only securities that are widely held, actively traded, and for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or to the general public, and are widely recognized as accurate and reliable sources for such information. For purposes of this requirement, the terms, ''widely-held'' and ''actively-traded,'' shall be deemed to include any security listed in an Index, as defined in Section IV(c); and

(2) Cross-trades of fixed-income securities involve only securities for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or to the general public and are widely recognized as accurate and reliable sources for such information.

(g) The Manager receives no brokerage fees or commissions because of the cross-trade.

(h) A plan's participation in the cross-trading program of a Manager, as a result of investments made in any Index or Model-Driven Fund that holds plan assets is subject to a written authorization executed in advance of such investment by a fiduciary of such plan that is independent of Morgan Stanley and Mitsubishi (the independent plan fiduciary).

For purposes of this Part VII, the requirement that the authorizing fiduciary be independent of the Manager shall not apply in the case of a Manager Plan.

(i) With respect to existing plan investors in any Index or Model-Driven Fund that holds plan assets as of the date this proposed exemption is granted, the independent fiduciary is furnished with a written notice, not less than forty-five (45) days before the implementation of the cross-trading program, that describes the Fund's participation in the cross-trading program of the Manager, provided that:

(1) Such notice allows each plan an opportunity to object to such plan's participation in the cross-trading program as a Fund investor by providing such plan with a special termination form;

(2) The notice instructs the independent plan fiduciary that failure to return the termination form to the Manager, by a specified date (which shall be at least thirty (30) days following such plan's receipt of the form) shall be deemed to be an approval by such plan of its participation in the Manager's cross-trading program as a Fund investor; and

(3) If the independent plan fiduciary objects to a plan's participation in the cross-trading program as a Fund investor by returning the termination form to the Manager by the specified date, such plan is given the opportunity to withdraw from each Index or Model-Driven Fund without penalty before the implementation of the cross-trading program, within such time as may be reasonably necessary to effectuate the withdrawal in an orderly manner.

(j) Prior to obtaining the authorization described in Section II(h) the notice described in Section II(i) of this Part VII, the following statement must be provided by the Manager to the independent plan fiduciary:

Investment decisions for the Fund (including decisions regarding which securities to buy or sell, how much of a security to buy or sell, and when to execute a sale or purchase of securities for the Fund) will not be based in whole or in part by the Manager on the availability of cross-trade opportunities and will be made prior to the identification and determination of any cross-trade opportunities. In addition, all cross-trades by a Fund will be based solely upon a ''triggering event'' as set forth in this Part VII. Records documenting each cross-trade transaction will be retained by the Manager.

(k) Before any authorization set forth in Section II(h) of this Part VII, and at the time of any notice described in Section II(i) of this Part VII, the independent plan fiduciary must be furnished with any reasonably available information necessary for the fiduciary to determine whether the authorization should be given, including (but not limited to) (i) a copy of this proposed exemption and the final exemption, if granted, (ii) an explanation of how the authorization may be terminated, (iii) detailed disclosure of the procedures to be implemented under the Manager's cross-trading practices (including the ''triggering events'' that will create the cross-trading opportunities, the independent pricing services that will be used by the Manager to price the cross-traded securities, and the methods that will be used for determining closing price), and (iv) any other reasonably available information regarding the matter that the authorizing plan fiduciary requests. The independent plan fiduciary must also be provided with a statement that the Manager will have a potentially conflicting division of

loyalties and responsibilities to the parties to any cross-trade transaction and must explain how the Manager's cross-trading practices and procedures will mitigate such conflicts.

With respect to Funds that are added to the Manager's cross-trading program or changes to, or additions of, triggering events regarding Funds, following the authorizations described in Section II(h) or Section II(i) of this Part VII, the Manager shall provide a notice to each relevant independent plan fiduciary of each plan invested in the affected Funds before, or within ten (10) days following, such addition of Funds or change to, or addition of, triggering events, which contains a description of such Fund(s) or triggering event(s). Such notice will also include a statement that such plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner.

(l) At least annually, the Manager notifies the independent fiduciary for each plan that has previously authorized participation in the Manager's cross-trading program as a Fund investor, that such plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund that holds plan assets without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner. This notice shall also provide each independent plan fiduciary with a special termination form and instruct the fiduciary that failure to return the form to the Manager by a specified date (which shall be at least thirty (30) days following such plan's receipt of the form) shall be deemed an approval of the subject plan's continued participation in the cross-trading program as a Fund investor. In lieu of providing a special termination form, the notice may permit the independent plan fiduciary to utilize another written instrument by the specified date to terminate a plan's participation in the cross-trading program; provided that in such case the notification explicitly discloses that a termination form may be obtained from the Manager upon request. Such annual re-authorization must provide information to the relevant independent plan fiduciary regarding each Fund in which a plan is invested, as well as explicit notification that such plan fiduciary may request and obtain disclosures regarding any new Funds in which such plan is not invested that are added to the cross-trading program, or any new triggering events (as defined in Section IV(d) of this Part VII) that may have been added to any existing Funds in which such plan is not invested, since the time of the initial authorization described in Section II(h) of this Part VII, or the time of the notification described in Section II(i) of this Part VII.

(m) With respect to a cross-trade involving a Large Account:

(1) The cross-trade is executed in connection with a portfolio restructuring program, as defined in Section IV(f) of this Part VII, with respect to all or a portion of the Large Account's investments which an independent fiduciary of the Large Account (other than in the case of any assets of a Manager Plan) has authorized the Manager to carry out or to act as a ''trading adviser,'' as defined in Section IV(g) of this Part VII, in carrying out a Large Account-initiated liquidation or restructuring of its portfolio;

(2) Before the cross-trade, a fiduciary of the Large Account who is independent of Morgan Stanley and Mitsubishi (other than in the case of any assets of a Manager Plan) [7] has been fully informed of the Manager's cross-trading program, has been provided with the information required in Section II(k) of this Part VII, and has provided the Manager with advance written authorization to engage in cross-trading in connection with the restructuring, provided that:

(i) Such authorization may be terminated at will by the Large Account upon receipt by the Manager of written notice of termination.

(ii) A form expressly providing an election to terminate the authorization, with instructions on the use of the form, is supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must specify that the authorization may be terminated at will by the Large Account, without penalty to the Large Account, upon receipt by the Manager of written notice from the authorizing Large Account fiduciary;

(3) All cross-trades made in connection with the portfolio restructuring program must be completed by the Manager within sixty (60) days of the initial authorization (or initial receipt of assets associated with the restructuring, if later) to engage in such restructuring by the Large Account's independent fiduciary, unless such fiduciary agrees in writing to extend this period for another thirty (30) days; and,

(4) No later than thirty (30) days after completion of the Large Account's portfolio restructuring program, the Large Account's independent fiduciary must be fully apprised in writing of all cross-trades executed in connection with the restructuring. Such writing shall include a notice that the Large Account's independent fiduciary may obtain, upon request, the information described in Section III(a) of this Part VII, subject to the limitations described in Section III(b) of this Part VII. However, if the program takes longer than sixty (60) days to complete, interim reports containing the transaction results must be provided to the Large Account fiduciary no later than fifteen (15) days following the end of the initial sixty (60) day period and the succeeding thirty (30) day period.

Section III. General Conditions

(a) The Manager maintains or causes to be maintained for a period of six (6) years from the date of each cross-trade the records necessary to enable the persons described below in subparagraph (b) of this Section III to determine whether the conditions of this Part VII have been met, including records which identify:

(1) On a Fund-by-Fund basis, the specific triggering events which result in the creation of the model prescribed output or trade list of specific securities to be cross-traded;

(2) On a Fund-by-Fund basis, the model prescribed output or trade list which describes:

(i) Which securities to buy or sell; and

(ii) How much of each security to buy or sell; in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

(3) On a Fund-by-Fund basis, the actual trades executed by the Fund on a particular day and which of those trades resulted from triggering events.

Such records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified below in subparagraph (b) of this Section III, may obtain them within a reasonable period of time. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Manager shall be subject

[7] However, for the Manager Plan to participate in a specific portfolio restructuring program as part of a Large Account, proper disclosures must be made to, and written authorization must be made by, an appropriate plan fiduciary.

to the civil penalty that may be assessed under ERISA section 502(i) or to the taxes imposed by Code section 4975(a) and (b) if the records are not maintained or are not available for examination as required by subparagraph (b)below of this Section III.

(b)(1) Except as provided below in subparagraph (b)(2) of this Section III and notwithstanding any provisions of ERISA sections 504(a)(2) and (b), the records referred to in subparagraph (a) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the IRS,

(ii) Any fiduciary of a plan participating in a cross-trading program who has the authority to acquire or dispose of the assets of such plan, or any duly authorized employee or representative of such fiduciary,

(iii) Any contributing employer with respect to any plan participating in a cross-trading program or any duly authorized employee or representative of such employer, and

(iv) Any participant or beneficiary of any Manager Plan participating in a cross-trading program, or any duly authorized employee or representative of such participant or beneficiary.

(2) If, in the course of seeking to inspect records maintained by a Manager pursuant to this Section III, any person described below in subparagraph (b)(1)(ii) through (iv) of this Section III seeks to examine trade secrets, or commercial or financial information of the Manager that is privileged or confidential, and the Manager is otherwise permitted by law to withhold such information from such person, the Manager may refuse to disclose such information provided that, by the close of the thirtieth (30th) day following the request, the Manager gives a written notice to such person advising the person of the reasons for the refusal and that the Department of Labor may request such information.

(3) The information required to be disclosed to persons described above in subparagraph (b)(1)(ii) through (iv) of this Section III shall be limited to information that pertains to cross-trades involving a Fund or Large Account in which they have an interest.

Section IV. Definitions

The following definitions apply for purposes of this Part VII:

(a) ''Index Fund''—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a Manager or an Affiliate, in which one or more investors invest, and:

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index, as defined in Section IV(c) of this Part VII, by either

(i) Replicating the same combination of securities which compose such Index, or

(ii) Sampling the securities which compose such Index based on objective criteria and data;

(2) For which the Manager does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That either contains ''plan assets'' subject to ERISA, is an investment company registered under the 1940 Act, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust, or other fund which is exempt from taxation under Code section 501(a); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Index Fund which is intended to benefit a Manager or an Affiliate, or any party in which a Manager or an Affiliate may have an interest.

(b) ''Model-Driven Fund''—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by the Manager or an Affiliate in which one or more investors invest, and:

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of the Manager, to transform an Index, as defined in Section IV(c) of this Part VII;

(2) Which either contains ''plan assets'' subject to ERISA, is an investment company registered under the 1940 Act, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust, or other fund which is exempt from taxation under Code section 501(a); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Model-Driven Fund or the utilization of any specific objective criteria which is intended to benefit a Manager or an Affiliate, or any party in which a Manager or an Affiliate may have an interest.

(c) ''Index''—A securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is:

(i) Engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients,

(ii) A publisher of financial news or information, or

(iii) A public securities exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of the Manager, as defined in Section IV(i) of this Part VII; and,

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of the Manager.

(d) ''Triggering Event'':

(1) A change in the composition or weighting of the Index underlying a Fund by the independent organization creating and maintaining the Index;

(2) A material amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that:

(i) Such material amount has either been identified in advance as a specified amount of net change relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund or the Manager has otherwise disclosed in the description of its cross-trading practices, pursuant to Section II(k) of this Part VII, the parameters for determining a material amount of net change, including any amount of discretion retained by the Manager that may affect such net change, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given; and

(ii) Investments or withdrawals as a result of the Manager's discretion to invest or withdraw assets of a Manager Plan, other than a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including such Fund, will not be taken into

account in determining the specified amount of net change;

(3) An accumulation in the Fund of a material amount of either:

(i) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(ii) Stock attributable to dividends on portfolio securities; provided that such material amount has either been identified in advance as a specified amount relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund, or the Manager has otherwise disclosed in the description of its cross-trading practices, pursuant to Section II(k) of this Part VII the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the Manager that may affect such accumulated amount, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given;

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Model-Driven Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have been disclosed in writing to an independent fiduciary of each plan having assets held in the Model-Driven Fund, prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Model-Driven Fund; or

(5) A change in the composition or weighting of a portfolio for an Index Fund or a Model-Driven Fund which results from an independent fiduciary's direction to exclude certain securities or types of securities from the Fund, notwithstanding that such securities are part of the index used by the Fund.

(e) ''Large Account''—Any investment fund, account or portfolio that is not an Index Fund or a Model-Driven Fund sponsored, maintained, trusteed (other than a Fund for which the Manager is a nondiscretionary trustee), or managed by the Manager, which holds assets of either:

(1) An employee benefit plan within the meaning of ERISA section 3(3) that has $50 million or more in total assets (for purposes of this requirement, the assets of one or more employee benefit plans maintained by the same employer, or controlled group of employers, may be aggregated provided that such assets are pooled for investment purposes in a single master trust);

(2) An institutional investor that has total assets in excess of $50 million, such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust, or other fund which is exempt from taxation under Code section 501(a); or

(3) An investment company registered under the 1940 Act (*e.g.,* a mutual fund) other than an investment company advised or sponsored by the Manager; provided that the Manager has been authorized to restructure all or a portion of the portfolio for such Large Account or to act as a ''trading adviser'' (as defined in Section IV(g) of this Part VII in connection with a portfolio restructuring program (as defined in Section IV(f) of this Part VII for the Large Account.

(f) ''Portfolio restructuring program''—Buying and selling the securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund managed by the Manager or by another investment manager, or in order to produce a portfolio of securities the composition of which is designated by a party independent of the Manager, without regard to the requirements of Section IV(a)(3) or (b)(2) of this Part VII, or to carry out a liquidation of a specified portfolio of securities for the Large Account.

(g) ''Trading adviser''—A Morgan Stanley or Mitsubishi entity whose role is limited with respect to a Large Account to the disposition of a securities portfolio in connection with a portfolio restructuring program that is a Large Account-initiated liquidation or restructuring within a stated period of time in order to minimize transaction costs. The Morgan Stanley or Mitsubishi Entity does not have discretionary authority or control with respect to any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions and does not render investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to such transactions.

(h) ''Closing price''—The price for a security on the date of the transaction, as determined by objective procedures disclosed to investors in advance and consistently applied with respect to securities traded in the same market, which procedures shall indicate the independent pricing source (and alternates, if the designated pricing source is unavailable) used to establish the closing price and the time frame after the close of the market in which the closing price will be determined.

(i) ''Manager''—A Morgan Stanley entity acting as manager of a Fund or Large Account involved in one side of a cross-trade transaction involving a Mitsubishi entity acting as manager of a Fund or Large Account involved in the other side of the same cross-trade transaction; or a Mitsubishi entity acting as manager of a Fund or Large Account involved in one side of a cross-trade transaction involving a Morgan Stanley entity acting as manager of a Fund or Large Account involved in the other side of the same cross-trade transaction, where the Morgan Stanley entity and the Mitsubishi entity is:

(1) A bank or trust company, or any Affiliate thereof, which is supervised by a state or federal agency; or

(2) An investment adviser or any Affiliate thereof which is registered under the Investment Advisers Act of 1940.

(j) ''Affiliate''—An affiliate of a Manager is:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Manager:

(2) Any officer, director, employee, or relative of such Manager, or partner of any such Manager; or

(3) Any corporation or partnership of which such Manager is an officer, director, partner, or employee.

(k) ''Control''—The power to exercise a controlling influence over the management or policies of a person other than an individual.

(l) ''Relative''—A relative is a person that is defined in ERISA section 3(15) (or a ''member of the family'' as that term is defined in Code section 4975(e)(6)), or a brother, a sister, or a spouse of a brother or sister).

(m) ''Nondiscretionary trustee''—A plan trustee whose powers and duties with respect to any assets of a plan are limited to:

(1) The provision of nondiscretionary trust services to such plan, and

(2) Duties imposed on the trustee by any provision or provisions of ERISA or the Code. The term ''nondiscretionary trust services'' means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this Part VII, a person who is otherwise a nondiscretionary trustee will not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Part VIII. New Global Conditions Applicable to All Transactions Covered by This Exemption

(a) Notwithstanding the requirements above, the applicable Morgan Stanley/Mitsubishi Entity maintain(s) or cause(s) to be maintained for a period of six (6) years from the date of any transaction described herein, such records as are necessary to enable the persons described below in subparagraph (b) to determine whether the conditions of this proposed exemption were met, except that:

(1) If the records necessary to enable the persons described below in subparagraph (b)(1)(i)–(iv) to determine whether the conditions of the proposed exemption have been met are lost or destroyed, due to circumstances beyond the control of the Morgan Stanley/Mitsubishi Entity, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest with respect to a plan which engages in the covered transactions, other than Morgan Stanley and Mitsubishi, shall be subject to the civil penalty that may be assessed under ERISA section 502(i) Act or to the taxes imposed by Code section 4975(a) and (b) if the records have not been maintained or are not available for examination as required by subparagraph (b) below.

(b)(1) Except as provided below in subparagraph (b)(2), and notwithstanding the provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to above in subparagraph (a) are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service (IRS), or the SEC; or

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by any plan that engages in the transactions covered herein, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of any plan that engages in the transactions covered herein, or duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in subparagraph (b)(1)(ii)–(iv) shall be authorized to examine the trade secrets of a Morgan Stanley/Mitsubishi Entity, or commercial or financial information, which is privileged or confidential; and

(3) Should a Morgan Stanley/Mitsubishi entity refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to subparagraph (b)(2) above such Morgan Stanley/Mitsubishi Entity shall, by the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

(c) If an Applicable Class Exemption is amended, revised or revoked, or is subject to a new interpretation by the Department following the grant of this exemption, such change or interpretation will apply to the relevant transactions, conditions and/or terms in the relevant exemption herein.

(d) *Disclosure of Conflicts:* The Morgan Stanley/Mitsubishi Entity engaging in a transaction covered by any Part of this exemption (with the exception of transactions described in Parts III and V) must provide a written notice to a fiduciary of that plan that is independent of both Mitsubishi and Morgan Stanley. The notice must clearly, and in plain English: (i) describe the ownership relationship between Morgan Stanley and Mitsubishi; (ii) describe the transactions that Morgan Stanley and Mitsubishi will engage in under this exemption on behalf of the plan or IRA; and (iii) alert the independent plan fiduciary that, as a result of the ownership relationship between Morgan Stanley and Mitsubishi, the previously identified transactions will provide a benefit to Morgan Stanley or Mitsubishi (*i.e.,* the party that is not exercising discretion over the assets involved in the transaction) and/or involve a conflict of interest;

(e) When relying on the relief in any Part of this exemption, the Morgan Stanley/Mitsubishi Entity must comply with the following ''Impartial Conduct Standards'': (1) The Morgan Stanley/Mitsubishi Entity, at the time of the transaction, must act in the Best Interest of the plan. In this regard, acting in the Best Interest means acting with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of affected plan, and not place the financial or other interests of the Morgan Stanley/Mitsubishi Entity, Related Entity, or other party ahead of the interests of the affected plan, or subordinate the plan's interests to their own; (2)(A) The compensation received, directly or indirectly, by the Morgan Stanley/Mitsubishi Entity and Related Entities for their services may not exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and (B) As required by the federal securities laws, the Morgan Stanley/Mitsubishi Entity must obtain the best execution of the investment transaction reasonably available under the circumstances; and (3) The Morgan Stanley/Mitsubishi Entity's statements to the plan about the covered transaction and other relevant matters must not be materially misleading at the time statements are made.

(f) All Morgan Stanley/Mitsubishi Entities utilizing the exemption will have policies and procedures in place that are prudently designed to ensure that the conditions of the exemption are met. The policies and procedures must be in place prior to the occurrence of the transaction that is the subject of the relevant relief.

Part IX. General Definitions

(a) The term ''Morgan Stanley/Mitsubishi Entity'' means an entity acting as a plan fiduciary in a transaction described in Parts I through VII:

(1) That meets the definition of Morgan Stanley, as defined below; or

(2) That meets the definition of Mitsubishi, as defined below; or

(b) The term ''Related Entity'' means an entity that meets the definition of ''Morgan Stanley/Mitsubishi Entity,'' except that the entity is not acting as a fiduciary with respect to the transaction that is the subject of the exemptive relief described in Parts I through VII of the exemption, if granted.

(c) The term ''Morgan Stanley'' means Morgan Stanley & Co. LLC and any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Morgan Stanley & Co.

(d) The term ''Mitsubishi'' means Mitsubishi UFJ Financial Group, Inc., and any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Mitsubishi UFJ Financial Group, Inc.

(e) For purposes of Part IX (c) and (d) above, the term ''control'' means the power to exercise a controlling influence over the management or

policies of a person other than an individual.

(f) The term ''Rating Agency'' or collectively, ''Rating Agencies'' means a credit rating agency that:

(1) Is currently recognized by the Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO);

(2) Has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities;'' and

(3) Has had, within a period not exceeding twelve (12) months prior to the initial issuance of the securities, at least three (3) ''qualified ratings engagements.'' A ''qualified ratings engagement'' is one:

(i) Requested by an issuer or underwriter of securities in connection with the initial offering of the securities;

(ii) For which the credit rating agency is compensated for providing ratings;

(iii) Which is made public to investors generally; and

(iv) Which involves the offering of securities of the type that would be granted relief by the certain underwriter exemptions (the Underwriter Exemptions).[8]

(g) The term ''Applicable Class Exemption'' means PTE 75–1, Part III; PTE 75–1, Part IV; PTE 77–3; PTE 77–4; PTE 79–13; PTE 86–128; or PTE 2002–12.

Applicability Date: This exemption will be in effect on the date that this grant notice is published in the **Federal Register**.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

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[8] The Underwriter Exemptions are a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding, and disposition by plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The most recent amendment to the Underwriter Exemptions is the Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, et al., To Amend the Definition of ''Rating Agency,'' [Prohibited Transaction Exemption 2012–08, 78 FR 41090 (July 9, 2013); Exemption Application No. D–11718].

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Technical Correction to PTE 2016–10, Exemption From Certain Prohibited Transaction Restrictions: Royal Bank of Canada (Together With Its Current and Future Affiliates, RBC or the Applicant)

AGENCY: Employee Benefits Security Administration (EBSA), Labor.

ACTION: Notice of technical correction.

SUMMARY: This document makes a technical correction to Prohibited Transaction Exemption (PTE) 2016–10 granted to the Royal Bank of Canada (D–11868) on October 28, 2016.

DATES:

Issuance date: These technical corrections are issued on December 11, 2023 without further action or notice.

Exemption Date: PTE 2016–10 will remain in effect for the period beginning on the Conviction Date (as corrected herein) until the earlier of: (1) the date that is twelve months following the Conviction Date; or (2) the effective date of a final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described in PTE 2016–10.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2016, the Department published PTE 2016–10 in the **Federal Register**.[1] PTE 2016–10 is a temporary administrative exemption that permits certain entities (the RBC Qualified Professional Asset Managers (QPAMs)) with specified relationships to Royal Bank of Canada (Bahamas) Limited (RBCTC Bahamas) to continue to rely upon the relief provided by the Department's QPAM Exemption [2] for a one-year period, notwithstanding a potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud.[3]

The Department granted PTE 2016–10 to protect Covered Plans [4] from the harm that may arise if and when RBCTC were convicted in the District Court of Paris.[5] Therefore, PTE 2016–10, as initially granted, defined the term ''Conviction'' as ''the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12.''

In January 2017, the trial court in France acquitted RBCTC of the aiding and abetting the tax fraud charge, so the exemptive relief provided in PTE 2016–01 was unnecessary. However, RBCTC recently informed the Department that the French prosecutor has appealed the lower court's acquittal and the case is now being heard de novo as a new trial by a French appellate court. According to RBCTC, the alleged crime, the parties, and the case numbers remain the same as the District Court of Paris case that is defined as the ''Conviction'' in PTE 2016–01. RBCTC has requested confirmation from the Department that the relief provided in PTE 2016–10 would be available for one year, if RBCTC were ultimately convicted by the French appellate court.

As noted above, PTE 2016–10 is intended to protect Covered Plans from harm if RBCTC were convicted for the alleged crime in France. This same harm would arise whether RBCTC is convicted for the same crime, stemming from the same conduct, in a French appellate court or ''the District Court of Paris.'' Therefore, to ensure that Covered Plans are protected from any harm that would arise from the appellate court's conviction of RBCTC, the Department is revising the definition of ''Conviction'' in PTE 2016–10 to refer to ''the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the Court of Appeal, French

[1] 81 FR 75147 (October 28, 2016).

[2] PTE 84–14 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM exemption.

[3] Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84–14 for itself and its client plans, if that entity or an ''affiliate'' thereof, or any owner, direct or indirect, of a five percent or more interest in the QPAM has within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section.

[4] A ''Covered Plan'' is a plan subject to part 4 of title 1 of ERISA (''ERISA-covered plan'') or a plan subject to Section 4975 of the Code (''IRA''), with respect to which an RBC QPAM relies on PTE 84–14, or with respect to which an RBC QPAM (or any RBC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption. A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the RBC QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

[5] RBC's exemption request (D–11868) is available by contacting EBSA's Public Disclosure Room at (202) 693–8673.